

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8316**

**SENATE JUDICIARY**

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## PEDESTRIAN FACT SHEET

- There are more than 100,000 pedestrian injuries and approximately 6,000 pedestrian fatalities each year.
- Crashes involving pedestrians are likely to be fatal crashes and account for approximately 15 percent of all traffic fatalities.
- Alcohol impairment is a leading factor in pedestrian fatalities and injuries. Approximately one-third of the pedestrians involved in fatal pedestrian crashes were intoxicated. In about half of the fatal pedestrian crashes, pedestrians between the ages of 14 and 65 had been drinking.
- Approximately half of the total number of pedestrian fatalities each year involve use of alcohol either by the driver or the pedestrian.
- There are more than 9 alcohol-related fatal pedestrian crashes every day in this country. In 1992, there were 1,902 alcohol-related fatal pedestrian crashes.
- One out of 4 alcohol-related fatal pedestrian crashes involves a pedestrian who had not been drinking and a driver who had.
- More than half of all fatal pedestrian crashes involving adults ages 20-29 involved alcohol in 1992.
- Many prescriptions and over-the-counter medications, when combined with alcohol, impair mental alertness and the ability to walk safely.

## Motorcycle Fact Sheet

- In 1992, traffic crashes killed 2,394 motorcyclists. An additional 72,000 were injured.
- In 1992, alcohol was present in 52.4 percent of motorcycle operators involved in fatal crashes. The presence of alcohol is higher in motorcycle operators involved in fatal crashes than in the operators of any other type of vehicle involved in fatal crashes.
- In 1992, 30 percent of motorcycle drivers under the age of 20 killed in traffic crashes had some level of alcohol in their blood, with the majority of these having a blood alcohol content of .10 or above.
- Although motorcycles only represent less than 3 percent of all registered motor vehicles, crashes involving motorcycles account for almost 7 percent of all motor vehicle fatalities.
- Per mile, a motorcyclist is approximately 20 times more likely to die in a crash than is an automobile operator.
- Head injury is the leading cause of death in motorcycle crashes. Compared to a helmeted rider, an unhelmeted rider is 40 percent more likely to incur a fatal head injury and 15 percent more likely to incur a head injury of lesser severity when involved in a crash.
- A study of all injured motorcyclists admitted to Maryland trauma centers for a one-year period in 1987-88 found that of the 165 patients tested for alcohol use, 53.3 percent tested positive. Of the riders under the legal drinking age tested for alcohol use, 31.3 percent tested positive.

## TRUCKS FACT SHEET

- Light, medium and heavy trucks were involved in 18,783 fatal crashes in 1989.
- In 1989, 38.3 percent of light trucks, 7.3 percent of medium trucks, and 5.0 percent of heavy truck drivers involved in fatal crashes had some level of alcohol in their blood.
- Occupants of other vehicles constitute approximately three-fourths of the victims in medium and heavy truck crashes.

## SPEED FACT SHEET

- Speed is the most prominent factor governing the fundamental relationships among all the physical forces involved in crashes, including motorist reaction time and crash severity.
- From current data, the National Highway Traffic Safety Administration estimates that the percent of vehicles exceeding 65 mph on rural interstate highways has increased from 23 percent in 1986 to 45 percent in 1992. In the same time period, the percent of vehicles exceeding 75 mph increased from an estimated 6 percent to 20 percent.
- Speed increases the distance a vehicle travels during the "fixed period of time" that it takes for the driver to react to a perceived danger.
- Speed increases the total stopping distance necessary to halt a vehicle. The Federal Motor Vehicle Safety Standard (FMVSS) 105 requires that a car stop within 383 feet from 80 mph, 172 feet from 55 mph, and 70 feet from 35 mph.
- One-third of all fatal crashes are related to speed.
- Speed-related fatal crashes most often involve only a single vehicle.
- Speed is a frequently occurring driver-error-related cause contributing to crashes.
- Crash severity increases disproportionately with speed at impact. The chances of death or serious injury double for every 10 mph of increased vehicle speed.
- The safety benefits of occupant protection (safety belts/airbags/child safety seats) diminish in a crash as speeds increase.
- Excessive speed was noted for approximately 30 percent of unrestrained drivers in fatal crashes.
- The energy of impact delivered to the driver and passengers in a collision is proportional to the square of the speed. If a driver of a car increases the speed from 20 mph to 80 mph, the speed goes up by a factor of four and the energy of the impact delivered in a collision goes up by a factor of 16 in these crashes.
- Police investigating fatal crashes report that unsafe practices (speeding, following too closely, improper lane use, unsafe passing, and reckless operation) account for more than one-third of the total at-fault, driver-related factors in these crashes.
- Of all drivers involved in speed-related fatal crashes in 1992, about 56 percent were under the influence of alcohol.
- Higher speeds result in more severe crashes which can result in more disabling injuries.
- The total societal cost of speed-related crashes is more than \$10 billion annually.

STATE AND FEDERAL APPELLATE COURT DECISIONS  
CONCERNING ROADSIDE SOBRIETY CHECKPOINTS  
(January 22, 1993)

State	Yes/No*	Case Name and Citation
Alabama	Yes	Smith v. State, 515 So.2d 149 (Ala. Cr. App. 1987) <sup>42</sup>
Alaska		
Arizona	Yes	State v. Superior Court, 691 P.2d 1073 (1984) <sup>43</sup>
Arkansas	Note:	See Footnote No. 12.
California	Yes	Ingersoll v. Palmer, 743 P.2d 1299 (Cal. 1987) <sup>40</sup>
Colorado	Yes	People v. Rister, 803 P.2d 483 (Colo. 1990) <sup>41</sup>
Connecticut		
Delaware	Note:	See Delaware v. Prouse, 440 U.S. 648 (1979) <sup>17</sup>
Dist. of Columbia	Note:	Galberth v. U.S., 590 A.2d 990 (D.C. App. 1991) <sup>5</sup>
Florida	Yes <sup>3</sup>	State v. Jones, 483 So.2d 433 (1986) <sup>44</sup>
Georgia	Yes	State v. Golden, 318 S.E.2d 693 (Ga. App. 1984) <sup>32</sup>
Hawaii	Yes	Hawaii v. Naima (No. B-91009) (1985) <sup>19</sup>
Idaho	No <sup>0</sup>	State v. Henderson, 756 P.2d 1057 (Idaho 1988)
Illinois	Yes	People v. Bartley, 486 N.W.2d 880 (Ill. 1985) <sup>42</sup>
Indiana	Yes	State v. Garcia, 500 N.E.2d 158 (Ind. 1986) <sup>9</sup>
Iowa	Yes	State v. Riley, 377 N.W.2d 242 (CA 1985) <sup>28, 18</sup>
Kansas	Yes	State v. Deskins, 673 P.2d 1174 (Kansas 1983)
Kentucky	Yes	Kinslow v. Com., 660 S.W.2d 677 (Ky. 1984) <sup>4</sup>
Louisiana	No <sup>0</sup>	State v. Parms, 523 So.2d 1293 (La. 1988) <sup>29</sup>
Maine	Yes	State v. Leighton, 551 A.2s 116 (Me. 1988) <sup>34</sup>
Maryland	Yes	Little v. State, 479 A.2d 903 (Md. 1984)
Massachusetts	Yes	Com. v. Shields, 521 N.E.2d 987 (Mass. 1988) <sup>35</sup>
Michigan	No	See Footnote No. 21.
Minnesota	Yes	Chock v. Comm. of Pub. Safety, 448 N.W.2d 692 <sup>11</sup>
Mississippi	Note:	See Miller v. State, 373 So.2d 1004 (Miss. 1979) <sup>40</sup>
Missouri	Yes	State v. Welch, 755 S.W.2d 624 (Mo. App. 1988) <sup>28</sup>
Montana	Note:	Checkpoints Authorized via Safety Spot Checks <sup>40</sup>
Nebraska	No <sup>10</sup>	State v. Crom, 383 N.W.2d 461 (Neb. 1986)
Nevada		See Footnote No. 33.
New Hampshire	No <sup>5</sup>	State v. Koppel, 499 A.2d 977 (N.H. 1985) <sup>43</sup>
New Jersey	Yes	State v. Mazurek, 567 A.2d 277 (NJ Super AD 1989) <sup>1</sup>
New Mexico	Yes	City of Law Cruces v. Betancourt, 735 P.2d 1161 <sup>15</sup>
New York	Yes	People v. Scott, 473 N.E.2d 1 (N.Y. 1984) <sup>45</sup>
North Carolina	Note:	See Footnote No. 30.
North Dakota	Note:	State v. Wetzel, 456 N.W.2d 115 (N.D. 1990) <sup>38</sup>
Ohio	Note:	See State v. Goines, 474 N.E.2d 1219 (CA 1984) <sup>13</sup>
Oklahoma	No	State v. Smith, 674 P.2d 562 (Okla. Cr. 1984) <sup>47</sup>
Oregon	No <sup>0</sup>	State v. Bovanovsky, 743 P.2d 711 (Or. 1987) <sup>40</sup>
Pennsylvania	Yes	Com. v. Tarbert, 535 A.2d 1035 (Pa. 1987) <sup>36</sup>
Puerto Rico		
Rhode Island	No <sup>0</sup>	Primental v. Rhode Island, 561 A.2d 1348 (RI 1989)
South Carolina		
South Dakota	Note:	See State v. Halverson, 277 N.W.2d 723 <sup>0</sup>
Tennessee		
Texas	No	King v. State, 816 S.W.2d 447 <sup>37</sup>
Utah	Note:	Authorized by Ut. Code Anno. § 77-23-101 et seq. <sup>39</sup>

APPELLATE DECISIONS-SOBRIETY CHECKPOINTS

State	Yes/No*	Case Name and Citation
Vermont	Yes	State v. Martin, 496 A.2d 442 (1985) <sup>24</sup>
Virginia	Yes	Lowe v. Commonwealth, 337 S.E.2d 273 (1985) <sup>10&amp;25</sup>
Washington	No <sup>0</sup>	City of Seattle v. Mesiani, 755 P.2d 775 (1988) <sup>14</sup>
West Virginia	Note:	See State v. Frisby, 245 S.E.2d 622 (W.Va. 1978) <sup>31</sup>
Wisconsin	Note:	Checkpoints Prohibited by Law § 349.02(2)(a)
Wyoming		
<b>TOTALS</b>	<b>Yes=23 No=10</b>	

\*Yes=A favorable decision on the use of sobriety checkpoints (e.g., constitutional).

No=An unfavorable decision on the use of sobriety checkpoints (e.g., unconstitutional).

References: See 37 ALR4th 10 and, under "Automobile" in West's Digests. "Key Number" 349(9).

FOOTNOTES:

<sup>1</sup>Sobriety checkpoints held unconstitutional as applied/administered by law enforcement personnel.

<sup>2</sup>See also State v. Hillesheim, 291 N.W.2d 314 (Iowa 1980), where the State supreme court indirectly decided that properly conducted checkpoints would not violate the U.S. Constitution (Fourth Amendment).

<sup>3</sup>The court held that sobriety checkpoints are generally constitutional if the correct procedures are followed. However, as such procedures were not followed in this case, the checkpoint was unconstitutional as applied.

<sup>4</sup>Cert. den. by the U.S. Supreme Court, 465 U.S. 1105 (1984).

<sup>5</sup>Certain types of checkpoints (e.g., sobriety checkpoints) were indirectly approved. See also U.S. v. McFayden, 865 F.2d 1306 (D.C.Cir. 1989), where the U.S. Court of Appeals for the District of Columbia Circuit upheld the use of a roadblock (checkpoint) for the purpose of checking the validity of drivers' licenses and vehicle registrations.

<sup>6</sup>Sobriety checkpoints found to be in violation of the State's constitution. See State v. DeCamera, 568 A.2d 86 (N.J.Super.A.D. 1989). See also, State v. Moskal, 586 A.2d 845 (N.J.Super.A.D. 1991), and State v. Kirk, 493 A.2d 1271 (N.J.Super.A.D. 1985). For a case involving an unreasonable roadblock that interfered with individual liberties and interstate commerce, see State v. Barcia, 549 A.2d 491 (N.J.Super.L. 1988).

## APPELLATE DECISIONS--SOBRIETY CHECKPOINTS

### FOOTNOTES: (continued)

<sup>8</sup>(S.D. 1979) In the Halverson case, a person was charged with driving with a revoked license following a stop at temporary checkpoint to determine violations of the State's wild game laws. However, in an earlier case, *State v. Olgaard*, 248 N.W.2d 392 (S.D. 1976), a DWI checkpoint was found to be unconstitutional; the court felt that a "prior judicial warrant" was needed before a DWI checkpoint could be conducted. Note: These cases were decided prior to *Delaware v. Prouse*, 440 U.S. 648 (1979). In a recent case, the South Dakota Supreme Court held that the police had probable cause to stop a driver for a criminal traffic offense when the driver tried to avoid a checkpoint. See *State v. Thill*, 474 N.W.2d 86 (S.D. 1991).

<sup>9</sup>Cert. den. by the U.S. Supreme Court, 481 U.S. 1014 (1987). See also *Snyder v. State*, 538 N.E.2d 961 (Ind.App. 4 Dist. 1989).

<sup>10</sup>Cert. den. by the U.S. Supreme Court, 475 U.S. 1084 (1986).

<sup>11</sup>(Minn.App. 1990). In an earlier case, this court held against sobriety checkpoints, in part, because there was a lack of evidence showing the "need" for them. See *State v. Muzik*, 379 N.W.2d 599 (Minn.App. 1985). However, if proper procedures are not followed, the court will invalidate a checkpoint. See *State v. Larson*, 485 N.W.2d 571 (Minn.App. 1992). Note: A voluntary roadside "drunk driver survey" was held constitutional by a Federal District Court; see *Stark v. Perpich*, 590 F.Supp. 1057 (1984).

<sup>12</sup>In several cases involving DWI arrests associated with roadblocks established to check the validity of driver's licenses/vehicle registrations, the Arkansas Court of Appeals has held that the roadblocks used were constitutional; see *Coffman v. State*, 759 S.W.2d 573 (Ark.App. 1988), *Tims v. State*, 760 S.W.2d 78 (Ark.App. 1988) and *Camp v. State*, 764 S.W.2d 463 (Ark. App. 1989). See also *Stobaugh v. State*, 769 S.W.2d 25 (Ark. 1989). Note: In *Garrett v. Goodwin*, 569 F.Supp. 106 (1982), a Federal district court issued a consent decree requiring the State to issue written procedures on how license and registration check roadblocks are to be conducted.

<sup>13</sup>Motor vehicle safety inspection "checkpoints" were upheld as conducted in this case. Language in this case, however, gives no indication as to whether the court would uphold sobriety checkpoints.

<sup>14</sup>Sobriety checkpoints found to be in violation of the State's constitution. Note: In an earlier case, *State v. Marchand*, 706 P.2d 285 (1985), a checkpoint for the purpose of checking driver's licenses, vehicle registrations and equipment was held to be an invalid seizure by the State supreme court; language in this case indicated that this court would be opposed to any type of checkpoint.

<sup>15</sup>(CA 1987). Note: See *United States v. Prichard*, 645 F.2d 854 (1981) (Cert. den. by the U.S. Supreme Court, 454 U.S. 832) where a routine driver's license and vehicle registration check by the New Mexico State Police was held valid. For another case, which also upheld this type of checkpoint, see *United States v. Diaz-Albertini*, 772 F.2d 654 (1985).

<sup>16</sup>The court may allow sobriety checkpoints if the proper procedures are followed. The court, however, was not clear on this point.

## APPELLATE DECISIONS--SOBRIETY CHECKPOINTS

### FOOTNOTES: (continued)

<sup>17</sup>The U.S. Supreme Court case that, prior to *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990), appears to have established, via dicta, the constitutionality of certain types of checkpoints (sobriety and otherwise). See also *Brower v. County of Inyo*, 489 U.S. 593 (1989), 109 S.Ct. 1378, 103 L.Ed.2d 628.

<sup>18</sup>Under § 321K.1, routine drunk driver roadblocks may be prohibited.

<sup>19</sup>This is an unpublished opinion. Note: Hawaii Revised Statutes § 286-162.6 and Notice 86-10 (an internal police regulation) provide for the minimum standards that law enforcement officers must use when conducting sobriety checkpoints. For a cases decided with reference to these standards, see *State v. Aguinaldo*, 782 P.2d 1225 (Hawaii 1989), and *State v. Fedak*, 825 P.2d 1068 (HawaiiApp. 1992).

<sup>20</sup>However, a DWI arrest following an officer's observation of a violation while stopping and directing traffic around an accident was approved: see *State v. Holmes*, 813 P.2d 28 (Or. 1991). See also, *State v. Gerrish*, 815 P.2d 1244 (Or. 1991), *State v. Anderson*, 743 P.2d 715 (Or. 1987), and *Nelson v. Lane County*, 743 P.2d 692 (Or. 1987). Both in the Lane County case and in *State v. Shankle*, 647 P.2d 959 (Or. 1982), the Oregon Supreme Court held that the use of sobriety checkpoints did not violate the Fourth Amendment to the U.S. Constitution. Note: The court in the Lane County case indicated that the State could establish "administrative checkpoints" to control the drunk driver problem. The sanctions associated with apprehending a person at such a checkpoint must be administrative in nature (e.g., driver's license suspension or revocation) not criminal (as in the *Boyanovsky* and *Anderson* cases). The court further noted that such "administrative checkpoints" must be authorized by statute. 743 P. 692, 679 (See especially Footnote No. 9 on p. 697.)

<sup>21</sup>In *Mich. Dept. of State Police v. Sitz*, 496 U.S.444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990) the U.S. Supreme Court held that sobriety checkpoints do not on their face violate the U.S. Constitution's protections against unreasonable searches and seizures under the Fourth Amendment. However, on remand from the U.S. Supreme Court, the Michigan Court of Appeals held that sobriety checkpoints violated Michigan's Constitution. See *Sitz v. Mich. Dept. of State Police*, 485 N.W.2d 135 (Mich.App. 1992). (Note: The Michigan Supreme Court had declined to review the first court of appeals decision on this issue (432 Mich. 872). This cleared the way for the U.S. Supreme Court to review the case.) The decision in the remanded case has been appealed to the Michigan Supreme Court for the purpose of determining the legality of sobriety checkpoints under the State constitution's search and seizure provision (Const. 1963, art. 1, §11). Comment: In a recent case, the Michigan Supreme Court appears to have indicated that it will interpret the State constitution's provision on search and seizure the same way as the U.S. Supreme Court interprets the Fourth Amendment of the U.S. Constitution. See *People v. Mamon*, 457 N.W.2d 623 (Mich. 1990).

<sup>22</sup>Cert. den. by the U.S. Supreme Court, 475 U.S. 1068 (1986).

## APPELLATE DECISIONS—SOBRIETY CHECKPOINTS

### FOOTNOTES: (continued)

<sup>23</sup>See Opinion of the Justices, 509 A.2d 744 (N.H. 1986), where judicially authorized sobriety checkpoints via legislation may be allowed.

<sup>24</sup>See also *State v. Record*, 548 A.2d 422 (Vt. 1988), that upheld the use of sobriety checkpoints under the State's constitution.

<sup>25</sup>See *Crandol v. City of Newport News*, 386 S.E.2d 113 (Va. 1989), and *Simmons v. Commonwealth*, 380 S.E.2d 656 (Va. 1989), and *Hall v. Com.*, 406 S.E.2d 674 (Va.App. 1991). In the *Simmons* and *Hall* cases, the courts held the sobriety checkpoints invalid because they did not follow the standards for such roadblocks as detailed in the *Lowe* case. In *Com. v. Eaves*, 408 S.E.2d 925 (Va.App. 1991), the court held that the police had probable cause to stop a driver for a criminal offense if they made a U-turn just in front of a checkpoint.

<sup>26</sup>Note: In a separate sobriety checkpoint case, the California Supreme Court, based on the *Ingersoll* decision, vacated an opinion of a lower State appellate court that had held that the use of such checkpoints was unconstitutional. The defendant in this vacated case filed a petition with the U.S. Supreme Court for a writ of certiorari; the Court, however, denied the writ. See *People v. In Re Richard T.*, 750 P.2d 297 (Calif. 1988) (No. 88-316), cert. den., 488 U.S. 986 (1988), 109 S.Ct. 542, 102 L.Ed.2d 572. The California Court of Appeals has held that advanced publicity is a necessary part of any checkpoint. Failure to have such publicity renders a checkpoint unconstitutional. The court based its decision on the fact that the checkpoint that was approved by the U.S. Supreme Court in the *Sitz* case had advanced public notice. See *People v. Banks*, 13 Cal.Rptr.2d 920 (Cal.App. 4th Dist. 1992).

<sup>27</sup>This case was decided prior to *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990). The court held that a temporary sobriety checkpoint violated the Fourth Amendment to the U.S. Constitution. Note: Oklahoma has a statute (21 § 540B) authorizing the use of roadblocks for the purpose of apprehending persons who (1) have eluded the police, (2) have escaped custody or (3) have committed a felony. The Oklahoma courts have not determined whether either this statute or type of roadblock violates either the U.S. or State constitutions.

<sup>28</sup>For another case upholding the use of sobriety checkpoints, see *State v. Payne*, 759 S.W.2d 252 (Mo.App. 1988). However, the court of appeals did hold a sobriety checkpoint illegal where there were no written procedures on how the checkpoint was to be conducted; see *State v. Canton*, 775 S.W.2d 352 (Mo.App. 1989).

<sup>29</sup>See also *Louisiana v. Church*, 538 So.2d 993 (La. 1989). In these cases, the court also found sobriety checkpoints in violation of the U.S. Constitution as well as the State constitution.

<sup>30</sup>North Carolina law establishes the minimum procedures needed to operate a sobriety checkpoint; see § 20-16.3A.

## APPELLATE DECISIONS--SOBRIETY CHECKPOINTS

### FOOTNOTES: (continued)

<sup>31</sup>Cert. den., 439 U.S. 1127 (1979). In this case, the West Virginia Supreme Court of Appeals held that checkpoints, established for the purpose of examining licenses and vehicle registrations, were constitutional if such were conducted according to a preconceived plan that used nondiscriminatory procedures. In a published opinion, the West Virginia Attorney General has determined that sobriety checkpoints, if properly conducted, would be constitutional under both the Federal and State constitutions; see Op. Attn. Gen., Dec. 27, 1984, No. 3.

<sup>32</sup>and *Evans v. State*, 380 S.E.2d 332 (Ga.App. 1989). For other cases upholding the use of some form of checkpoint, see *Sapp v. State*, 374 S.E.2d 114 (Ga.App. 1988), *Mims v. State*, 410 S.E.2d 824 (Ga.App. 1991), *Brimer v. State*, 411 S.E.2d 128 (Ga.App. 1991) and *Christopher v. State*, 413 S.E.2d 236 (Ga.App. 1991).

<sup>33</sup>Nevada law establishes minimum standards for conducting either administrative or temporary emergency roadblocks; see §§ 484.359 and 484.3591.

<sup>34</sup>See also *State v. McMahon*, 557 A.2d 1324 (Me. 1989), and *State v. Babcock*, 559 A.2d 337 (Me. 1989). Note: In *State v. D'Angelo*, 605 A.2d 58 (Me. 1992), the court held that there was "reasonable and articulable suspicion" for a law enforcement officer to stop and question occupants of a vehicle where the vehicle was observed to have turned into a residential driveway just before a checkpoint, the vehicle's lights and engine were turned off and it appeared to the officer that the occupants did not live in the residence.

<sup>35</sup>See also *Com. v. Cameron*, 545 N.E.2d 619 (Mass.App.Ct. 1989). In another appellate case, however, the State supreme court held that a sobriety checkpoint was illegal because it did not comply with written guidelines; see *Com. v. Anderson*, 547 N.E.2d 1134 (Mass. 1989).

<sup>36</sup>See also *Com. v. Myrtetus*, 580 A.2d 42 (Pa.Super. 1990). Also, in *Com. v. Blouse*, 611 A.2d 1177 (Pa. 1992), the court held that systematic, non-discriminatory and non-arbitrary checkpoints established for the purpose of enforcing vehicle registration and equipment laws and driver licensing laws did not violate the Pennsylvania Constitution (Article I, § 8).

<sup>37</sup>(Tex.App. - Dallas 1991), and *State v. Wagner*, 821 S.W.2d 288 (Tex.App. - Dallas 1991). These cases were decided on remand from the Texas Court of Criminal Appeals (see below); the court held that sobriety checkpoints were unconstitutional because there was no "legislatively developed administrative scheme (i.e., no legislative authorization to conduct such checkpoints). The cases decided by the Texas Court of Criminal Appeals, which appear to generally uphold the use of sobriety checkpoints, were *King v. State*, 800 S.W.2d 528 (TexCrApp 1990) and *State v. Wagner*, 810 S.W.2d 207 (Tex.Cr.App. 1991); these cases were decided after *Michigan Dept of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990). (Note: The *King* case overturned a previous decision on this same subject by this same court; see *Higbie v. State*, 780 S.W.2d 228 (TexCrApp 1989).) However, the court remanded these cases for consideration of other issues. Note: An intermediate appellate court held against the use of sobriety checkpoints on "efficiency" grounds; see *State v. Van Natta*, 805 S.W.2d 40 (Tex.App. - Fort Worth 1991).

## APPELLATE DECISIONS—SOBRIETY CHECKPOINTS

### FOOTNOTES: (continued)

<sup>38</sup>In this case, the State supreme court upheld the validity of a vehicle safety inspection checkpoint. Also, in *State v. Everson*, 474 N.W.2d 695 (N.D. 1991), the State supreme court upheld the validity of a checkpoint that was conducted to apprehend drug traffickers.

<sup>39</sup>Under this law, the "Administrative Traffic Checkpoint Act," law enforcement officers are authorized to conduct sobriety and other checkpoints after approval of a plan by a magistrate. This statute was necessary because an appellate court had held that the State's constitution prohibited "suspicionless investigation roadblocks" unless they have been authorized via legislation. See *State v. Sims*, 808 P.2d 141 (UtahApp. 1991). The roadblock (checkpoint) that was found by the court to be operating illegally was being used "to detect driver's license, registration, and equipment violations as well as liquor and drug violations." The defendant was convicted of a drug offense as a consequence of the stop at the roadblock. The Utah Supreme Court has also held that roadblocks (or checkpoints) must be authorized by specific legislation. The court felt that legislation that granted the police general powers to enforce the laws were not sufficient to authorize the use of roadblocks where there was a lack of evidence to warrant a stop. See *Sims v. Tax Commission*, 841 P.2d 6 (Utah 1992). See also *State v. Park*, 810 P.2d 456 (UtahApp. 1991), and *State v. Small*, 829 P.2d 129 (UtahApp. 1992). In addition, in all three of the above cases, the court held that, since the roadblocks in question were not being conducted according to "established guidelines," they violated the Federal Constitution.

<sup>40</sup>This case concerned a "roadblock" to check for the validity of drivers' licenses. The court held that the stop and the procedures used at this "roadblock" did not violate a person's rights under the federal Constitution.

<sup>41</sup>*and Orr v. People*, 803 P.2d 509 (Colo. 1990)

<sup>42</sup>See also *Cains v. State*, 555 So.2d 290 (Ala.Cr.App. 1989), and *Brunson v. State*, 580 So.2d 52 (Ala.Cr.App. 1991)

<sup>43</sup>See also *State v. Tykwinski*, 824 P.2d 761 (Ariz.App. 1991). In this case, defendants were convicted of offenses based upon evidence obtained at a checkpoint. However, the checkpoint was not being conducted for the purpose of obtaining evidence of such offenses. Nevertheless, the court held that the evidence obtained and the convictions were legal since the checkpoint was itself legal.

<sup>44</sup>A three to four minute delay at a sobriety checkpoint before the defendant was asked to step out of their vehicle was found to be constitutional. *Cahill v. State*, 595 So.2d 258 (Fla.App. 4 Dist. 1992)

<sup>45</sup>An intermediate appellate court has held that the police are entitled to stop a vehicle where the driver thereof attempts to evade a sobriety checkpoint (e.g., turning into a parking lot prior to the checkpoint). The court felt that the purpose of the checkpoint to deter and apprehend drunk drivers would be voided if evasion were possible. See *People v. Chaffee*, \_\_\_ N.Y.S.2d \_\_\_ (App.Div. 1992). Note: For a case concerning the legality of a checkpoint to deter prostitution, see *People v. Evans*, 579 N.Y.S.2d 853 (N.Y.CityCrim.Ct. 1992). The court found that this checkpoint was unconstitutional based largely on the determination that there was no rational for the location of the checkpoint.

<sup>46</sup>See § 46-5-501 et seq.

APPELLATE DECISIONS-SOBRIETY CHECKPOINTS

The following attorneys for the Justice Department handled the U.S. v. McFayden, 865 F.2d 1306 (D.C.Cir. 1989), case for the Government.

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APPELLATE DECISIONS-SOBRIETY CHECKPOINTS

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(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_  
Title: "An Act relating to driving a motor vehicle ..."  
Sponsor: Rules/By Request of the Governor  
Requestor: Governor's Office

Department Affected: Department of Law  
BRU: Prosecution  
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: January 25, 1994  
Date: January 25, 1994

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For further dis

INOR'S LEGISLATIVE OFFICE  
s Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

ANALYSIS CONTINUATION:

This bill makes several changes to state law to provide for "implied consent" for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial motor vehicles that are in accidents that cause death or serious physical injury to another person. Of particular importance, is the provision for blood chemical tests, after a serious accident, because drug use often goes undetected by breath chemical tests. Consequently, the bill will assist in the collection of better evidence for use by state prosecutors and will not, therefore, have a fiscal impact.

No. 2  
 Bill Version: SB 579  
 (S) Publish Date: 2-4-94

1994 LEGISLATIVE SESSION

Effective Date: \_\_\_\_\_  
 Title: Relating to operating a motor vehicle  
 Sponsor: Rules Committee  
 Requestor: Governor

Department Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 3540

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

2 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John B. Salemi, Public Defender  
 Division: Public Defender Agency

Phone: 264-4400  
 Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Ujsera, Commissioner  
 Title: Department of Administration

Date: 2/15/94

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

No. 2  
Bill Version: SB 279  
(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: Mandatory Drug Alcohol Testing BRU: DPS Statewide Support  
Component: Laboratory Services  
Sponsor: Ballas  
Requestor: Governor COMPONENT SERIAL NO. 527

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	49.6	49.6	49.6	49.6	49.6	49.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.6	49.6	49.6	49.6	49.6	49.6

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other Interagency Receipts	49.6	49.6	49.6	49.6	49.6	49.6
TOTAL	49.6	49.6	49.6	49.6	49.6	49.6

Estimate of current year (FY 94) impact: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)  
  
See attached analysis.

Prepared By: Francis C. Allan Phone: (907) 269-5531  
Division: Administrative Services Date: 01/10/94  
Approved by Commissioner: *Richard E. Burton* Date: 01/10/94  
Agency: Richard E. Burton, Dept. of Public Safety

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Department of Public Safety  
Fiscal Note Analysis  
Law Log 94-0019  
Mandatory Drug/Alcohol Testing  
Page 2 of 4

In 1992, 382 major injury crashes involving approximately 550 drivers and 89 fatal crashes involving approximately 125 drivers were reported statewide.

Implementation of this legislation will require chemical test or tests to be administered at the direction of a law enforcement officer who has reasonable grounds to believe that a person was operating or driving a motor vehicle or commercial vehicle involved in an accident that causes death or serious physical injury to another person, for the purpose of determining the presence of controlled substances in that person's blood and urine, even if the person is not under arrest.

The Scientific Crime Detection Laboratory oversees all breath instrument tests statewide. Approximately 6,000 DWI breath tests are conducted per year by city and state. Additionally 250 blood tests are administered for the purpose of determining the alcohol content of the person's blood. It is estimated that approximately 300 chemical tests will be administered statewide per year to detect the apresence of alcohol and/or controlled substances in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person.

To perform this function the Scientific Crime Detection Laboratory will require one additional scientist, a Criminalist I, who will be a trained Toxicologist. This employee will utilize a sophisticated Ion Trap Mass Spectrometer instrument to analyze urine and blood samples to determine the presence or the lack of the presence of alcohol and/or controlled substances. Other duties performed by this employee would include: instrumental identification of controlled substances; drug analysis of specimens from suspects in murder and assault cases; analyses of solid dosages of controlled substances; and other tasks associated with the Statewide Breath Alcohol Program such as instrument calibration and certification.

Currently, the Scientific Crime Detection Laboratory is not performing these toxicolcgy analyses; they are sent out-of-state. To our knowledge, there are no laboratories in the state (other than this laboratory) equipped to do these analyses. Additionally, if court testimony is needed of the analyst, it is very costly to bring them up from the Lower 48 for court purposes.

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Page 3 of 4

It is anticipated that federal highway funds through the Highway Safety Planning Agency will be available to fund the initial three years of this position. Contingent upon the success of the program and review by the regional administrator, federal highway funds may be available to continue this position beyond the initial three year period.

PERSONAL SERVICES

Salary - Criminalist I Range 15, Step A	\$34,260
Benefits	<u>15,321</u>

Total Personal Services

\$49,581

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.  
12/30/93 Position Information Inquiry/Update

07:58:10

Position: 12-12#091 Project: 0 Salary Costs: 34,260  
Component: 12-62-06-02-01-10 Benefits Costs: 15,32  
Scenario: 3 FY: 95 COLA %= 0.00 Total Costs: 49,581.32

-----  
Actuals not available (Status: UNKNOWN ) Retirement Code: A  
-----

00/00/00 ° Step: A for 12.0 months & Step: B for 0.0 months (total: 12.00 )  
0 ° Merit Date; use merit defaults? N ( 0.0 @ & 0.0 @ )  
0 ° Class/Sched Prefix: 1 Schedule: 1A (actual: )  
° Bargaining Unit: GG Range: 15 (actual: )  
° Location Code: EBA Place: ANCHORAGE  
° Job Class Code: P8371 Title: CRIMINALIST I  
° Seasonal Indic.: F Type: -

-----  
Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months ; rate of 0.00 for 0.0 months  
Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:  
1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations  
7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0\_

S20

Aa

zAa06 FX

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 239  
(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_  
Title: Relating to operating a motor vehicle  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Administration  
BRU: Office of Public Advocacy  
Component: Office of Public Advocacy  
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING SOURCE:

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
4 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Director  
Division: Office of Public Advocacy

Phone: 274-1684  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usher  
Agency: Administration

Date: 1/27/94

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# GOVERNOR HICKEL'S DWI LAWS (SB 279 & HB 445)

Governor Hickel has introduced legislation to remove the impaired driver from the Alaska's highways. The main objective of this legislation is to provide "implied consent" for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial motor vehicles involved in accidents that cause death or serious physical injury.

Impaired driving, and crashes related to it account for more than half of all traffic deaths in Alaska and is among the nation's leading problems. Despite a rising tide of public indignation, the wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to Alaska's highways.

The Governor's legislation amends the implied consent statutes to specify that a person who operates a motor vehicle or commercial motor vehicle in this state is considered to have given consent to submit to a chemical test or tests of the person's blood and urine for the purpose of determining the presence of both alcohol and drugs if the person is involved in an accident that causes death or serious physical injury to another person, even if the person is not under arrest. The tests may be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating a motor vehicle or commercial vehicle that was involved in an accident that caused death or serious physical injury to another person.

The penalty for refusal to submit to a chemical test under the provision of the legislation is a Class A misdemeanor and will result in revocation of the driver's license, privilege to drive, or privilege to obtain a license, in addition to other criminal penalties. If a person has been notified of the penalties that will result from refusal to submit to a chemical test, and the person refuses to submit, the chemical test may not be given unless the person has been arrested and the arrest resulted from an accident that causes death or serious physical injury to another person.

Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms. This legislation will provide law enforcement and prosecutors with the tools they need to combat the significant highway safety problems presented by those drivers who use drugs and then cause fatal or serious injury accidents.

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Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms. This legislation will provide law enforcement and prosecutors with the tools they need to combat the significant highway safety problems presented by those drivers who use drugs and then cause fatal or serious injury accidents.

RECENT ACTIVITIES OF THE INTERNATIONAL ASSOCIATION FOR  
CHEMICAL TESTING

A Report to the National Safety Council Committee on Alcohol and Other  
Drugs  
October 6, 1993  
Chicago, IL

prepared by Patrick Harding, IACT liaison to the CAOD

Mr. Chairman,

The International Association for Chemical Testing continues to grow in membership. In keeping with the pledges of our two organizations to keep each other informed of activities, members of the COAD have been placed on our mailing list to receive the IACT Newsletter. Additionally, the minutes of COAD meetings are summarized and published in the Newsletter for the benefit of IACT members.

The following report is a summary of the some of IACT's recent activities:

RESOLUTIONS

**"Mandatory Alcohol/Drug Testing of All Drivers in Fatal and Serious Injury Crashes"**

Whereas, alcohol and other drug involvement is a major factor in fatal and serious traffic crashes, and

Whereas, the best method for confirming alcohol and other drug involvement in drivers is to obtain an alcohol/drug test, and

Whereas, currently only 73 percent of fatally injured drivers and 25 percent of surviving drivers in fatal crashes are tested for alcohol in the United States, and

Whereas, drug testing of fatally injured drivers and surviving drivers in fatal and serious injury crashes is not routinely done, and

Whereas, it is important for the scientific community to be able to accurately determine alcohol and other drug involvement in all fatal and serious injury traffic crashes in order to develop and evaluate intervention measures; be it therefore

RESOLVED that the International Association for Chemical Testing urges all jurisdictions to pass and actively implement laws requiring alcohol/drug testing of all drivers involved in fatal and serious injury producing crashes. Such laws, if implemented, would allow year to year tracking of alcohol and other drug involvement in all fatal and serious injury producing crashes in order to evaluate the effectiveness of alcohol/drug countermeasures. Further, such laws would allow and authorize law enforcement agencies to identify alcohol and other drug impaired drivers involved in fatal and serious injury crashes who heretofore have gone undetected.

Adopted March 26, 1993

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## DRUG IMPAIRED DRIVING

### RESOLUTION 93-14 (new)

*WHEREAS, people who operate motor vehicles while under the influence of alcohol have long been known to cause thousands of crashes, injuries and deaths each year, but only recently has the magnitude of the problems caused by drug (other than alcohol) impaired drivers come to light; and*

*WHEREAS, a NHTSA report to Congress disclosed a frequency of drug use by fatally injured drivers is between 10-15 percent; and*

*WHEREAS, many studies have documented this finding, pointing to a national prevalence of drug impaired driving; and*

*WHEREAS, NHTSA has developed a standardized curriculum for training police officers as Drug Recognition Experts (DRE);*

*NOW THEREFORE BE IT RESOLVED, that NAGHSR encourages states to adopt legislation which makes it illegal to operate a motor vehicle while impaired by drugs other than alcohol or in combination with alcohol; and*

*BE IT FURTHER RESOLVED, that states allow the chemical test sample to be analyzed to determine the presence and/or concentration of drugs other than alcohol.*

Submitted by: Impaired Driving Committee

8-GS2019E

Ford

3/25/94

## CS FOR SENATE BILL NO. 279(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to operating or driving a motor vehicle, commercial motor  
2 vehicle, aircraft, or watercraft and to classifying certain driving while intoxicated  
3 offenses as felonies; and providing for an effective date."

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

5 \* Section 1. AS 28.15.165(a) is amended to read:

6 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to  
7 a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a  
8 chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces  
9 a result described in AS 28.35.030(a)(2); a chemical test administered under  
10 AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person  
11 refuses to submit to a chemical test authorized under AS 28.33.031(a) [AS 28.33.031]  
12 or AS 28.35.031(a) or (g) [AS 28.35.032]. The notice must advise that

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

1 to the person, or disqualify the person;

2 (2) the person has the right to administrative review of the action taken  
3 against the person's license or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident privilege to  
5 drive, the notice itself is a temporary driver's license that expires seven days after it  
6 is delivered to the person, except that if the person was operating a commercial motor  
7 vehicle the person will be ordered out of service for 24 hours under AS 28.33.130;

8 (4) revocation of the person's driver's license, privilege to drive, or  
9 privilege to obtain a license, a determination not to issue an original license, or a  
10 disqualification of the person, takes effect seven days after delivery of the notice to the  
11 person unless the person, within seven days, requests an administrative review.

12 \* Sec. 2. AS 28.15.165(c) is amended to read:

13 (c) Unless the person has obtained a temporary permit or stay of a  
14 departmental action under AS 28.15.166, if the chemical test administered under  
15 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in  
16 AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized  
17 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032], the  
18 department shall revoke the person's license, privilege to drive, or privilege to obtain  
19 a license, shall refuse to issue an original license, and, if the chemical test administered  
20 under AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2) or the person  
21 refused to submit to a chemical test authorized under AS 28.33.031(a)  
22 [AS 28.33.031], shall disqualify the person. The department's action takes effect seven  
23 days after delivery to the person of the notice required under (a) of this section, and  
24 after receipt of a sworn report of a law enforcement officer

25 (1) that a chemical test administered under AS 28.33.031(a) or  
26 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a  
27 chemical test administered under AS 28.33.031(a) produced a result described in  
28 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized  
29 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032];

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

31 (3) describing the

1                   (A) circumstances surrounding the arrest and the grounds for the  
2 officer's belief that the person operated a motor vehicle, commercial motor  
3 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or  
4 AS 28.35.030; or

5                   (B) grounds for the officer's belief that the person operated  
6 a motor vehicle that was involved in an accident causing death or serious  
7 physical injury to another person.

8 \* Sec. 3. AS 28.15.166(g) is amended to read:

9                   (g) The hearing for review of action by the department under AS 28.15.165  
10 shall be limited to the issues of whether the law enforcement [ARRESTING] officer  
11 had reasonable grounds to believe that the person was operating a motor vehicle that  
12 was involved in an accident causing death or serious physical injury to another  
13 person, or that the person was operating a motor vehicle, commercial motor  
14 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or AS 28.35.030 and  
15 whether

16                   (1) the person refused to submit to a chemical test authorized under  
17 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032] after being  
18 advised that refusal would result in disqualification or the suspension, revocation, or  
19 denial of the person's license, privilege to drive, or privilege to obtain a license, and  
20 that the refusal is a misdemeanor;

21                   (2) the chemical test administered [AUTHORIZED] under  
22 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in  
23 AS 28.35.030(a)(2); or

24                   (3) the chemical test administered [AUTHORIZED] under  
25 AS 28.35.031(a) produced a result described in AS 28.33.030(a)(2).

26 \* Sec. 4. AS 28.15.181(a) is amended to read:

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

29                   (1) manslaughter or negligent homicide resulting from driving a motor  
30 vehicle;

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

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

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

5 (5) operating a motor vehicle or aircraft while intoxicated;

6 (6) reckless driving;

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

9 (8) refusal to submit to a chemical test authorized under  
10 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032 WHILE  
11 UNDER ARREST FOR OPERATING A MOTOR VEHICLE, COMMERCIAL  
12 MOTOR VEHICLE, OR AIRCRAFT WHILE INTOXICATED];

13 (9) driving while license, privilege to drive, or privilege to obtain a  
14 license, canceled, suspended, or revoked, or in violation of a limitation.

15 \* Sec. 5. AS 28.33.031(a) is amended to read:

16 (a) A person who operates a commercial motor vehicle in this state is  
17 considered to have given consent to a chemical test or tests

18 (1) of the person's breath if the person is lawfully arrested for an  
19 offense arising out of acts alleged to have been committed when the person was  
20 operating the commercial motor vehicle while intoxicated; the [. THE] test or tests  
21 may be administered at the direction of a law enforcement officer who has reasonable  
22 grounds to believe that the person was operating a commercial motor vehicle while  
23 intoxicated in violation of AS 28.33.030 or AS 28.35.030;

24 (2) of the person's breath and blood for the purpose of determining  
25 the alcoholic content of the person's breath and blood, and of the person's blood  
26 and urine, for the purpose of determining the presence of controlled substances  
27 in the person's blood and urine, if the person is involved in a motor vehicle  
28 accident that causes death or serious physical injury to another person; the test  
29 or tests may be administered at the direction of a law enforcement officer who  
30 has reasonable grounds to believe that the person was operating a commercial  
31 motor vehicle that was involved in an accident causing death or serious physical

1        injury to another person.

2        \* Sec. 6. AS 28.33.190 is amended to read:

3                Sec. 28.33.190. DEFINITIONS. In this chapter [AS 28.33.100 - 28.33.190],

4                (1) "alcoholic beverage" has the meaning given in AS 04.21.080(b);

5                (2) "commercial motor vehicle" has the meaning given in  
6                AS 28.40.100;

7                (3) "controlled substance" means any substance listed as being  
8                controlled under AS 11.71 or 21 U.S.C. 812 - 813, or determined under federal  
9                regulations to be controlled for purposes of 21 U.S.C. 801 - 813 (Controlled  
10                Substances Act);

11                (4) "disqualification" means a withdrawal of the privilege to drive a  
12                commercial motor vehicle;

13                (5) "disqualified" means that a person's privilege to drive a commercial  
14                motor vehicle has been withdrawn;

15                (6) "drive a commercial motor vehicle" means to affect the movement,  
16                attempt to affect the movement, or to be in actual physical control, of a commercial  
17                motor vehicle in motion, excluding slight motion incidental to loading, unloading,  
18                servicing, or inspecting the vehicle;

19                (7) "employer" means a person who

20                        (A) provides compensation to a person who operates a  
21                        commercial motor vehicle, including wages or other remuneration, whether  
22                        through an employment relationship or by contract; or

23                        (B) acts as an agent of someone who provides compensation to  
24                        a person who operates a commercial motor vehicle, with authority to allow,  
25                        require, permit, assign, or authorize the person being compensated to operate  
26                        a commercial motor vehicle;

27                (8) "hazardous substance" means a substance found by the United  
28                States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 -  
29                1813 (Hazardous Materials Transportation Act);

30                (9) "operating a commercial motor vehicle" means

31                        (A) to drive a commercial motor vehicle; or

1 (B) whether or not the vehicle is in motion, or is capable of  
2 being moved, to be in actual physical control, or to attempt to affect the  
3 movement, of a commercial motor vehicle; and

4 (10) "serious traffic violation" means

5 (A) speeding 15 miles per hour or more above the posted limit;

6 (B) reckless or negligent driving, in violation of AS 28.35.040  
7 or 28.35.045 or an ordinance with substantially similar elements;

8 (C) violation of a provision of this title, or a regulation adopted  
9 under this title, relating to improper lane changes or following too closely, or  
10 an ordinance with substantially similar elements; or

11 (D) violation of a law or ordinance relating to traffic control,  
12 which was determined by the court by a preponderance of the evidence to have  
13 been a factor in causing physical injury to a person.

14 \* Sec. 7. AS 28.35.030(b) is amended to read:

15 (b) Except as provided under (n) of this section, driving [DRIVING] while  
16 intoxicated is a class A misdemeanor. Upon conviction

17 (1) the court shall impose a minimum sentence of imprisonment of

18 (A) not less than 72 consecutive hours and a fine of not less  
19 than \$250 if the person has not been previously convicted;

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

22 (C) NOT LESS THAN 60 DAYS AND A FINE OF NOT LESS  
23 THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED  
24 TWICE;

25 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT  
26 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY  
27 CONVICTED THREE TIMES;

28 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT  
29 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY  
30 CONVICTED FOUR TIMES;

31 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT

1 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY  
2 CONVICTED MORE THAN FOUR TIMES];

3 (2) the court may not

4 (A) suspend execution of sentence or grant probation except on  
5 condition that the person serve the minimum imprisonment under (1) of this  
6 subsection;

7 (B) suspend imposition of sentence;

8 (3) the court shall revoke the person's driver's license, privilege to  
9 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor  
10 vehicle or aircraft that was used in commission of the offense to be forfeited under  
11 AS 28.35.036.

12 \* Sec. 8. AS 28.35.030 is amended by adding a new subsection to read:

13 (n) A person is guilty of a class C felony if the person is convicted of driving  
14 while intoxicated and has been previously convicted two or more times. Upon  
15 conviction the court

16 (1) shall impose a minimum sentence of imprisonment of 360 days and  
17 a fine of not less than \$1,000;

18 (2) may not

19 (A) suspend execution of sentence or grant probation except on  
20 condition that the person serve the minimum imprisonment under (1) of this  
21 subsection; or

22 (B) suspend imposition of sentence;

23 (3) shall revoke the person's driver's license, privilege to drive, or  
24 privilege to obtain a license under AS 28.15.181, and may order the motor vehicle or  
25 aircraft that was used in commission of the offense to be forfeited under AS 28.35.036;  
26 and

27 (4) may order as a condition of probation that the person take antabuse  
28 or a similar drug intended to prevent the consumption of an alcoholic beverage; a  
29 condition of probation imposed under this paragraph is in addition to any other  
30 condition authorized under another provision of law.

31 \* Sec. 9. AS 28.35.031 is amended by adding a new subsection to read:

1 (g) A person who operates or drives a motor vehicle in this state shall be  
2 considered to have given consent to a chemical test or tests of the person's breath and  
3 blood for the purpose of determining the alcoholic content of the person's breath and  
4 blood and shall be considered to have given consent to a chemical test or tests of the  
5 person's blood and urine for the purpose of determining the presence of controlled  
6 substances in the person's blood and urine if the person is involved in a motor vehicle  
7 accident that causes death or serious physical injury to another person. The test or  
8 tests may be administered at the direction of a law enforcement officer who has  
9 reasonable grounds to believe that the person was operating or driving a motor vehicle  
10 in this state that was involved in an accident causing death or serious physical injury  
11 to another person.

12 \* Sec. 10. AS 28.35.032(a) is amended to read:

13 (a) If a person under arrest for operating a motor vehicle or aircraft while  
14 intoxicated refuses the request of a law enforcement officer to submit to a chemical  
15 test authorized under AS 28.33.031(a)(1) [AS 28.33.031(a)] or AS 28.35.031(a), or  
16 if a person involved in a motor vehicle accident that causes death or serious  
17 physical injury to another person refuses the request of a law enforcement officer  
18 to submit to a chemical test authorized under AS 28.33.031(a)(2) or  
19 AS 28.35.031(g), after being advised by the officer that the refusal will [, IF THAT  
20 PERSON WAS ARRESTED WHILE OPERATING A MOTOR VEHICLE OR  
21 AIRCRAFT.] result in the denial or revocation of the driver's license, privilege to  
22 drive, or privilege to obtain a license, that the refusal may be used against the person  
23 in a civil or criminal action or proceeding arising out of an act alleged to have been  
24 committed by the person while operating a motor vehicle or [, AN] aircraft [, OR A  
25 WATERCRAFT] while intoxicated, and that the refusal is a crime, a chemical test may  
26 not be given, except as provided by AS 28.35.035. If a person under arrest for  
27 operating a watercraft while intoxicated refuses the request of a law enforcement  
28 officer to submit to a chemical test authorized under AS 28.35.031(a), after being  
29 advised by the officer that the refusal may be used against the person in a civil  
30 or criminal action or proceeding arising out of an act alleged to have been  
31 committed by the person while operating a watercraft while intoxicated, and that

1 the refusal is a crime, a chemical test may not be given, except as provided by  
2 AS 28.35.035.

3 \* Sec. 11. AS 28.35.032(e) is amended to read:

4 (e) The refusal of a person to submit to a chemical test authorized under  
5 AS 28.33.031(a) or AS 28.35.031(a) or (g) [OF BREATH UNDER (a) OF THIS  
6 SECTION] is admissible evidence in a civil or criminal action or proceeding arising  
7 out of an act alleged to have been committed by the person while operating or driving  
8 a motor vehicle or operating an aircraft or watercraft while intoxicated.

9 \* Sec. 12. AS 28.35.032(f) is amended to read:

10 (f) Except as provided under (g) of this section, refusal [REFUSAL] to  
11 submit to a [THE] chemical test [OF BREATH] authorized by AS 28.33.031(a) or  
12 AS 28.35.031(a) or (g) is a class A misdemeanor.

13 \* Sec. 13. AS 28.35.032(g) is amended to read:

14 (g) Upon conviction under this section

15 (1) the court shall impose a minimum sentence of imprisonment of

16 (A) not less than 72 consecutive hours and a fine of not less  
17 than \$250 if the person has not been previously convicted;

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

20 (C) NOT LESS THAN 60 DAYS AND A FINE OF NOT LESS  
21 THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED  
22 TWICE;

23 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT  
24 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY  
25 CONVICTED THREE TIMES [;

26 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT  
27 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY  
28 CONVICTED FOUR TIMES;

29 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT  
30 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY  
31 CONVICTED MORE THAN FOUR TIMES];

1 (2) the court may not

2 (A) suspend execution of the sentence required by (1) of this  
3 subsection or grant probation, except on condition that the person serve the  
4 minimum imprisonment under (1) of this subsection; or

5 (B) suspend imposition of sentence;

6 (3) the court shall revoke the person's driver's license, privilege to  
7 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor  
8 vehicle or aircraft that was used in commission of the offense be forfeited under  
9 AS 28.35.036; and

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

12 \* Sec. 14. AS 28.35.032(j) is amended to read:

13 (j) For purposes of this section, convictions for operating or driving while  
14 intoxicated under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a  
15 chemical test [OF BREATH] under this section, if arising out of a single transaction  
16 and a single arrest, are considered one previous conviction.

17 \* Sec. 15. AS 28.35.032 is amended by adding a new subsection to read:

18 (q) A person is guilty of a class C felony if the person is convicted under this  
19 section and has been previously convicted two or more times. Upon conviction,

20 (1) the court shall impose a minimum sentence of imprisonment of 360  
21 days and a fine of not less than \$1,000;

22 (2) the court may not

23 (A) suspend execution of the sentence required by (1) of this  
24 subsection or grant probation, except on condition that the person serve the  
25 minimum imprisonment under (1) of this subsection; or

26 (B) suspend imposition of sentence;

27 (3) the court shall revoke the person's driver's license, privilege to  
28 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor  
29 vehicle or aircraft that was used in commission of the offense be forfeited under  
30 AS 28.35.036;

31 (4) the court may order as a condition of probation that the person take

1 antabuse or a similar drug intended to prevent consumption of an alcoholic beverage;  
2 a condition of probation imposed under this paragraph is in addition to any other  
3 condition authorized under another provision of law; and

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

6 \* Sec. 16. AS 28.35.035(a) is amended to read:

7 (a) If a person is under arrest for an offense arising out of acts alleged to have  
8 been committed while the person was operating a motor vehicle, aircraft, or watercraft  
9 while intoxicated, and that arrest results from an accident that causes death or physical  
10 injury to another person, a chemical test may be administered without the consent of  
11 the person arrested to determine the amount of alcohol in that person's breath or blood  
12 or to determine the presence of controlled substances in that person's blood and  
13 urine.

14 \* Sec. 17. AS 28.35.035(b) is amended to read:

15 (b) A person who is unconscious or otherwise in a condition rendering that  
16 person incapable of refusal is considered not to have withdrawn the consent provided  
17 under AS 28.33.031(a) or AS 28.35.031(a) or (g) and a chemical test may be  
18 administered to determine the amount of alcohol in that person's breath or blood or  
19 to determine the presence of controlled substances in that person's blood and  
20 urine. A person who is unconscious or otherwise incapable of refusal need not be  
21 placed under arrest before a chemical test may be administered.

22 \* Sec. 18. AS 28.35.036(b) is amended to read:

23 (b) For purposes of this section, convictions for both driving while intoxicated  
24 and for refusal to submit to a chemical test authorized [OF BREATH] under  
25 AS 28.35.031(a) or (g), if arising out of a single transaction and a single arrest, are  
26 considered one previous conviction.

27 \* Sec. 19. AS 28.35 is amended by adding a new section to article 2 to read:

28 Sec. 28.35.039. DEFINITION FOR AS 28.35.029 - 28.35.039. In  
29 AS 28.35.029 - 28.35.039, "controlled substance" has the meaning given in  
30 AS 28.33.190.

31 \* Sec. 20. AS 28.40.100(a) is amended by adding a new paragraph to read:

1                                   (24) "serious physical injury" has the meaning given in  
2 AS 11.81.900(b).

3 \* Sec. 21. AS 28.35.030(m)(1) is repealed.

4 \* Sec. 22. APPLICABILITY. The amendments made by secs. 7, 8, 13, and 15 - 16 of this  
5 Act apply to offenses that are committed on or after the effective date of this Act, except that  
6 references to previous convictions include convictions occurring before, on, or after the  
7 effective date of this Act.

8 \* Sec. 23. This Act takes effect July 1, 1994.

Richard L. Burton  
Commissioner

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4322  
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Mandatory Drug/Alcohol Testing  
Discussion Paper

"A bill to provide for implied consent for, and administration of, chemical test to detect the presence of drugs in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person".

This proposed legislation gives law enforcement officers additional tools they need to combat the significant highway safety challenge presented by those drivers who use drugs and then cause fatal or serious injury accidents.

Discussion:

Much deserved attention has been focused on drunk driving, while the related dangers presented by individuals driving under the influence of drugs other than alcohol or taken in conjunction with alcohol or other drugs have had little attention. One of the reasons for the lack of attention has been a lack of legislation allowing for the taking of blood and urine samples in those cases where drug use may be suspected.

The impact of intentional or unintentional drug abuse on motor vehicle operation in our highly mobile society is enormous as there currently are obtainable over 20,000 prescription drugs; 100,000 over-the-counter drugs; 500 illicit drugs; and 200 herbal drugs.

Drug use has become prevalent in our society. An estimated twenty-three million people are marijuana users, at least five million people use cocaine, and even a greater number use psychoactive prescription and over-the-counter medication.

There are unique subcategories of drivers whose apparent drug use patterns differ from those of the general driving population. For example, commercial truck drivers exhibit a substantially lower alcohol-involvement crash rate than do passenger vehicle drivers. In 1985, five percent of the drivers of heavy trucks involved in fatal crashes had been drinking whereas thirty-four percent of the drivers of passenger vehicles involved in fatal crashes had consumed alcohol. However, truck drivers were found to have been more apt to use stimulants.

The National Transportation Safety Board (NTSB) released a study in October 1988 revealing that at least 26 accidents of 189 heavy truck accidents from 1985 to 1987 conclusively involved drug or alcohol abuse. In one case, the driver of a heavy truck struck the rear of a queue of four other heavy trucks; the driver had not slept in the previous forty-four hours and had consumed alcohol, amphetamines, and cocaine in an attempt to stay awake.

Another unique subgroup appears to be young male drivers. An often-cited study (Compton, A Report to Congress 1988) of drug incidence among fatally injured young male drivers in California found higher rates of drug use in general and marijuana and cocaine use in particular than among the general population. One or more drugs were detected in 81 percent of 440 male drivers aged 15 to 34 killed in vehicle crashes, whereas two or more drugs were detected in 43 percent. In addition, drugs other than alcohol rarely were detected alone; the drugs usually were found in combination with alcohol and generally the BAC levels were 0.10 percent or higher. The use of drugs among young drivers is thought to present a greater risk than among the general population since youths are beginning to experiment with drugs and are inexperienced at driving.

The wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to the nation's highways.

It is the consensus of the Highway Safety Planning Agency that passage of this legislation will provide law enforcement with an additional tool in which to remove the impaired driver from the state's highways.

Lorn M. Campbell  
Lorn M. Campbell  
Executive Director  
Alaska Highway Safety Planning Agency

02/08/94  
Date

**DEPARTMENT OF PUBLIC SAFETY**  
**OFFICE OF THE COMMISSIONER**

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February 16, 1994

**DRUGS IN SERIOUS INJURY AND FATAL ACCIDENTS**

**FACT SHEET**

1. Very few studies have been conducted of drug use by drivers involved in crashes. What limited data is available has focused on limited geographic areas and special driver populations such as young males.
2. In 1988, the National Highway Transportation Administration synthesized existing research in a report to Congress and found that drugs were present in 10-22 percent of crash involved drivers.
3. Los Angeles Police Department personnel estimate that 20 percent of persons arrested for impaired driving were under the influence of drugs. In addition, when drugs were found in either crash involved or arrested drivers, they were found most often in combination with alcohol.
4. Urine is generally the best specimen to screen for the presence of a drug, but blood is necessary if you wish to know the degree of influence of the drug as well as possible dose and time of administration.
5. If you want to know if a suspect was under the influence of a drug at the time of committing an offense, a blood and urine sample should be collected as close to the time of the offense as possible.
6. In one study blood specimens were obtained from nearly 2,000 fatally injured drivers from seven states. Drugs other than alcohol were present in approximately 18 percent of these drivers.
7. A second recent study which was a far more comprehensive which focused on fatally injured drivers who died within four hours of the crash. Blood specimens were collected from a sample of 1,882 fatally injured drivers from 13 sampling sites, encompassing three entire states (Massachusetts, North Carolina, and Wisconsin), and selected counties in California, Nevada, Texas and Virginia. The results of the tests are as follows:
  - a. Alcohol was found in 52 percent of fatalities.

- c. 64 percent of drug cases also had alcohol.
  - d. A drug was detected without alcohol in 6.3 percent of fatalities.
  - e. Abuse drugs (e.g., marijuana, cocaine) were found most frequently in the 25-54 age group.
  - f. Marijuana and cocaine were found more frequently in urban crashes than in rural ones.
  - g. Prescription drugs were found most frequently in the over 55 age group.
  - h. Drugs were found mostly in males.
  - i. Regional difference: Amphetamines were found nearly exclusively in California; Marijuana/cocaine were unusually prevalent in Dallas, TX; and Wisconsin had the lowest abuse drug involvement.
8. With a urine sample, the lab is able to screen for a wide range of all types of controlled substances in detail very cheaply. Then the lab is able to go back after identifying the controlled substance in the urine and quantify the amount through the blood test. If blood alone is submitted it is a very cumbersome, slow expensive process to attempt to identify multiple substances or in essence screen the blood.
9. The following substances are usually checked during a routine urine screen.
- A. Stimulants
    - 1. Amphetamines
    - 2. methamphetamine
    - 3. "MDA"
    - 4. Dexedrine
  - B. Depressants
    - 1. Barbiturates
    - 2. Seconal
    - 3. Nembutal
  - C. Tranquilizers
    - 1. Valium
    - 2. Librium
  - D. Opiates
    - 1. Morphine
    - 2. Percodan
    - 3. Heroin
    - 4. Dilaudid
  - E. Antidepressants
    - 1. Elavil

F. Marijuana

G. Cocaine

H. LSD

*Lorn M. Campbell*

Lorn M. Campbell (Name of Submitter)

HSPA (Agency)

465-4374 (Phone Number)

# Repeat DWI

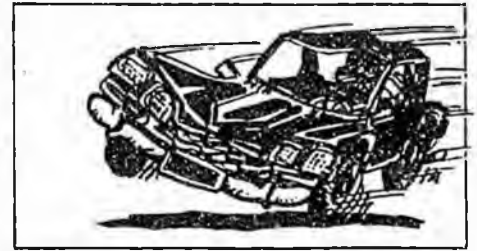
*What can be done? For starters, fund prisons, alcohol programs*

First comes the almost overwhelming anger. The drunken driver who hit and killed Leigh Ann Barnes and her daughter Lindsey Hurst Saturday morning had five previous drunken driving convictions and nine convictions for driving with a suspended license. What was Daniel James Bushey doing behind the wheel of a car?

Then comes the despair. How do we keep drivers like him off the road?

Daniel Bushey's been to jail already. He should have been there Saturday morning, cooling his heels for another two months from a July conviction. If he had been in jail instead of driving a car 50 mph through a red light, Leigh Ann Barnes and Lindsey would be home safe in Cordova now.

Instead, Daniel Bushey walked away from a halfway house before his sentence ended. That may be cause for anger — at Daniel Bushey, at the system that let him walk — but here is reason for despair: Even had he served the full sentence, what then?



Repeat offenders account for a disproportionate number of fatal accidents, in spite of licenses suspended and jail time served. In fatal accidents in which the driver is drunk, people with a prior conviction for drunken driving are almost five times more likely to be involved than those with no record, according to the National Highway Transportation Safety Administration.

But we can't let despair convince us there's nothing we can do. Jail may provide only a temporary respite, but it's better than nothing. Just ask the family of Leigh Ann Barnes and Lindsey Hurst.

It's a crime that drunken driving remains a misdemeanor here no matter how many times a person is convicted of it. At some point — we'd suggest five is more than enough — a repeat conviction should become a felony. If jail is the only way to keep repeat offenders from driving drunk, we need to keep them there for longer than the 365-day maximum allowed under the misdemeanor charge.

But tougher laws are only as good as their enforcement, and we don't have enough jail space for the prisoners we have now. That's why Daniel Bushey was in a halfway house instead of a jail — it's cheaper.

Gov. Wally Hickel wants to increase funding for the Corrections Department, but a House subcommittee is recommending a 5 percent cut. That's absurd.

As for long-term solutions, the same subcommittee is also recommending cutting state grants for substance abuse programs by \$8 million. Tell the family of Leigh Ann Barnes and Lindsey Hurst we don't have an alcohol abuse problem in this state. Then vent your anger to the House Finance Committee.

**NATIONAL SAFETY COUNCIL**

**POLICY STATEMENT**

**COMMITTEE ON ALCOHOL AND OTHER DRUGS**

**ENFORCEMENT OF LAWS AIMED AT ALCOHOL-IMPAIRED DRIVING**

There is strong scientific consensus suggesting that the public's perception of effective enforcement appears to be a strong deterrent to alcohol impaired driving. In order to enhance the effectiveness of enforcement activities in preventing impaired driving, the National Safety Council recommends that jurisdictions:

Implement new enforcement programs requiring chemical tests of body substance samples for all drivers involved in nighttime crashes.

Consider the use of new technologies such as passive alcohol sensors and motor vehicle ignition interlocks.

Develop and use highly visible and widely publicized enforcement approaches that increase the public's perception of the risk of apprehension.

Passed by the Committee on Alcohol and Other Drugs, November 4, 1992.

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# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
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130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 9, 1994

**SUBJECT:** Sectional Summary of SB 281; An Act relating to waste of salmon and parts of salmon; relating to permits for and operation of a salmon hatchery; and providing for an effective date. (Work Order No. 8-GS2028\A)

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have requested a sectional summary of SB 281; An Act relating to waste of salmon and parts of salmon; relating to permits for and operation of a salmon hatchery; and providing for an effective date. SB 281 was drafted by the Department of Law and introduced by the Governor.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 16.05.831. Subsection (a) prohibits the waste of salmon and defines "waste." Subsection (b) authorizes the commissioner of fish and game to issue permits that (1) allow the discard of carcasses of hatchery fish if the fish are taken in specified locations, the eggs are removed, and the carcasses are unfit for human consumption or (2) allow other uses of salmon that are consistent with maximum and wise use of the resource. Subsection (c) authorizes the commissioner to adopt regulations to implement subsection (b). Subsection (d) prescribes the penalty for violating this section or regulations adopted under this section.

Sections 2 - 5 of the bill amend provisions of AS 16.10.420, 16.10.440(b), 16.10.450(a), and 16.10.470(a) to allow nonprofit salmon enhancement facilities to sell salmon eggs from surplus brood stock and from hatchery salmon that were taken in specified locations and were not fit for human consumption.

Senator Robin Taylor, Chair  
February 9, 1994  
Page 2

Section 6 of the bill amends AS 16.40.210(b) to clarify that the sale of eggs from surplus salmon brood stock or from hatchery salmon that were taken in specified locations and were not fit for human consumption does not violate the prohibition against finfish farming.

Section 7 of the bill provides that the bill takes effect immediately.

GU:pl:gc  
94-117.plm

**SB**

**286**

8-LS1686J  
Luckhaupt  
3/7/94

CS FOR SENATE BILL NO. 286(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to special conditions of mandatory parole; relating to conditions  
2 of mandatory and discretionary parole; extending the termination date of the  
3 Board of Parole; and providing for an effective date."

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

5 \* Section 1. PURPOSE. The purpose of sec. 2, the portions of sec. 3 relating to a member  
6 of the Board of Parole acting on behalf of the board, and secs. 4, 6, and 7 of this Act is to  
7 validate and affirm the longstanding practice of the Board of Parole to delegate the setting of  
8 special conditions for mandatory parole under AS 33.16.150 to a single board member, subject  
9 to a right of review by a quorum of the Board of Parole. It is the intent of the legislature to  
10 expressly ratify this practice and to clarify existing statutes to reflect it.

11 \* Sec. 2. AS 33.16.050(c) is amended to read:

12 (c) Except when a member of the board imposes special conditions of  
13 mandatory parole for the board under AS 33.16.150, decisions [DECISIONS] and  
14 orders of the board require the affirmative votes of a majority of the members present.

1 \* Sec. 3. AS 33.16.150 is amended to read:

2 Sec. 33.16.150. CONDITIONS OF PAROLE. (a) As a condition of parole,  
3 a prisoner released on discretionary or mandatory parole

4 (1) shall obey all [REFRAIN FROM CONDUCT PUNISHABLE BY  
5 IMPRISONMENT UNDER] state, [OR] federal, or local laws or ordinances, and any  
6 court orders applicable to the parolee;

7 (2) shall make diligent efforts to maintain steady employment and  
8 meet family obligations;

9 (3) shall, if involved in education, counseling, training, or treatment,  
10 continue in the program unless granted permission from the parole officer  
11 assigned to the parolee to discontinue the program;

12 (4) shall report

13 (A) upon release to the parole officer assigned to the  
14 parolee;

15 (B) at other times, and in the manner, prescribed by the  
16 board or the parole officer assigned to the parolee;

17 (5) shall reside at a stated place and not change that residence  
18 without notifying, and receiving permission from, the parole officer assigned to  
19 the parolee;

20 (6) shall remain within stated geographic limits unless written  
21 permission to depart from the stated limits is granted the parolee;

22 (7) may not use, possess, handle, purchase, give, distribute, or  
23 administer a controlled substance as defined in AS 11.71.900 or under federal law  
24 or a drug for which a prescription is required under state or federal law without  
25 a prescription from a licensed medical professional to the parolee;

26 (8) may not possess or control a prohibited weapon, a defensive  
27 weapon, a ~~deadly~~ weapon other than an ordinary pocket knife with a blade three  
28 inches or less in length, or ~~ammunition~~ for a firearm, or reside in a residence  
29 where there is a firearm capable of being concealed on one's person or a  
30 prohibited weapon; in this paragraph, "deadly weapon," "defensive weapon," and  
31 "firearm" have the meanings given in AS 11.81.900 and "prohibited weapon" has

1 the meaning given in AS 11.61.200;

2 (9) may not enter into an agreement or other arrangement with a  
3 law enforcement agency or officer that will place the parolee in the position of  
4 violating a law or parole condition without the prior approval of the board;

5 (10) may not contact or correspond with anyone confined in a  
6 correctional facility of any type serving any term of imprisonment or a felon  
7 without the permission of the parole officer assigned to a parolee;

8 (11) shall agree to waive extradition from any state or territory of  
9 the United States and to not contest efforts to return the parolee to the state  
10 [LAW OR MUNICIPAL ORDINANCE].

11 (b) The board may require as a condition of discretionary or mandatory parole,  
12 or a member of the board acting for the board under (e) of this section may  
13 require as a condition of mandatory parole, that a prisoner released on parole

14 (1) [MEET FAMILY OBLIGATIONS;

15 (2) PURSUE EMPLOYMENT, EDUCATION, COUNSELING, OR  
16 TRAINING;

17 (3) REMAIN WITHIN STATED GEOGRAPHIC LIMITS UNLESS  
18 WRITTEN PERMISSION TO DEPART FROM THE STATED LIMITS IS  
19 GRANTED THE PAROLEE;

20 (4) REPORT UPON RELEASE TO THE PAROLE OFFICER  
21 ASSIGNED TO THE PAROLEE;

22 (5) REPORT AS REQUIRED TO THE PAROLE OFFICER  
23 ASSIGNED TO THE PAROLEE;

24 (6) RESIDE AT A STATED PLACE AND NOTIFY THE BOARD OF  
25 ANY CHANGE IN PLACE OF RESIDENCE;

26 (7) NOT POSSESS OR CONTROL FIREARMS OR OTHER  
27 DANGEROUS WEAPONS;

28 (8) refrain from possessing or consuming alcoholic beverages;

29 (2) [(9)] submit to reasonable searches and seizures by a parole officer,  
30 or a peace officer acting under the direction of a parole officer;

31 (3) [(10)] submit to appropriate medical, mental health, or controlled

1 substance or alcohol examination, treatment, or counseling;

2 (4) [(11)] submit to periodic examinations designed to detect the use  
3 of alcohol or controlled substances;

4 (5) [(12)] make restitution ordered by the court according to a schedule  
5 established by the board;

6 (6) [(13)] refrain from opening, maintaining, or using a checking  
7 account or charge account;

8 (7) [(14)] refrain from entering into a contract other than a prenuptial  
9 contract or a marriage contract;

10 (8) [(15)] refrain from operating a motor vehicle;

11 (9) [(16)] refrain from entering an establishment where alcoholic  
12 beverages are served, sold, or otherwise dispensed;

13 (10) [(17)] refrain from participating in any other activity or conduct  
14 reasonably related to the parolee's offense, prior record, behavior or prior  
15 behavior, current circumstances, or perceived risk to the community, or from  
16 associating with any other person that the board determines is reasonably likely to  
17 diminish the rehabilitative goals of parole, or that may endanger the public.

18 (c) Except for a condition imposed under (b)(2) - (5) [(b)(4), (7), (9), (11) OR  
19 (12)] of this section, the board, or a member of the board acting for the board  
20 under (e) of this section, may generally delegate imposition of special conditions  
21 under (b) of this section to the discretion of the parole officer.

22 (d) The board, or a member of the board acting for the board under (e) of  
23 this section, may require a prisoner released on parole to comply with special  
24 conditions imposed under (b) of this section for any period up to the maximum term  
25 under which the prisoner is subject to the custody and jurisdiction of the board.

26 \* Sec. 4. AS 33.16.150 is amended by adding a new subsection to read:

27 (e) The board may designate a member of the board to act on behalf of the  
28 board in imposing conditions of mandatory parole under (a) and (b) of this section, in  
29 delegating imposition of conditions of mandatory parole under (c) of this section, and  
30 in setting the period of compliance with the conditions of mandatory parole under (d)  
31 of this section. The decision of a member of the board under this section is the

1 decision of the board. A prisoner or parolee aggrieved by a decision of a member of  
2 the board acting for the board under this subsection may apply to the board under  
3 AS 33.16.160 for a change in the conditions of mandatory parole.

4 \* Sec. 5. AS 44.66.010(a)(3) is amended to read:

5 (3) Board of Parole (AS 33.16.020) -- June 30, 1997 [1993];

6 \* Sec. 6. Notwithstanding AS 33.16.050 and 33.16.150 as they read on the day before the  
7 effective date of this Act, from January 1, 1986, through the day before the effective date of  
8 this Act, one member of the Board of Parole acting for the board may impose special  
9 conditions of mandatory parole under AS 33.16.150(b), delegate imposition of special  
10 conditions of mandatory parole under AS 33.16.150(c), and set the period of compliance with  
11 the special conditions of mandatory parole under AS 33.16.150(d). The decision of a member  
12 of the Board of Parole under this section is the decision of the board under AS 33.16.050 and  
13 33.16.150. A prisoner or parolee aggrieved by a decision of a member of the Board of Parole  
14 acting for the board under this section may apply to the board under AS 33.16.160 for a  
15 change in the special conditions of mandatory parole.

16 \* Sec. 7. Section 6 of this Act is retroactive to January 1, 1986.

17 \* Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

8-LS1686E  
Luckhaupt  
2/28/94

CS FOR SENATE BILL NO. 286(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to special conditions of mandatory parole; extending the  
2 termination date of the Board of Parole; and providing for an effective date."

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

4 \* Section 1. PURPOSE. The purpose of secs. 1 - 6 and 9 of this Act is to validate and  
5 affirm the longstanding practice of the Board of Parole to delegate the setting of special  
6 conditions for mandatory parole under AS 33.16.150 to a single board member, subject to a  
7 right of review by a quorum of the Board of Parole. It is the intent of the legislature to  
8 expressly ratify this practice and to clarify existing statutes to reflect it.

9 \* Sec. 2. AS 33.16.050(c) is amended to read:

10 (c) Except when a member of the board imposes special conditions of  
11 mandatory parole for the board under AS 33.16.150, decisions [DECISIONS] and  
12 orders of the board require the affirmative votes of a majority of the members present.

13 \* Sec. 3. AS 33.16.150(b) is amended to read:

14 (b) The board may require as a condition of discretionary or mandatory parole,

1 or a member of the board acting for the board under (e) of this section may  
2 require as a condition of mandatory parole. that a prisoner released on parole

- 3 (1) meet family obligations;
- 4 (2) pursue employment, education, counseling, or training;
- 5 (3) remain within stated geographic limits unless written permission to  
6 depart from the stated limits is granted the parolee;
- 7 (4) report upon release to the parole officer assigned to the parolee;
- 8 (5) report as required to the parole officer assigned to the parolee;
- 9 (6) reside at a stated place and notify the board of any change in place  
10 of residence;
- 11 (7) not possess or control firearms or other dangerous weapons;
- 12 (8) refrain from possessing or consuming alcoholic beverages;
- 13 (9) submit to reasonable searches and seizures by a parole officer, or  
14 a peace officer acting under the direction of a parole officer;;
- 15 (10) submit to appropriate medical, mental health, or controlled  
16 substance or alcohol examination, treatment, or counseling;
- 17 (11) submit to periodic examinations designed to detect the use of  
18 alcohol or controlled substances;
- 19 (12) make restitution ordered by the court according to a schedule  
20 established by the board;
- 21 (13) refrain from opening, maintaining, or using a checking account or  
22 charge account;
- 23 (14) refrain from entering into a contract other than a prenuptial  
24 contract or a marriage contract;
- 25 (15) refrain from operating a motor vehicle;
- 26 (16) refrain from entering an establishment where alcoholic beverages  
27 are served, sold, or otherwise dispensed;
- 28 (17) refrain from participating in any other activity or associating with  
29 any other person that the board determines is reasonably likely to diminish the  
30 rehabilitative goals of parole, or that may endanger the public.

31 \* Sec. 4. AS 33.16.150(c) is amended to read:

1 (c) Except for a condition imposed under (b)(4), (7), (9), (11), or (12) of this  
 2 section, the board, or a member of the board acting for the board under (e) of this  
 3 section, may generally delegate imposition of special conditions under (b) of this  
 4 section to the discretion of the parole officer.

5 \* Sec. 5. AS 33.16.150(d) is amended to read:

6 (d) The board, or a member of the board acting for the board under (e) of  
 7 this section, may require a prisoner released on parole to comply with special  
 8 conditions imposed under (b) of this section for any period up to the maximum term  
 9 under which the prisoner is subject to the custody and jurisdiction of the board.

10 \* Sec. 6. AS 33.16.150 is amended by adding a new subsection to read:

11 (e) The board may designate any member of the board to act on behalf of the  
 12 board in imposing special conditions of mandatory parole under (b) of this section, in  
 13 delegating imposition of special conditions of mandatory parole under (c) of this  
 14 section, and in setting the period of compliance with the special conditions of  
 15 mandatory parole under (d) of this section. The decision of a member of the board  
 16 under this section is the decision of the board. A prisoner or parolee aggrieved by a  
 17 decision of a member of the board acting for the board under this subsection may  
 18 apply to the board under AS 33.16.160 for a change in the conditions of mandatory  
 19 parole.

20 \* Sec. 7. AS 44.66.010(a)(3) is amended to read:

21 (3) Board of Parole (AS 33.16.020) -- June 30, 2003 [1993];

22 \* Sec. 8. Section 7 of this Act is effective notwithstanding AS 44.66.010(c).

23 \* Sec. 9. Sections 1 - 6 of this Act are retroactive to January 1, 1986.

24 \* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

Senator Tim Kelly, Chair  
Senator Steve Rieger, Vice Chair  
Senator Bert Sharp  
Senator Judy Salo  
Senator Georgianna Lincoln



STATE CAPITOL, SUITE 101  
JUNEAU, ALASKA 99801-1182  
PHONE: (907) 465-3822  
FAX: (907) 465-3756

## SENATE LABOR AND COMMERCE COMMITTEE

716 W. 4TH, SUITE 400  
ANCHORAGE, AK 99501-2133  
PHONE: (907) 258-8180  
FAX: (907) 258-4524

### SPONSOR STATEMENT: SB 286 - EXTEND THE BOARD OF PAROLE

SB 286 and its House companion HB 418, introduced by Representative Bettye Davis, would extend the Board of Parole for the customary four-year period under AS 44.66.010(c). Under current law, and without passage of this legislation, the Board will shut down on June 30, 1994. The Board sunsetted on June 30th, 1993, and is in its "close-down" year.

The State Board of Parole was created in 1960 and has been an essential component of Alaska's criminal justice system. There are currently 700 felons on parole supervision. Each year, about 400 prisoners are eligible to be released to discretionary parole supervision for a portion of their sentence. In addition, 500 prisoners are released to mandatory parole supervision for a period equal to one-third of the sentence.

Expiration of the Parole Board will not alter the state's responsibility under Title 33, Chapter 16, which provides for prisoners to be eligible for and supervised on discretionary and mandatory parole. The state will almost certainly be a party to costly litigation to determine the legal status of prisoners, parolees and victims.

The Board of Parole has been an effective vehicle in administering the parole process.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 286

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act extending the Parole Board BRU: Admin/Support  
 Component: Parole Board  
 Sponsor: Sen. Kelly  
 Requestor: Sen. L&C COMPONENT SERIAL NO. 505

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

Estimate of any current year (FY94) cost: \$ 0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

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

The Parole Board is contained in the department's proposed FY95 budget.

Prepared by: Diane Schenker, Special Assistant Phone: 465-4643/786-2147  
 Division: Office of the Commissioner Date: 2/14/94  
 Approved by Commissioner: J. Frank Date: 2/14/94  
 Agency: Department 1

PREPARED

GOVERNOR'S LEGISLATIVE OFFICE

FISCAL NOTE

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*STATE OF ALASKA*

*BOARD OF PAROLE*



*1993 ANNUAL REPORT TO THE GOVERNOR*

*AND THE ALASKA LEGISLATURE*

*JANUARY 1994*

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# STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

### BOARD OF PAROLE

WALTER J. HICKEL, GOVERNOR

ALASKA BOARD OF PAROLE  
P.O. BOX 1  
JUNEAU, ALASKA 99811-2000  
PHONE: (907) 465-3384  
FAX: (907) 465-2006

Alonzo B. Patterson, Jr., Chairman  
Dolores G. Weiler, Vice Chairperson  
David F. Cooper, Member  
Elsabeth Demeksa, Member  
James E. McLain, Member

December 30, 1993

To the Honorable Walter J. Hickel, Governor  
and the Honorable Members of the Alaska  
State Legislature and the Citizens of the  
State of Alaska:

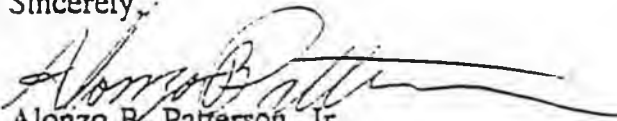
Ladies and Gentlemen:

It is my pleasure to offer the Annual Report of the Alaska Board of Parole for the calendar year 1993. I believe you will find the information contained in this report to be both interesting and informative.

The Board and the Department of Corrections are faced with many challenges. At the forefront is the growing prisoner population and the limits of our resources. The Board takes a great deal of pride in the dedication and commitment to excellence exemplified by our administrative staff and by the Department's employees during the last year. Often employees go beyond the call of duty to bring about positive change in many who have known only failure.

We as a Board are first and foremost accountable to the citizens of Alaska and we will endeavor to uphold their trust through informed decision-making and successful reintegration of the offender back to the community.

Sincerely,



Alonzo B. Patterson, Jr.  
Chairman

# ALASKA BOARD OF PAROLE

## 1993 ANNUAL REPORT

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# MISSION STATEMENT

## Alaska Board of Parole

### OUR MISSION IS

To protect the public by focusing on risk and by making careful, just and equitable parole decisions.

To have a clear, articulate policy and numerical guidelines so the public, offenders and criminal justice components can easily understand discretionary parole release decisions.

To have professionally trained Board Members, with close ties to the community, who are representative of the ethnic, racial, sexual, and cultural populations of the state.

To use Department and community resources as a bridge to help parolees become contributing members of society.

To set realistic parole conditions and to return to prison those who show they will not be law-abiding.

## OUR STATUTORY OBLIGATIONS

AS 33.16.100(a) The Board may authorize the release of a prisoner on discretionary parole if it determines that a reasonable probability exists that:

- (1) the prisoner will live and remain at liberty without violating any laws or conditions imposed by the Board;
- (2) the prisoner's rehabilitation and reintegration into society will be furthered by release on parole;
- (3) the prisoner will not pose a threat of harm to the public if released on parole; and
- (4) release of the prisoner on parole would not diminish the seriousness of the crime.

AS 33.16.010(d) A prisoner released on discretionary or mandatory parole is subject to the conditions of parole imposed under AS 33.16.150.

AS 33.16.220 The Board may revoke parole for conduct in violation of AS 33.16.150(a) or (b).

# OUR RESPONSIBILITIES

## To Alaska Citizens

To keep refining our ability to select persons for parole who will succeed as law-abiding citizens; to help parolees become productive citizens for the benefit of society, themselves and their families; and to use our revocation authority wisely and to promptly return to prison those parolees who present a danger to the community.

## To Victims

To welcome and consider views and information from crime victims and their families and to respond positively to their requests for information and notification.

## To Corrections Employees

To provide leadership, training and resources so they can perform their job effectively and efficiently.

## To Offenders

To consider each offender as an individual by one set of standards and to provide a fair and unbiased hearing; to provide realistic parole conditions and helpful positive supervision.

## To Justice

To uphold appropriate punishment, to advance equal treatment of offenders serving for similar offenses with similar histories and needs, and to work with other justice components to reduce criminality.

## THE BOARD MEMBERS

Chairman A. J. B. Patterson, Jr. was appointed to the Board in February 1984 by Governor Sheffield. He was reappointed by Governor Sheffield in 1986 and by Governor Hickel in 1991. Reverend Patterson is the pastor of Shiloh Missionary Baptist Church in Anchorage. He has a Bachelor of Arts Degree in Psychology from the University of Alaska/Anchorage, and a Doctor of Divinity Degree from the American Bible Institute. Reverend Patterson is a resident of Anchorage.

Member David Cooper was appointed by Governor Sheffield in February 1984. He was reappointed by Governor Sheffield in 1986 and again by Governor Cowper in 1990. He has an Associate Arts Degree in Behavioral Science from the University of Alaska/Anchorage. Mr. Cooper is retired from the position of Assistant Superintendent at the Palmer Correctional Center after 19 years of exemplary service. He was born and raised near Ninilchik. He and his family operate a commercial fishing business in Cook Inlet. Mr. Cooper is a resident of Palmer.

Member Elisabeth Demeksa was appointed by Governor Hickel in 1992. She has a Bachelor of Arts Degree in English Literature from New York State University. Ms. Demeksa is the owner, manager of a women's apparel store. From 1980 to 1991 she was an Aide to the Alaska Legislature, the last two years as Chief of Staff to the House Minority Leader. She is active in numerous women's and family organizations, and in 1984 was honored as one of the Outstanding Young Women of America. Ms. Demeksa is a resident of Juneau.

Member James McLain was appointed by Governor Hickel in 1993. He has a Bachelor of Arts Degree in Criminal Justice from the University of Alaska/Fairbanks and was the Justice Student of the Year in 1988. He is currently employed as a paralegal. Mr. McLain is a resident of Fairbanks.

Member Mary Vollendorf was appointed by Governor Hickel in 1994. She has a Bachelor of Arts Degree in Political Science/Pre Law from the University of Northern Arizona University. Since graduation from college she has worked for several legislators. Ms. Vollendorf is a resident of Anchorage.

# THE EMPLOYEES OF THE PAROLE BOARD

During 1993 the administrative office of the Board was located at the corner of 4th & Harris, Juneau, Alaska. As of January 21, 1994 the office will be located at 802 Third St., Douglas, Alaska. Our mailing address is:

Alaska Board of Parole  
P.O. Box 112000  
Juneau, Alaska 99811-2000  
Phone: (907) 465-3334  
Fax: (907) 465-2006

## EXECUTIVE DIRECTOR

*Richard E. Collum*

The Executive Director is appointed by the Board and is responsible for day to day operations of the agency. The Executive Director attends parole release hearings and parole revocation hearings and provides technical assistance to the Board.

## Secretary I

*Georgina Weitzel*

## Clerk Typist III

*Mary Engdahl*

## PAROLE ADMINISTRATOR

*Donna E. White*

The Parole Administrator assists the Executive Director in agency administration and supervision of the staff. The Parole Administrator is a resource for parole officers to use in the daily management of cases, scheduling hearings and compiling statistics.

## PAROLE BOARD OFFICER

*Daniel L. Stroeing*

The Parole Board Officer assists the Parole Administrator and handles conditions of supervision and Executive Clemency applications and investigation.



## THE PAROLE BOARD

Society through legislation has determined that some people who commit crimes must be incarcerated in correctional institutions as a deterrent to others and for punishment for their crime, as well as for protection of the public and for reformation. The optimum period of time that will meet this criteria, for any given crime, is unknown and consequently sentence length varies considerably across the United States. We know from experience that a number of offenders can be released to community supervision prior to the expiration of their sentences without jeopardizing the public and at a tremendous cost savings to the public.

The Alaska Board of Parole was created by the legislature at the time of statehood to fulfill the State's constitutional requirement for a parole system. The Board was originally comprised of three volunteer members appointed by the Governor, the staff was provided by the Division of Corrections. In the mid 1960's the Board was increased to five members. In 1972, a separate parole office was created within the Department of Health and Social Services to make the Board independent of the Division of Corrections and provide the Board Members with their own administrative staff. When the Division of Corrections became the Department of Corrections in 1984 the Board's Budget Request Unit was moved from Health and Social Services to this newly formed Department.

Prior to 1986, Board Members were appointed to four year terms. Beginning January 1, 1986 the five members are appointed to staggered five year terms. One term expires every year on December 31. The Staff presently consists of an Executive Director, Parole Administrator, Parole Board Officer, a Secretary and a Clerk Typist.

In addition to holding discretionary parole release hearings, the Board holds parole revocation hearings on both mandatory parolees and discretionary parolees. The Board sets conditions of parole, conducts preliminary revocation hearings and preliminary rescission hearings, and issues arrest warrants and subpoenas. During the years from 1984 to 1986, the Board reviewed cases in accordance with the Prisoner Overcrowding Emergency Conditional Commutation Plan. The staff conducts all of the Executive Clemency investigations for the Executive Clemency Advisory Committee and the Governor.

The Board meets quarterly in Fairbanks, Anchorage and Juneau. The Board meets quarterly as necessary in other areas which have a State Correctional Facility, such as Seward, Nome, Bethel, Kenai,

and Ketchikan. Occasionally it is necessary for the Board to travel outside Alaska to the Federal Bureau of Prisons Facilities and other contract institutions to hold parole hearings. The Board members are not state employees but are paid per diem and travel expenses plus \$150 compensation for each full day they are in session.

In 1981, following three years of research and analysis the Board adopted a parole guidelines model which rates a prisoner's social and criminal history to determine risk. This risk score is compared to the severity of the crime to determine a range of time the prisoner should serve prior to discretionary parole. These guidelines were revised in 1983 based on criminal code revisions and again in 1989 following additional research into the validity of the risk factors.

## THE HISTORY OF PAROLE ELIGIBILITY

Eligibility for discretionary parole and for mandatory parole has changed considerably over the last three decades since Statehood and has become extremely complicated. The following information is presented as a historical review of what has occurred and may provide some perspective on the limited numbers of prisoners who are currently eligible for release.

The Alaska legislature determined, with passage of the criminal code in 1960, that a prisoner sentenced to a term of at least 131 days would be eligible for discretionary parole. Former AS 33.15.180. Although there was no statutory minimum term a prisoner had to serve before release on parole, the court had the discretion to set a minimum term, not to exceed one-third of the total sentence. Former AS 33.15.230(a)(1). No other restrictions or guidelines applied.

Effective May 16, 1974, the Alaska Legislature amended former AS 33.15.080 to require a prisoner to serve one-third of the period of confinement prior to being eligible for release on discretionary parole. In the case of a prisoner serving a life sentence, the mandatory minimum was set at fifteen years. In addition, former AS 33.15.230(a)(1) was amended so the court could further restrict eligibility up to the maximum term.

In 1980, as part of the revised criminal code and with the inception of presumptive sentencing, parole eligibility was altered significantly. Crimes were grouped according to severity of the offense. Murder I, Murder II and Kidnapping were unclassified felonies. Murder I and II and Kidnapping were changed from a maximum term of life to a maximum term of 99 years. The mandatory

minimum for discretionary parole eligibility for Murder I was increased to 20 years [AS 12.55.125(a)] or one-third of the period of confinement (former AS 33.15.080), whichever was greater. The mandatory minimum term for Murder II and Kidnapping was set at five years [AS 12.55.125(b)] or one-third of the period of confinement, whichever was greater.

All other felony offenses were classified as A, B, or C felonies. First time felony offenders and all misdemeanor offenders with a sentence of 181 days or longer were eligible for parole after serving one-third of the period of confinement. The remaining felony offenders (those with one or more prior felony convictions) were to be given a non-parole eligible presumptive term. AS 12.55.125. As in the past, the court could further restrict parole eligibility beyond the statutory minimums. AS 12.55.115.

The 1980 revised criminal code also provided for a Three-Judge Sentencing Panel (AS 12.55.175) to review cases with extraordinary circumstances. AS 12.55.165. The Three-Judge Panel may sentence a defendant to any sentence authorized under AS 12.55.015, including making an otherwise ineligible defendant eligible for parole.

Effective October 1, 1982, Sexual Assault I and Sexual Abuse of a Minor I, previously class A felonies, were moved to a new category of unclassified presumptive's [AS 12.55.125(i)] and first time offenders were no longer eligible for parole. In addition, Class A first time offenders were now subject to presumptive terms and were not eligible for parole. AS 12.55.125(c).

Effective January 1, 1983, drug offenses were included in the revised criminal code and Misconduct Involving a Controlled Substance in the First Degree became an unclassified felony with a five year mandatory minimum. AS 12.55.125(b).

Effective January 1, 1986, class A, B and C felony offenders eligible for parole, had their parole eligibility reduced from one-third of the period of confinement to one-quarter. [AS 33.16.100(c)] In addition, enhanced or aggravated presumptive's were declared eligible for discretionary parole after completing the initial presumptive term plus the minimum (one-third or one-quarter) applicable to the enhanced portion of the term. [AS 33.16.090(c)].

In order to correct what they believed to be a previous oversight the legislature made Class A offenders eligible for parole after serving one-third of the period of confinement, effective September 12, 1987. Eligibility on these offenders had been mistakenly reduced the previous year to one-quarter along with class B and C offenders. [AS 33.16.100(d)].

In 1988, it was determined an offender sentenced prior to 1986 to an enhanced (aggravated) presumptive sentence [AS 12.55.155(c)] was eligible for parole after serving the presumptive term, less good time, and at least one-third of the composite term. Merry v. State, 752 P.2d 475 (Alaska App. 1988). In 1990, it was determined an offender sentenced to a consecutive presumptive sentence prior to 1986 was eligible for parole after completion of the initial presumptive sentence, less good time, and after serving the applicable minimum (one-third or one-quarter) of the consecutive presumptive term.

It has been long established that good time does not reduce the minimum term for parole eligibility. Attorney General Opinion, 01/30/74, Mills v. State, 592 P.2d 1247 (Alaska 1979). However good time does reduce the term of a presumptively sentenced prisoner and thus affects parole eligibility on enhanced presumptive sentences and consecutive presumptive sentences. AS 33.16.090(c).

Effective September 14, 1992, Three Judge Panel sentencing based on a finding of an exceptional potential for rehabilitation became more restrictive. After that date the panel is required to sentence the defendant to the presumptive term, shall order the defendant to participate in appropriate programs of rehabilitation, and may provide that the defendant is eligible for discretionary parole during the second half of the sentence imposed if the defendant successfully completes all rehabilitation programs ordered. AS 12.55.175(e), AS 33.16.090(e).

## WHO IS ELIGIBLE FOR DISCRETIONARY PAROLE NOW?

As indicated in the previous history of parole, the parole eligibility laws have become extremely complicated. A quick overview follows:

In order for a prisoner to be eligible for discretionary parole, the prisoner must be sentenced to a term of 181 days or more. In the case of classified felonies, first time class B and C offenders are eligible after serving one-quarter of their term. All other classified felonies and unclassified sex offenses fall under presumptive sentencing and are eligible for parole after serving the initial presumptive terms. Prisoners convicted of Unclassified felonies must serve mandatory minimums (20 yrs. for Murder in the first Degree, five years for all others) or one-third of the total term, whichever is greater.

## WHO IS ON MANDATORY PAROLE?

A prisoner who is not eligible for discretionary parole or has not been granted discretionary parole will be supervised on mandatory parole if the composite term the prisoner is serving is two (2) years or more. The term of mandatory parole is equal to the period of time the prisoner's sentence was reduced for good behavior, in most cases this is one-third of the total sentence.

Mandatory parole can be revoked prior to a prisoner's release to supervision if the prisoner does not comply with court ordered treatment while incarcerated. Once released from the institution, mandatory parole can be revoked by the Board if the prisoner violates a condition of the mandatory parole. A prisoner cannot refuse to be released to mandatory parole supervision.

## The Board's Workload

The workload for the Alaska Board of Parole increased significantly during the 1980's at a time when the prison population mushroomed. As an example, the 1980 criminal code revision did not begin to show an impact until about 1983 (Figure #1). In 1982, the Board's total workload including parole hearings, parole revocation hearings, warrants and preliminary hearings was under 400 cases. From 1982 to the current peak, the Board's workload increased fourfold. The increase was substantially related to the 1980 presumptive sentence law and mandatory parole law. Discretionary parole hearings and discretionary parole releases did not increase during that period in spite of the growing prison population. Each year, as a higher percentage of prisoners entering the system were sentenced after 1979 under the presumptive sentence law, the number of prisoners eligible for discretionary parole and the number of prisoners released on discretionary parole decreased.

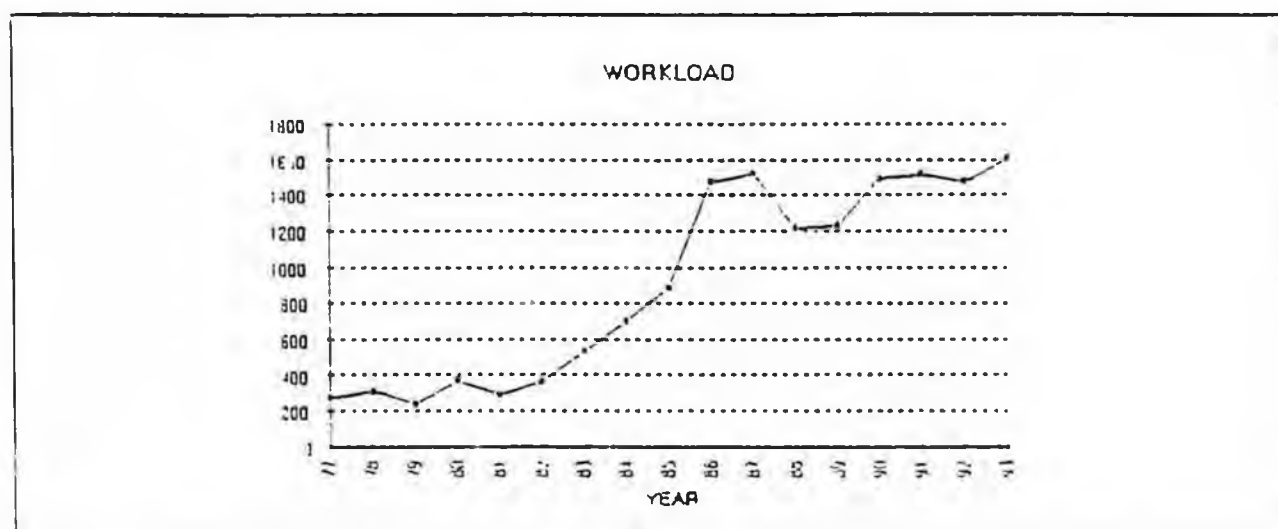


Figure #1

The Board's sharp increase in workload in 1986 and 1987 as indicated in Figure #1 is attributed to the added responsibility during those two years of reviewing prisoners eligible for release under the Governor's Emergency Conditional Commutation Release Plan.

During calendar year 1993, the Board held a total of 1608 hearings, 697 of which were in-person hearings. The remaining 911 case decisions included issuing warrants, setting or changing conditions, and reviewing appeals.

## Discretionary Parole

During the calendar years 1991, 1992 and 1993 the Board held a total of 461 discretionary parole release hearings. Of that total, 178 prisoners were granted discretionary parole for a parole rate of 39%. (Figure 2). In addition, during that three year period, the Board released another 225 prisoners following revocation of their mandatory parole.

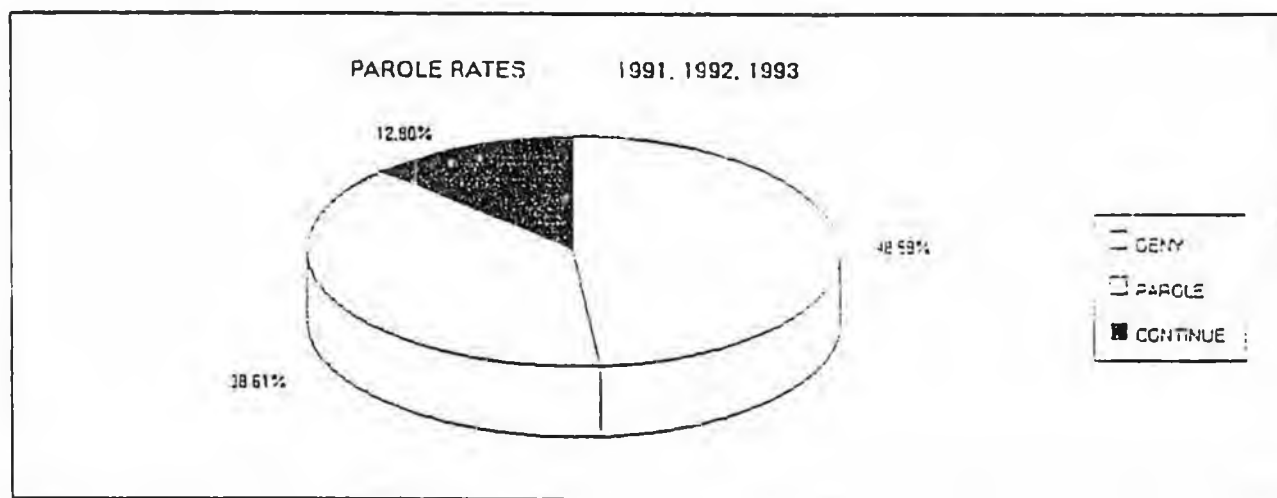


Figure #2

The Board has completed a recidivism study every year since at least the mid 1970's. This was traditionally a one year follow up of prisoners released to discretionary parole. In 1988, the study was expanded to follow the parolee for more than one year. Success is measured by the parolee's ability to complete the followup period on supervision without having been revoked by the Board.

Failure is also divided into four categories based on the nature of the violation. If the violation was for a condition of parole that was not a violation of a law or local ordinance, such as consuming alcohol or failing to report a change of residence, the violation is considered to be a technical or conditions violation. If parole is revoked as a result of a conviction for a misdemeanor or felony while on supervision, the violation is noted accordingly. A parolee who does not report to the parole office as instructed and is unable to be located by the parole officer is coded as an absconder. If multiple violations occur, the most serious one is the one coded.

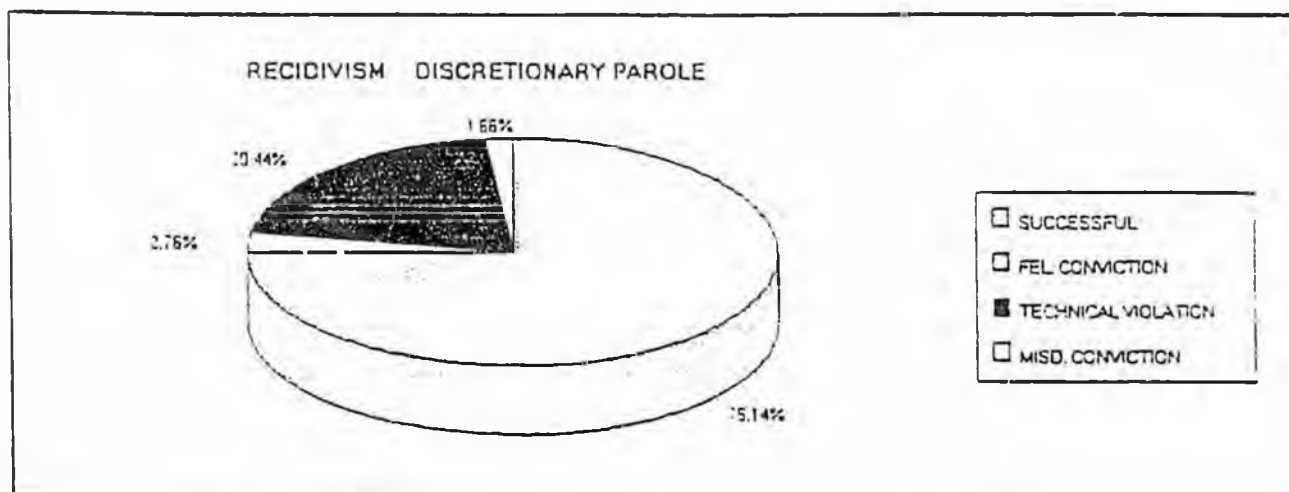


Figure #3

The Board is very proud of its consistently low felony revocation rate. A felony revocation rate of 10% is acceptable and expected in many jurisdictions across the United States. The Alaska Board of Parole has consistently had a felony violation rate of 5% or less. A follow-up of the prisoners released to discretionary parole during the years 1989, 1990, 1991 and 1992 indicates a felony violation rate of 5 out of 182, or 3%. (Figure #3).

The combined violation rate for discretionary parolees during that period of time is 25%. However, many of those prisoners were ordered back to prison for only a short period of time and then released to supervision again at a later date. This low felony and misdemeanor revocation rate is an indication the field parole officer is doing a good job of monitoring cases to assure the parolee is removed from the community at the first sign of serious supervision violations and before a new crime is committed.

### Mandatory Parole

The Department of Corrections currently releases over 500 prisoners each year who are to be supervised on mandatory parole for the period of time their sentence was reduced for good behavior in the institution. This number has increased considerably as the prison population has increased. In 1986, less than 300 prisoners were released to mandatory parole supervision. At the present time, the Department is supervising about 700 mandatory parolees.

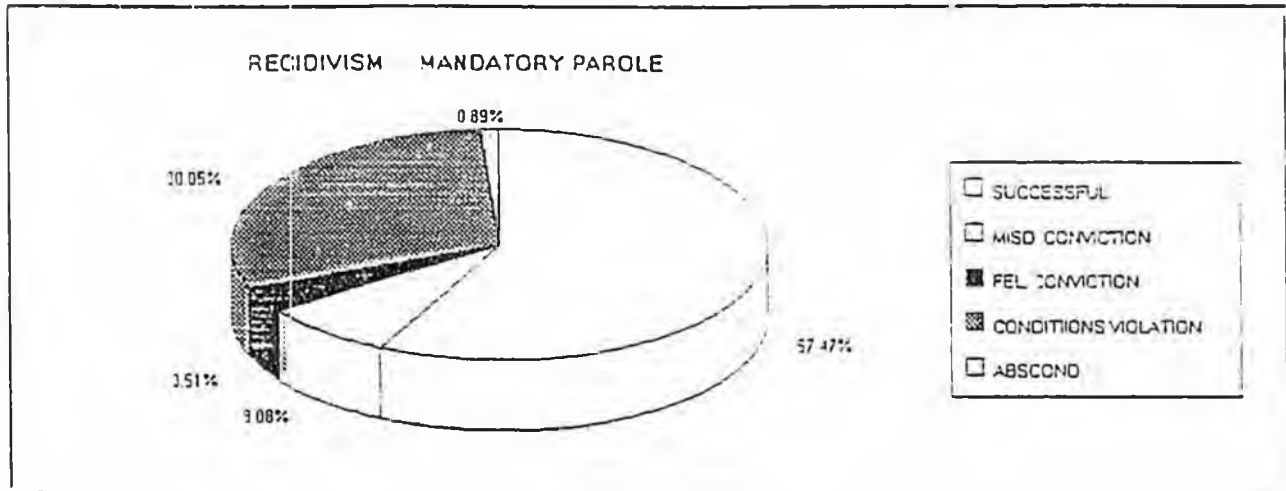


Figure #4

During the years 1989, 1990, 1991 and 1992, it is estimated 1907 prisoners were released to mandatory parole supervision. This estimate is based on the number of cases submitted to the Board so they could set conditions prior to release. As Figure #4 indicates, 311 of them were returned to prison. This is a violation rate of 43%. This violation rate is nearly eighteen (18%) percentage points higher than prisoners released to discretionary parole. In addition, on the average these prisoners were not as closely supervised as discretionary parolees who are often required to participate in residential programs, halfway houses or the Intensive Supervision Program. This revocation rate for mandatory parolees could increase considerably if they were supervised as closely as discretionary parolees.

### Risk Factors

The parole guidelines model developed in 1981 and the subsequent revisions to that model have always included a risk score sheet. The current risk factors were adopted in 1989 and provide for a scoring range of 0 to 49. The lower the score, the lower the risk to reoffend. Risk scores are divided into four categories as follows:

A = 0-6                      B = 7-14                      C = 15-29                      D = 30-49

During the years 1990, 1991, 1992, and 1993, the parole rate for prisoners in category A was 52%; the parole rate for category B was

48%; the parole rate for category C was 33%; and the parole rate for category D was 23%. (Figure #5). This is a good indication the Board is paying a great deal of attention to an applicant's risk to the community at the time parole is granted.

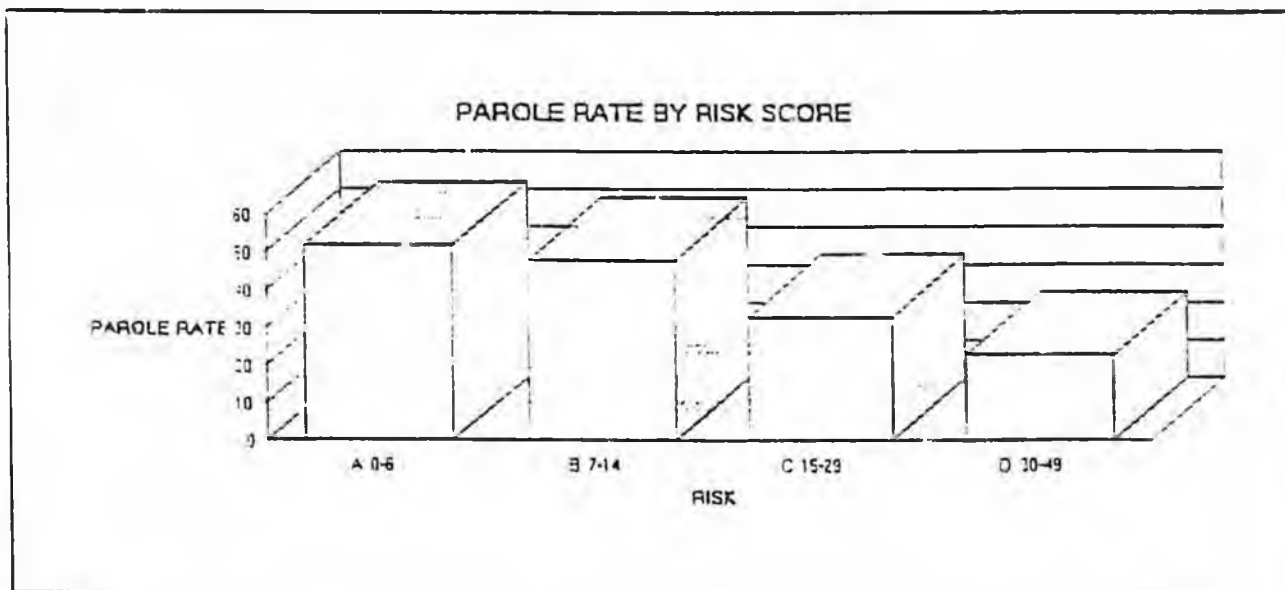


Figure #5

Information obtained from risk scores for prisoners appearing in revocation hearings during the years from 1988 to 1993 further support the validity of the scores and the Board's reliance on these scores. Of the 1350 prisoners revoked during that six year period, only 7% were in the two best risk categories (A & B). (Figure #6). Nearly all of the parolees violated during those years (93%) had a risk score of 15 or higher.

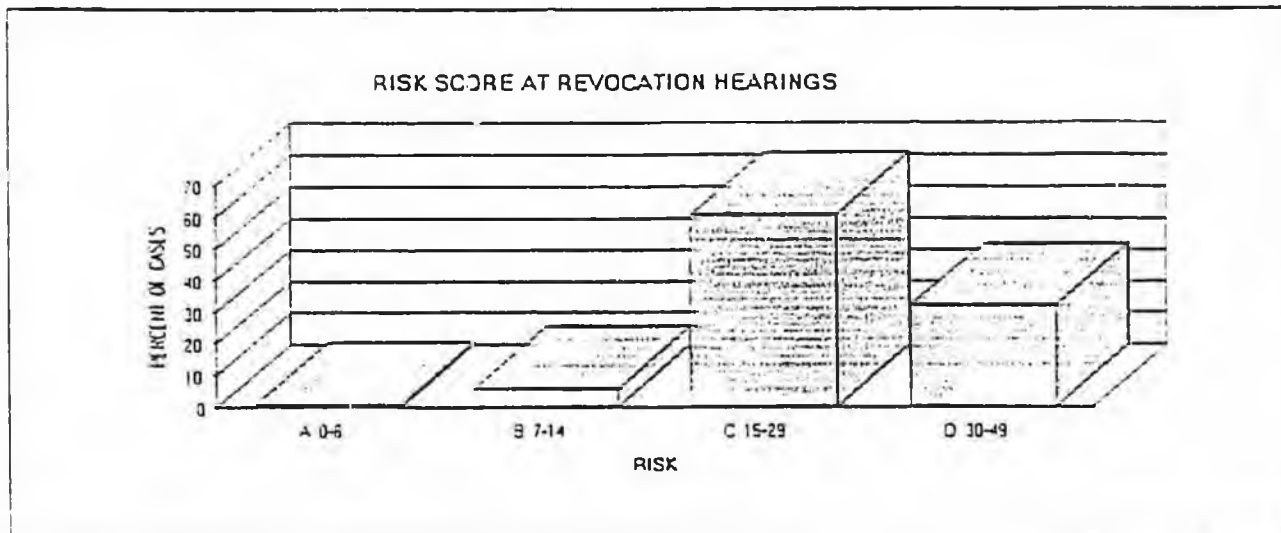


Figure #6

### Parole Guidelines

The Board has utilized numerical guidelines for releasing prisoners since 1981. See 22 AAC 20.142. The guidelines are designed for non-presumptively sentenced offenders eligible for discretionary parole. Many other states have guidelines models, including the U.S. Parole Commission. One of the goals in utilizing a guidelines system is to limit the number of cases where a decision is made outside of the suggested guidelines range. In some cases the Board will release a prisoner below the minimum range by making a formal finding of mitigating factors; or the Board will deny parole and thus require a prisoner to serve a term above the guidelines by making a formal finding of aggravating factors. As Figure #7 indicates, the Alaska Board of Parole is finding mitigation in about 7% of the cases appearing before them and is making a finding of aggravation in about 10% of the cases appearing before them.

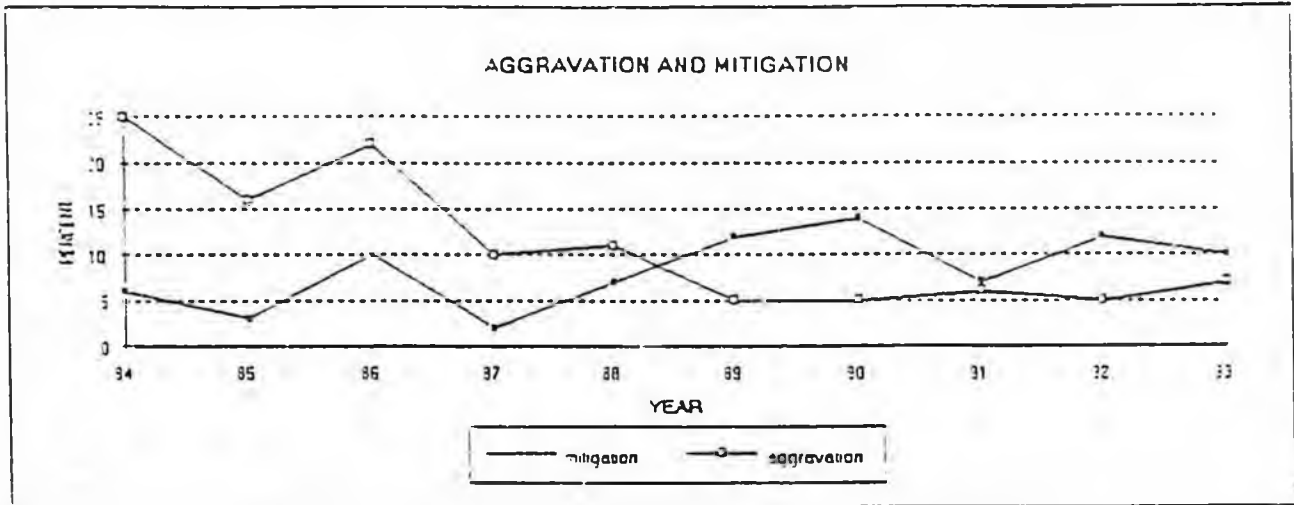


Figure #7

The remaining 83% of decisions are made within the guidelines range and this high percentage of conformity to the guidelines is an indication the Board is making a conscious effort to apply the discretion they have in a fair and equitable manner.