

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8588 HOUSE JUDICIARY

**HB**

**48**

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BRICE

TO: HB 48

1 Page 1, line 1:

2 Delete "motorcycle safety and to"

3 Page 1, lines 4 - 7:

4 Delete all material.

5 Page 1, line 8:

6 Delete "Sec. 3."

7 Insert "Section 1."

*I'm not quite  
sure what  
this bill  
changes.*

**HOUSE BILL NO. 48**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES BRICE, Brown, Navarre**

**Introduced: 1/16/95**

**Referred: Transportation, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to motorcycle safety and to use of helmets by operators of  
2 motorcycles."

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

4 \* Section 1. POLICY. It is the policy of the state that the Department of Public Safety  
5 implement a motorcycle safety program.

6 \* Sec. 2. AS 28.05.011 is amended by adding a new paragraph to read:

7 (12) regulations necessary to implement a motorcycle safety program.

8 \* Sec. 3. AS 28.35.245 is repealed and reenacted to read:

9 Sec. 28.35.245. MOTORCYCLE HELMET. (a) A motorcycle helmet may  
10 not be manufactured or sold in the state unless the helmet conforms to standards  
11 established by regulation by the commissioner of public safety. The regulations must  
12 provide for helmets that allow normal peripheral vision and hearing and minimize neck  
13 injuries to the wearer potentially caused by the helmet. The regulations shall be  
14 adopted under the provisions of AS 44.62 (Administrative Procedure Act).

*add duties of Commissioner of PS  
to adopt Regs*

1  
2  
3

(b) A person who is 18 years of age or older may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license or endorsement to operate a motorcycle.

*Present Law -  
Age of Majority  
AS 25.20.010  
WHI says 18 is  
Age of Majority*

**Sec. 28.35.225. Enforcement.** All law enforcement officers in this state and employees of the department designated by the commissioner shall enforce this title and regulations adopted under this title. The state troopers shall advise and instruct all other law enforcement officers in the state concerning the requirements of this title and regulations adopted under this title. (§ 11 ch 241 SLA 1976; am § 7 ch 54 SLA 1979)

#### NOTES TO DECISIONS

"Law enforcement officers". — Any member of the police force of an incorporated city or borough is a "law enforcement officer" for purposes of this section. *State v. Burke*, 714 P.2d 374 (Alaska Ct. App. 1986).

An airport police officer is a law enforcement officer for purposes of this section. *Clair v. State*, 738 P.2d 772 (Alaska Ct. App. 1987).

Enforcement authority. — This sec-

tion authorizes all "law enforcement officers" to stop any vehicle whose driver has committed a statewide traffic offense in the officer's presence, regardless not only of whether the offense was committed within the territorial limits of the jurisdiction which employed the officer, but also of whether the vehicle is in the territorial limits at the time the officer decides to make the stop. *State v. Burke*, 714 P.2d 374 (Alaska Ct. App. 1986).

*Sec. 28.35.230. [Renumbered as AS 28.40.050.]*

**Sec. 28.35.235. Unauthorized use of handicapped parking; minimum fine.** (a) A person may not park a motor vehicle in a parking place reserved for disabled or medically handicapped persons unless

(1) the person has a special permit issued by the department under AS 28.10.495;

(2) the motor vehicle displays a special license plate issued to disabled or handicapped persons under AS 28.10.181(d); or

(3) the motor vehicle displays a special license plate or permit issued to disabled or handicapped persons by another state, province, territory, or country.

(b) A person who violates this section is guilty of an infraction. Upon conviction the court shall impose a fine of not less than \$100. (§ 2 ch 11 SLA 1987)

*Sec. 28.35.240. Duty to obey school patrol. [Repealed, § 3 ch 68 SLA 1964.]*

**Sec. 28.35.245. Motorcycle helmets.** (a) After January 1, 1978, motorcycle helmets may not be manufactured or sold in Alaska that do not conform to standards established by regulation by the commissioner of public safety. The regulations must provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries to the wearer potentially caused by the helmet. The adoption of

these regulations shall be under AS 44.62 (Administrative Procedure Act).

(b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license that, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle. (§ 1 ch 230 SLA 1976)

**Cross references.** — For provisions regulating the manufacture and sale of motorcycle helmets, see AS 28.05.081(c). Validity of traffic regulations requiring motorcyclists to wear protective headgear. 32 ALR3d 1270.

**Collateral references.** — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 210.

*Sec. 28.35.250. Application of law. [Repealed, § 20 ch 241 SLA 1976.]*

**Sec. 28.35.251. Contained or confined loads.** (a) A person may not drive a motor vehicle loaded with sand, gravel, rock, or similar materials on a highway unless

(1) the load is contained or confined to prevent the load from dropping, shifting, leaking, or escaping, except that sand or other substances may be dropped, sprinkled, or sprayed for the purpose of cleaning or maintaining the highway or providing traction; and

(2) the load is subjected to treatment by methods, approved by the commissioner by regulation, designed to settle the load or remove loose material before the vehicle is driven on the highway.

(b) If a cover is used to contain or confine a load being driven on a highway, the cover shall be securely fastened to prevent the cover from becoming loose or detached, or from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

**Sec. 28.35.253. Anti-spray devices required.** A person may not drive a motor vehicle on a highway unless the vehicle is equipped with fenders, mud flaps, or other anti-spray devices adequate to prevent the vehicle from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

**Sec. 28.35.255. Penalty.** A person convicted of violating AS 28.35.251 or 28.35.253 is guilty of an infraction. (§ 1 ch 62 SLA 1986)

# FISCAL NOTE

No. 4  
 Bill Version: HB 48  
 (H) Publish Date: 2/22/95

**STATE OF ALASKA  
 1995 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to motorcycle safety and the use of helmets by operators of motorcycles." BRU: Prosecution  
 Sponsor: Representative Brice Component: Criminal Justice Litigation  
 Requester: House Transportation Committee COMPONENT SERIAL NO. 0089

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

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/14/95  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/14/95  
 Agency: Department of Law

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# FISCAL NOTE

STATE OF ALASKA  
 1995 LEGISLATIVE SESSION

I

Revision Date: \_\_\_\_\_ Dept. Affected: DOT & PF  
 Title: Motorcycle Safety BRU: Commissioner's Office  
 Component: Commissioner's Office  
 Sponsor: Representative Brnce  
 Requester: Fred Pascoe/Brices Office COMPONENT SERIAL NO. 530

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

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

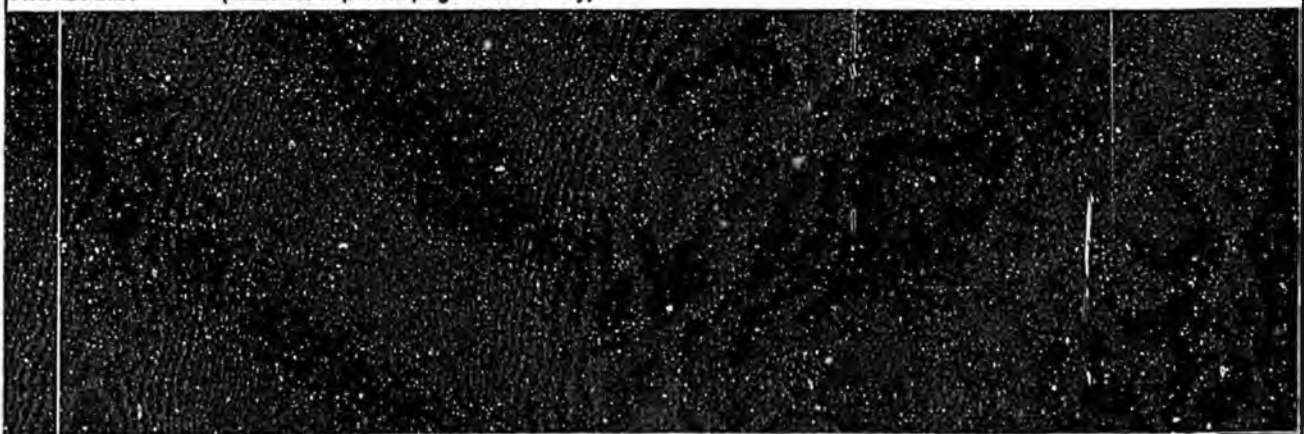
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

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

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



Prepared by: Sam Kito III Phone: 465-3904  
 Division: Commissioner's Office Date: 2/13/95  
 Approved by Commissioner: *Joseph L. Perkins* Date: 2/13/95  
 Agency: Department of Transportation and Public Facilities

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

NO. \_\_\_\_\_  
 Bill Version: HB 48  
 (H) Publish Date: 2/22/95

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Motorcycle Safety Highway Safety Planning Agency  
 Component: Federal Grants  
 Sponsor: Representative Brice  
 Requestor: (H) Transportation COMPONENT SERIAL NO. 0499

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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-
<small>Revenue Code</small>						

**FUNDING: (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 current year (FY 95) impact: \$ \_\_\_\_\_

**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.)  
 See Attached Analysis

Prepared By: Lorn Campbell Phone: 465-4371  
 Division: Highway Safety Planning Agency Date: 2/13/95  
 Approved by Commissioner: *Ronald L. Otte* Date: 2/14/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

Fiscal Analysis  
HB 48

Section 153 of the Intermodal Surface Transportation Efficiency Act of 1991 required that every state have in place a mandatory helmet use law by FFY 95. Failure to enact a mandatory helmet use law would initiate a transfer of funds from the Department of Transportation and Public Facilities to the Alaska Highway Safety Planning Agency in the amount of one and one half percent for the first year and three percent each year thereafter.

Transferred funds come from three discrete highway programs: The Surface Transportation Program, the National Highway System, and the Congestion Mitigation and Air Quality Improvement Program.

On October 1, 1994, \$2.8 million was transferred for FFY 95. The estimated transfer for FFY 96 will be \$5.5 million.

# FISCAL NOTE

No. 1  
 Bill Version: HB 48  
 (H) Publish Date: 2/22/95

**STATE OF ALASKA**  
**1995 LEGISLATIVE SESSION**

**BILL NO**

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Motorcycle Safety ERU: Motor Vehicles  
 Component: Driver Services  
 Sponsor: Representative Brice  
 Requestor: H TRANS COMPONENT SERIAL NO. 0500

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

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
<b>OPERATING</b>						
PERSONAL SERVICES						
TRAVEL	1.4					
CONTRACTUAL	2.5					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>3.9</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL EXPENDITURES</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CHANGE IN REVENUES ( )</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE	3.9					
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>	<b>3.9</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

Estimate of current year (FY 95) impact: \$ \_\_\_\_\_

**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.)**

This bill will require the Department to promulgate regulations regarding motorcycle safety programs and motorcycle training classes. Cost analysis is as follows:

Hearings would be held in Anchorage, Fairbanks, Soldotna/Kenai and Juneau. Travel = \$980.00 Airfare from Juneau to Anchorage, Anchorage to Fairbanks, Fairbanks to Soldotna and return to Juneau. Per-diem = \$336.00, Car Rental in Anchorage, Fairbanks, Soldotna \$75.00. Total of travel = \$1.4.

Contractual = Publishing cost to publish notice of regulations 2 times in 6 different newspapers = \$2.1, Cost of contracting with the Legislative Information Offices to hold public hearings \$25.00 an hour, 4 hours in each location. = \$.04. Total cost of contractual is \$2.5.

Prepared By: Juanita M. Hensley Phone: 465-2650  
 Division: Motor Vehicles Date: 2/12/95  
 Approved by Commissioner: Ronald L. Otte Date: 2/13/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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**FISCAL NOTE**



# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293

*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

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### REPRESENTATIVE TOM BRICE HB 48 Sponsor Statement

The federal highway safety act, ISTEA, requires each state to adopt a mandatory helmet law. The penalty for noncompliance in the first year (FY95) is 1.5 % of federal transportation funding which must be transferred from DOT&PF to the 402 fund for safety, training, and enforcement. In October 1994 (FY95) \$2.6 million was transferred to the 402 fund. Each year thereafter for the remaining four years of the act 3% will be moved. Depending on whether the act is fully funded by the US Congress, \$5.2 million will be moved to 402 each year. Over the life of ISTEA the total would be approximately \$23.5 million.

During the summer and fall of 1993, the state's Attorney General's office, in an attempt to bring Alaska into compliance with ISTEA mandates, issued an opinion supporting the state's ability to mandate the use of a helmet for motorcycle operators. The opinion's argument revolved around the use of "singularly licensed to drive a motorcycle." Although the opinion has been withdrawn, this is a new interpretation of a statute that has been on the books since 1976, and is contrary to legislative intent and current enforcement policy.

To address this, HB 48 clarifies the statute. To ensure that some of these funds would be used for improving motorcycle safety, a motorcycle safety program would be established under DPS.



HOUSE COMMITTEE REPORT

2/22/95

(7)

Date Referred: January 16, 1995

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 2/20/95

The TRANSPORTATION Committee considered:

HB 48

HOUSE BILL NO. 48

MOTORCYCLE SAFETY

"An Act relating to motorcycle safety and to use of helmets by operators of motorcycles."

recommends it be replaced with the following committee substitute \_\_\_\_\_ [ ] the same title [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee  
[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[x] fiscal note(s) Public Safety

[ ] fiscal note(s) \_\_\_\_\_

3) [x] zero fiscal note(s) Public Safety  
DOT+PF, Dept of Law

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

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Tom Brice</u> BRICE	✓			
<u>Ed Maclean</u> Maclean	✓			
<u>Annelle James</u> JAMES	✓			
<u>Beverly Masek</u> MASEK	✓			
<u>Will Williams</u> Williams	✓			
<u>John Sanders</u> Sanders	✓			
<u>Bary L. Davis</u> G. DAVIS	✓			
	(7)			

CHAIR'S SIGNATURE

Bary L. Davis  
G. DAVIS

28.37.235

§ 28.35.240

MOTOR VEHICLES

§ 28.35.251

electronic  
used in a  
in that the  
SLA 1984)

(2) the motor vehicle displays a special license plate issued to disabled or handicapped persons under AS 28.10.181(d); or

(3) the motor vehicle displays a special license plate or permit issued to disabled or handicapped persons by another state, province, territory, or country.

(b) A person who violates this section is guilty of an infraction. Upon conviction the court shall impose a fine of not less than \$100. (§ 2 ch 11 SLA 1987)

Repealed.

Sec. 28.35.240. Duty to obey school patrol. [Repealed, § 3 ch 68 SLA 1964.]

d, § 20 ch

Sec. 28.35.245. Motorcycle helmet. (a) After January 1, 1978, motorcycle helmets may not be manufactured or sold in Alaska that do not conform to standards established by regulation by the commissioner of public safety. The regulations must provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries to the wearer potentially caused by the helmet. The adoption of these regulations shall be under the provisions of the Administrative Procedure Act (AS 44.62).

d vehicles.  
h 178 SLA

(b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license that, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle. (§ 1 ch 230 SLA 1976)

20 ch 241

Collateral references. — 7A Am. Jur.  
2d, Automobiles and Highway Traffic,  
§ 210.

ers in this  
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this title.  
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and regu-  
§ 7 ch 54

Sec. 28.35.250. Application of law. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.251. Contained or confined loads. (a) A person may not drive a motor vehicle loaded with sand, gravel, rock, or similar materials on a highway unless

(1) the load is contained or confined to prevent the load from dropping, shifting, leaking, or escaping, except that sand or other substances may be dropped, sprinkled, or sprayed for the purpose of cleaning or maintaining the highway or providing traction; and

(2) the load is subjected to treatment by methods, approved by the commissioner by regulation, designed to settle the load or remove loose material before the vehicle is driven on the highway.

(b) If a cover is used to contain or confine a load being driven on a highway, the cover shall be securely fastened to prevent the cover from becoming loose or detached, or from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

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TO: The Honorable Bruce Campbell  
Commissioner  
Department of Transportation  
and Public Facilities

DATE: September 28, 1993

FILE NO:

TEL NO: 465-3603

SUBJECT: Motorcycle Helmet Law

FROM: Deborah Vogt *DV*  
Assistant Attorney General  
Transportation Section-Juneau

You have asked for an interpretation of the statutory and regulatory requirements for motorcycle helmets in Alaska.

AS 28.35.250 provides:

(b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license that, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle.

The classes of licenses are set out in 13 AAC 08.150, which is "adopted under AS 28.15.041." While many classes license the driver for any motor vehicle, class M1 licenses the driver only for "motorcycles, motor-driven cycles, and motorized bicycles, singly or in combination with trailers or sidecars designed to be used with these vehicles." 13 AAC 08.150(b)(2)(B). Thus, it is my opinion that only a Class M1 license is "classified singly as a license to operate a motorcycle."

The requirement for a helmet is set out in 13 AAC 04.350. That regulation provides:

(a) Except as otherwise provided by statute, a person operating or riding upon a motorcycle or motor-driven cycle upon a public roadway must wear protective headgear . . . .

Thus, this regulation makes helmets mandatory unless "otherwise provided by statute . . . ." The only statute that qualifies the helmet requirement is AS 28.35.250(b), set out above, prohibiting the requirement of a helmet when an adult holds a license classified singly for motorcycles.

/DV:ae

**HB**

**52**

9-LS0242K  
Chenoweth  
2/1/95

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Toohey

A BILL  
FOR AN ACT ENTITLED

"An Act relating to the admissibility of deoxyribonucleic acid (DNA) profiles in civil and criminal proceedings; and amending Rule 703 of the Alaska Rules of Evidence."

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

Sec. 09.25.100. ADMISSIBILITY OF DNA PROFILES. (a) In a civil action or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant fact, if the court finds that the technique underlying the evidence is scientifically valid. The admission of the DNA profile does not require a finding of general acceptance in the scientific community of DNA profile evidence.

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(b) In this section,

(1) "deoxyribonucleic acid" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure for each individual;

(2) "DNA profile" means an analysis of blood, semen, tissue, or other DNA-bearing cells, resulting in the identification of the individual's patterned chemical structure of genetic information.

*including statistical population frequency comparisons.*

*cells bearing deoxyribonucleic acid,*

Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal action or proceeding, the evidence of a DNA profile is admissible to prove or disprove any relevant fact, if the court finds that the technique underlying the evidence is scientifically valid. The admission of the DNA profile does not require a finding of general acceptance in the scientific community of DNA profile evidence.

(b) In this section,

(1) "deoxyribonucleic acid" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure for each individual;

(2) "DNA profile" means an analysis of blood, semen, tissue, or other DNA-bearing cells resulting in the identification of the individual's patterned chemical structure of genetic information.

\*Sec. 3. AS 09.25.100, added by sec. 1 of this Act, and AS 12.45.035, added by sec. 2 of this Act, have the effect of amending Rule 703, Alaska Rules of Evidence, to the extent, if any, that Rule 703 would disallow DNA profile evidence as a result of the application of the standard previously adopted by the Alaska Supreme Court in Pulakis v. State, 476 P.2d 474 (Alaska 1970), which requires a finding of general acceptance of scientific evidence in the scientific community as a precondition of admission of scientific evidence.

*Scientific evidence*

*DNA profile evidence*

*limit the admissibility of*

# FISCAL NOTE

STATE OF ALASKA

BILL NO: SSHB 52

1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: DNA evidence in civil & criminal cases BRU: Department of Public Safety - Statewide  
 Component: Commissioner's Office  
 Sponsor: Representative Green  
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 0523

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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-
<small>Revenue Code</small>						

**FUNDING: (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 current year (FY 95) impact: \$ \_\_\_\_\_

**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.)

No fiscal impact to the department is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322  
 Division: Commissioner's Office Date: 02/13/95  
 Approved by Commissioner: *Ronald L. Otte* Date: 3/13/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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HOUSE COMMITTEE REPORT

(7)  
 Date Referred: January 27, 1995 FURTHER REFERRALS: Finance

Date of Committee Action: 1-22-95

The JUDICIARY Committee considered: SSHB 52

HOUSE BILL NO. 52 DNA EVIDENCE IN CIVIL AND CRIMINAL TRIALS

"An Act relating to the admissibility into evidence of deoxyribonucleic acid (DNA) profiles in civil and criminal proceedings; amending Rules 702(a) and 703 of the Alaska Rules of Evidence to modify the rule relating to the basis or foundation for the admissibility of expert opinion testimony that is based on scientific evidence as it relates to DNA profile evidence; and amending Rules 401, 403, and 705 of the Alaska Rules of Evidence."

recommends it be replaced with the following committee substitute CS SSHB 52 (Jud)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

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

zero fiscal note(s) AK Court System  zero fiscal note(s) \_\_\_\_\_  
Pub. Saf., Dept. of Law

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>	X		<del>X</del>	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

ERRR BD

CHAIR'S SIGNATURE Brian S. Porter

BACK UP FOR SSHB 52

Number 806

CHAIRMAN PORTER asked if there were any other questions for Mr. Miller. Hearing none, he requested testimony from an individual in D.C. As no one was available from D.C., he asked Mr. Guaneli from the Department of Law to testify, and welcomed him back.

MR. DEAN GUANELI, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW gave a preface to his testimony, saying the Administration has not taken a position on this or any of the DNA bills, or really any of the crime bills. Those positions are in the process of being formulated, and it is probably going to be after the budget is submitted before we reach some of those decisions. We have been authorized to indicate in this bill, or any number of bills, what the impact would be on the criminal justice system and on criminal prosecution, specifically.

MR. GUANELI agreed, in general, with the comments made by everyone else that DNA testing is powerful evidence in criminal prosecutions, particularly in murder and rape cases where there is no eye witness; where the issue at trial is identity. In other words, "Who committed this crime?" Did this specific individual commit this crime? DNA evidence is often the best evidence you can have. In light of the unfortunate recidivism we have in this state

and others, it is fair to say a number of people in jail now are going to be committing crimes in the future, and so there is a rational basis for this kind of testing of people who have committed violent crimes in the past.

MR. GUANELI made it known that this is really only half of the issue from his standpoint. Using this as an investigative tool to solve criminal cases does not get people convicted of the crime unless it is admissible in court. So there is a whole other part of the DNA question. That is the admissibility in court and what level of scientific evidence is going to be admissible, and what the jury will hear. Although this is something that is valuable, it is less valuable unless we also make sure at least one of the admissibility bills passes this legislature.

MR. GUANELI referred to Representative Vezey's question as to why we need legislation in this area. That is a fair question, but we have certainly taken the approach in other areas such as testing for the HIV virus in convicted sex offenders. More legislation was enacted. As the gentleman from the FBI said, with things like genetic testing and computer databases on people, and the whole idea of the government keeping files and lists on people, it is always safest to have legislation, and testimony as you have gotten today from the experts, in the field to...

TAPE 95-1, SIDE B  
Number 000

MR. GUANELI (continued) one, show that this is a reliable testing method, and two, that appropriate safeguards are going to be applied for both the testing and the confidentiality of it, and that there is some relationship between the taking of blood from convicted violent offenders and future investigative needs. Once the legislature has made all of those determinations in enacting a piece of legislation, it certainly helps when the Department of Law is faced with the inevitable challenge amounted by some convicted person who does not want his or her blood drawn. Armed with that, we have a much greater chance of success, as other attorney general's offices have had in other states when their DNA testing laws have been challenged. For that reason alone, it is an appropriate subject for legislative action. He asked if there were other questions.

Number 021

REPRESENTATIVE GREEN noted he has one question, assuming we are all watching the Simpson trial. He asked Mr. Guaneli's opinion, starting from a clear-cut, good, no-question sample to some of these gradations that we have talked about where they may be mixed or if he had a feel for the acceptability of this as at least supplemental to two of the things in the trial.

Number 035

MR. GUANELI answered that those are legitimate questions, and he would be interested to hear the explanation from the FBI about the ability to separate samples. With DNA testing, like fingerprint testing, once you have used it as an investigative tool and you have narrowed your focus down to one person; whether the samples have been mixed at that point, you can always draw another sample of blood from that person who you focussed in on. It is a little like taking a fingerprint from that person. If it is smudged a little, you can take another fingerprint from the person and make whatever comparisons you can make. It is different from driving while intoxicated testing where you are taking a snapshot of the person's breath or blood at that moment, and you have got to do the testing fairly soon, as it disappears. With DNA testing, your genetic fingerprint does not change, and so it is appropriate to use it as an investigative tool, focus in on an individual, and if that individual has some question, draw another sample of blood and let them test it if they want to. There are always going to be questions when you have mixed samples, and it is a matter of relying on the scientists and the experts to tell us what conclusions they can draw. That is another reason why the admissability bills are so important, because to change the legal standard for admissability is the key to using this kind of evidence.

Number 080

REPRESENTATIVE GREEN understood we will be working on that.

Number 087

REPRESENTATIVE TOOHEY asked about Section 2, under (b), where it states that a person convicted in the state, of a crime against a person shall have a blood sample drawn. That does not include allowing a DNA sample to be used to convict that person, does it?

Number 091

MR. GUANELI replied that was correct. This bill only establishes a database of samples from people who have already been convicted once, and its usefulness is if that person commits a crime in the future. Then it is a matter of deciding if this evidence can be used in the prosecution for a future crime.

Number 102

REPRESENTATIVE TOOHEY asked if we were assuming DNA is being used to convict him, originally of a crime.

Number 106

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SSHB 52

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: DNA evidence in civil and criminal trials BRU: Trial Courts  
 Components: \_\_\_\_\_  
 Sponsor: Reps. Green, Toohy  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

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

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

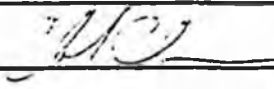
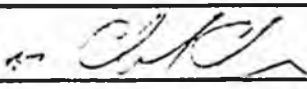
**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

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

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228  
 Agency: Alaska Court System Date: 02/06/95  
 Approved by: Arthur H. Snowden, II, Administrative Director  Date: 02/06/95  
 Agency: Alaska Court System

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# FISCAL NOTE

STATE OF ALASKA

BILL NO: SSHB 52

1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: DNA evidence in civil & criminal cases BRU: Department of Public Safety - Statewide  
 Component: Commissioner's Office  
 Sponsor: Representative Green  
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 0523

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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-
<small>Revenue Code</small>						

FUNDING: (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 current year (FY 95) impact: \$ \_\_\_\_\_

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.)

No fiscal impact to the department is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322  
 Division: Commissioner's Office Date: 02/13/95  
 Approved by Commissioner: *Ronald L. Otte* Date: 3/13/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 52

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...admissibility into evidence of deoxyribonucleic acid (DNA) profiles in civil and criminal proceedings..." BRU: Prosecution  
 Sponsor: Representative Green Component: All  
 Requester: Representative Green COMPONENT SERIAL NO. 0085 - 0090

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

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**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	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill changes the Alaska Rules of Evidence to provide for the admissibility of DNA profiles in civil and criminal actions or proceedings to prove or disprove the identity of a person. In so doing, the bill adopts the standard for admissibility of scientific evidence adopted by the U.S. Supreme Court in 1993 for use by federal courts, in respect to DNA profiles. Currently, Alaska's courts apply a standard for admissibility of scientific evidence that dates from the 1920s. The current standard does not take into account new or rapidly developing science for the identification of persons, and courts have sometimes not admitted into evidence the most recent testing methods. For instance, DNA evidence has been proven to be scientifically valid and of extreme value for both the defense and the prosecution for identification purposes. However, in the 2 or 3 cases where the issue of the standard for the admissibility of DNA evidence has been litigated, the department has had to spend \$20,000, in each case, for out-of-state experts, with only partial success. Consequently, the bill will reduce the department's cost to have DNA evidence admitted at trial and free its limited resources to handle other prosecutions that it has been forced to decline.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/9/95  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/9/95  
 Agency: Department of Law

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130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Alaska State Legislature



Phone: (907) 465-3991  
Fax: (907) 463-3351

February 20, 1995

## MEMORANDUM

TO: Representative Joe Green

FROM: Dale Brandt *DB*  
Legislative Analyst

RE: **DNA Admissibility Statutes**  
Research Request 95.129

You asked for a sample of state statutes that allow DNA evidence to be admissible in civil and criminal proceedings. We found such laws in seven states: Alabama, Delaware, Indiana, Maryland, Minnesota, Tennessee and Virginia. In each of these states except Virginia, a brief explanation regarding the admissibility of DNA analysis as evidence is provided in statutes. Virginia statutes, however, simply state: "DNA profile admissible in criminal proceeding" with reference in the annotations to a law review article. (This article is being sent to us from an out-of-state law library but you have a copy in your office). Attached are copies of statutes from each of the states mentioned.

If you have questions or need additional information, please call.

Attachments

**ATTACHMENTS**

# CODE OF ALABAMA

## 1975

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### 1994 Cumulative Supplement

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### ANNOTATED

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*Prepared by*

The Editorial Staff of the Publishers

*Under the Direction of*

D. S. Tussey, S. C. Willard, W. L. Jackson, M. A. Sancilio,  
J. H. Runkle, and L. A. Burckell

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### VOLUME 19A

1991 REPLACEMENT VOLUME

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*Including Acts through the 1994 Regular Session and First Special  
Session and annotations taken through Southern Reporter,  
Second Series, Volume 634, page 132*

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**Place in Pocket of Corresponding Volume of Main Set.  
This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.**

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Charlottesville, Virginia  
1994

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**§ 36-18-27. Disclosure of DNA records.**

DNA records collected and maintained for the purpose of the identification of criminal suspects or offenders shall be disclosed only:

(a) To criminal justice agencies for law enforcement identification purposes.

(b) In judicial proceedings, if otherwise admissible.

(c) For criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged. (Acts 1994, 1st Ex. Sess., No. 94-804, § 8.)

**§ 36-18-28. Penalties.**

(a) A person who by virtue of employment or official position has possession of, or access to, individually identifiable DNA information indexed or otherwise contained in the DNA database system of the Alabama Department of Forensic Sciences and who knowingly and willfully discloses such information in any manner to any person or agency not entitled to receive it shall be guilty of a Class C felony.

(b) A person who without authorization knowingly and willfully obtains DNA samples or any individual identifiable DNA information indexed or contained in the DNA database system of the Alabama Department of Forensic Sciences shall be guilty of a Class C felony.

(c) A person who shall conspire to commit a violation of subsections (a) or (b) shall be guilty of a Class C felony. (Acts 1994, 1st Ex. Sess., No. 94-804, § 9.)

**§ 36-18-29. Penalty for false entry or alteration of records.**

A person who shall knowingly make any false entry or falsely alter any record of the Alabama Department of Forensic Sciences; or who shall intentionally destroy, mutilate, conceal, remove or otherwise impair the verity or availability of records of the Alabama Department of Forensic Sciences with the knowledge of a lack of authority to do so; or who shall possess a record of the Alabama Department of Forensic Sciences and refuse to deliver up such record upon proper request of a person lawfully entitled to receive the same shall be guilty of a Class B felony. (Acts 1994, 1st Ex. Sess., No. 94-804, § 10.)

**§ 36-18-30. Admissibility of evidence relating to use of genetic markers.**

Expert testimony or evidence relating to the use of genetic markers contained in or derived from DNA for identification purposes shall be admissible and accepted as evidence in all cases arising in all courts of this state, provided, however, the trial court shall be satisfied that the expert testimony or evidence meets the criteria for admissibility as set forth by the United States Supreme Court in *Daubert, et. ux., et. al., v. Merrell Dow*

Pharmaceuticals, Inc., decided on June 28, 1993. (Acts 1994, 1st Ex. Sess., No. 94-804, § 11.)

**§ 36-18-31. Statistical database.**

(a) The director is hereby authorized and empowered to create and establish a DNA population statistical database which shall not include therein individually identifiable information.

(b) The DNA population statistical database may be utilized for the following purposes:

1. To provide data relative to the causation, detection and prevention of disease or disability.

2. To support identification research and protocol development of DNA forensic methods, or to create and maintain DNA quality control standards.

3. To assist in other humanitarian endeavors including, but not limited to, educational research or medical research or development. (Acts 1994, 1st Ex. Sess., No. 94-804, § 12.)

**§ 36-18-32. DNA Database Fund.**

(a) There is hereby established a special fund to be known as the Alabama DNA Database Fund.

(b) The fund shall be placed under the management or administration of the Director of the Alabama Department of Forensic Sciences for the exclusive purposes of implementing the provisions of this article.

(c) The fund shall consist of all moneys received by the director pursuant to the provisions of this section.

(d) The director shall have control of those funds as shall not be inconsistent with the provisions of this article and with the laws of the State of Alabama.

(e) Monies deposited in the Alabama DNA Database Fund may be expended by the Director of the Alabama Department of Forensic Sciences in accordance with the provisions of this article. The investment of monies in the fund by the State Treasurer shall remain in the Alabama DNA Database Fund. At the end of each fiscal year any unexpended or unencumbered monies shall remain in the fund. However, no funds shall be withdrawn or expended except as budgeted and allotted according to law and only in the amounts authorized by the Legislature in the general appropriation bill or other appropriation bills.

(f) Neither the director nor any member of the director's staff nor any employee of the Alabama Department of Forensic Sciences shall have any financial interest in any such investments or receive any reward, thing of value, or commission in respect thereto.

(g) It shall be the duty of the director to keep detailed permanent records of all expenditures and disbursements from such fund or account.

(h) In all municipal, district and circuit court cases, both criminal and civil, in bond forfeiture proceedings, upon initiation of attachment, garnishment or

# THE ANNOTATED CODE OF THE PUBLIC GENERAL LAWS OF MARYLAND

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## 1994 Cumulative Supplement

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Prepared by the Editorial Staff of the Publishers

*Under the Supervision of*

DEBORAH S. TUSSEY, PETER R. ROANE, WANDA F. BROWN ROSZAK,  
BARRY L. BRIDGES AND KATHLEEN E. SKINNER

*Consultant*

F. CARVEL PAYNE

Director, State Department of Legislative Reference

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## Courts and Judicial Proceedings

1989 REPLACEMENT

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This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.**

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*Effective Date of Statutes*

See Md. Const., Article XVI, § 2

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Annotated through 639 A.2d 73. For complete  
scope of annotations and legislation, see  
preface in Volume 1.

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**Trial court's discretion.**

Trial court did not abuse its discretion in admitting evidence of defendant's conviction for theft in 1982. The trial judge's ruling was correct; in fact, it would have been an abuse of discretion to exclude the proffered evidence. *Mitchell v. Montgomery County*, 88 Md. App. 542, 596 A.2d 93 (1991).

**Finality of conviction.** — The person invoking the privilege against self incrimination has the burden to show that his convictions were not final and, therefore, might be incrimi-

nating. *Horne v. State*, 321 Md. 547, 583 A.2d 726 (1991).

Applied in *Henry v. State*, 324 Md. 204, 596 A.2d 1024 (1991), cert. denied, — U.S. —, 112 S. Ct. 1590, 118 L. Ed. 2d 307 (1992); *Burgess v. State*, 89 Md. App. 522, 598 A.2d 830 (1991), cert. denied, 325 Md. 619, 602 A.2d 710 (1992).

Cited in *Jordan v. State*, 82 Md. App. 225, 571 A.2d 238 (1990), modified, 323 Md. 151, 591 A.2d 875 (1991); *Coleman v. State*, 321 Md. 586, 583 A.2d 1044 (1991); *Suggs v. State*, 87 Md. App. 250, 589 A.2d 551 (1991).

**§ 10-909. Proof of patented lands.**

**Notice of adverse possession counter-claim not required.** — Court erred in determining that this section required counter-claimants in action to quiet title to give notice

to adjoining landowners of their adverse possession counter-claim. *Ski Roundtop, Inc. v. Wagerman*, 79 Md. App. 357, 556 A.2d 1144 (1989).

**§ 10-910. Negligence of parent or custodian not imputed to infant.**

Quoted in *United States v. Streidel*, 329 Md. 533, 620 A.2d 905 (1993).

**§ 10-913. Punitive damages for personal injuries.**

Applied in *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 601 A.2d 633 (1992).

**§ 10-915. Admissibility of DNA profiles.**

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Deoxyribonucleic acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.

(3) "DNA profile" means an analysis that utilizes the restriction fragment length polymorphism analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information.

(b) *Purposes.* — In any criminal proceeding, the evidence of a DNA profile is admissible to prove or disprove the identity of any person, if the party seeking to introduce the evidence of a DNA profile:

(1) Notifies in writing the other party or parties by mail at least 45 days before any criminal proceeding; and

(2) Provides, if requested in writing, the other party or parties at least 30 days before any criminal proceeding with:

- (i) Duplicates of the actual autoradiographs generated;
- (ii) The laboratory protocols and procedures;
- (iii) The identification of each probe utilized;

(iv) A statement describing the methodology of measuring fragment size and match criteria; and

(v) A statement setting forth the allele frequency and genotype data for the appropriate data base utilized.

(c) *Prerequisites.* — If a party is unable to provide the information required under subsection (b) of this section at least 30 days prior to the criminal proceedings, the court may grant a continuance to permit such timely disclosures. (1989, ch. 430; 1991, ch. 631.)

*Effect of amendments.* — The 1991 amendment, effective July 1, 1991, inserted "that utilizes the restriction fragment length polymorphism analysis" in (a) (3); and rewrote (b) and (c).

*Editor's note.* — Section 2, ch. 430, Acts 1989, provided that the act shall take effect Jan. 1, 1990.

*Admissibility.* — Rape defendant was not

prejudiced during trial delay by the enactment of this section declaring DNA analysis as admissible evidence. *Wheeler v. State*, 88 Md. App. 512, 596 A.2d 78 (1991).

Cited in *Wilson v. State*, 87 Md. App. 659, 591 A.2d 524, cert. denied, 324 Md. 325, 597 A.2d 422 (1991); *Jackson v. State*, 92 Md. App. 304, 608 A.2d 782 (1992).

## § 10-916. Battered Spouse Syndrome.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Battered Spouse Syndrome" means the psychological condition of a victim of repeated physical and psychological abuse by a spouse, former spouse, cohabitant, or former cohabitant which is also recognized in the medical and scientific community as the "Battered Woman's Syndrome".

(3) "Defendant" means an individual charged with:

(i) First degree murder, second degree murder, manslaughter, maiming, or attempt to commit any of these crimes; or

(ii) Assault with intent to murder or maim.

(b) *Admissibility of evidence.* — Notwithstanding evidence that the defendant was the first aggressor, used excessive force, or failed to retreat at the time of the alleged offense, when the defendant raises the issue that the defendant was, at the time of the alleged offense, suffering from the Battered Spouse Syndrome as a result of the past course of conduct of the individual who is the victim of the crime for which the defendant has been charged, the court may admit for the purpose of explaining the defendant's motive or state of mind, or both, at the time of the commission of the alleged offense:

(1) Evidence of repeated physical and psychological abuse of the defendant perpetrated by an individual who is the victim of a crime for which the defendant has been charged; and

(2) Expert testimony on the Battered Spouse Syndrome. (1991, ch. 337.)

*Editor's note.* — Section 2, ch. 337, Acts 1991, provides that the act shall take effect July 1, 1991.

*Maryland Law Review.* — For comment, "Expert Testimony on the Battered Woman Syndrome in Maryland," see 50 Md. L. Rev. 920 (1991).

*Purpose.* — This section does not create a

new defense to murder. Rather, evidence of the Battered Spouse Syndrome is offered in support of the state of mind element of perfect or imperfect self-defense, i.e., it is offered to prove the honesty and reasonableness of the defendant's belief that he or she was in imminent danger at the time of the offense. *Banks v. State*, 92 Md. App. 422, 608 A.2d 1249 (1992).

# CODE OF VIRGINIA

1950

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1994 Cumulative Supplement

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ANNOTATED

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*Prepared under the Supervision of*  
The Virginia Code Commission

BY

The Editorial Staff of the Publishers

*Under the Direction of*

D. S. TUSSEY, S. C. WILLARD, W. L. JACKSON, T. M. HAMILTON,  
J. H. RUNKLE, AND S. L. HAVENS, JR.



**VOLUME 4A**

1990 REPLACEMENT

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*Annotated through South Eastern Reporter, 2d Series, through  
Volume 439, page 895.*

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**Place in Pocket of Corresponding Volume of Main Set.  
This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.**

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The 1989 amendment designated the first paragraph as subsection A; added subsection B; and in subsection C, designated the para-

graph as subsection C and inserted "or an order returning exhibits to the owners."

**§ 19.2-270.5. DNA profile admissible in criminal proceeding.** — In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique and the evidence of a DNA profile comparison may be admitted to prove or disprove the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the accused as shall be admissible in evidence.

At least twenty-one days prior to commencement of the proceeding in which the results of a DNA analysis will be offered as evidence, the party intending to offer the evidence shall notify the opposing party, in writing, of the intent to offer the analysis and shall provide or make available copies of the profiles and the report or statement to be introduced. In the event that such notice is not given, and the person proffers such evidence, then the court may in its discretion either allow the opposing party a continuance or, under appropriate circumstances, bar the person from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243. If the opposing party intends to object to the admissibility of such evidence he shall give written notice of that fact and the basis for his objections at least ten days prior to commencement of the proceedings.

No blood sample submitted to the Bureau of Forensic Science for analysis and use as provided in this section and no results of the analysis performed shall be included in the DNA data bank established by the Bureau pursuant to § 19.2-310.5 or otherwise used in any way with identifying information on the person whose sample was submitted. (1990, c. 669.)

**§ 19.2-271. Certain judicial officers incompetent to testify under certain circumstances.** — No judge shall be competent to testify in any criminal or civil proceeding as to any matter which came before him in the course of his official duties.

No clerk of any court, magistrate, or other person having the power to issue warrants, shall be competent to testify in any criminal or civil proceeding, except proceedings wherein the defendant is charged with perjury, as to any matter which came before him in the course of his official duties. Such person shall be competent to testify in any criminal proceeding wherein the defendant is charged pursuant to the provisions of § 18.2-460 or in any proceeding authorized pursuant to § 19.2-353.3. Notwithstanding any other provision of this section, any judge, clerk of any court, magistrate, or other person having the power to issue warrants, who is the victim of a crime, shall not be incompetent solely because of his office to testify in any criminal or civil proceeding arising out of the crime. (Code 1950, §§ 19.1-267, 19.1-268; 1960, c. 366; 1975, c. 495; 1976, c. 269; 1989, c. 738; 1990, c. 602.)

The 1980 amendment substituted "came before him" for "shall have come before him" in the first paragraph and in the first sentence of the second paragraph, and added "or in any proceeding authorized pursuant to § 19.2-353.3" in the second sentence of the second paragraph.

The 1990 amendment added the last sentence of the second paragraph.

**Law Review.** — For note, "Lying on the Stand Won't Cost You a Dime: Should Courts Recognize a Civil Action in Tort for Perjury," see 44 Wash. & Lee L. Rev. 1257 (1988).

This section is intended to protect an accused against the testimony of certain judicial officers before whom he has appeared as to admissions or confessions made by him.

**DELAWARE CODE**  
**ANNOTATED**

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**REVISED 1974**

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**1994 Cumulative Supplement**

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Prepared under the Supervision of  
The Delaware Code Revisors

**DANIEL F. WOLCOTT, JR. AND BRUCE A. ROGERS**

by

The Editorial Staff of the Publishers

*Under the Direction of*

**DEBORAH S. TUSSEY, PETER R. ROANE, WANDA F. BROWN ROSZAK,  
CAROLYN B. MEIER AND LYNN P. SEUFFERT**

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**VOLUME 7**  
**1987 REPLACEMENT**

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*Including Legislation Enacted  
by the 137th General  
Assembly*

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Annotated through 643 A.2d 1212. For complete scope of annotations,  
see Preface in Supplement to Volume 1.

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1994

(d) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time. (68 Del. Laws, c. 407, § 1.)

**Revisor's note.** — Section 2 of 68 Del. Laws, c. 407, provides: "This act shall not take effect unless and until sufficient funding has been appropriated to implement its provisions." The act was signed by the Governor on July 17, 1992.

### § 3515. Admissibility of DNA profiles.

(a) *Definitions.* — In this section the following words have the meanings indicated.

(1) "Deoxyribonucleic acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.

(2) "DNA profile" means an analysis that utilizes the restriction fragment length polymorphism analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information.

(b) *Purposes.* — In any criminal proceeding, the evidence of a DNA profile is admissible to prove or disprove the identity of any person, if the party seeking to introduce the evidence of a DNA profile:

(1) Notifies in writing the other party or parties by mail at least 45 days before any criminal proceeding; and

(2) Provides, if requested in writing, the other party or parties at least 30 days before any criminal proceeding with:

- a. Duplicates of the actual autoradiographs generated;
- b. The laboratory protocols and procedures;
- c. The identification of each probe utilized;
- d. A statement describing the methodology of measuring fragment size and match criteria; and
- e. A statement setting forth the allele frequency and genotype data for the appropriate database utilized.

(c) *Prerequisites.* — If a party is unable to provide the information required under subsection (b) of this section at least 30 days prior to the criminal proceeding, the court may grant a continuance to permit such timely disclosures as justice may require. (69 Del. Laws, c. 249, § 2.)

**Revisor's note.** — This section became effective upon the signature of the Governor on June 16, 1994.

### *Subchapter III. Intimidation of Witnesses and Victims*

### § 3532. Act of intimidation; class E felony.

**Statement about prior criminal activity admissible.** — Evidence that defendant made a statement about prior criminal activity in order to threaten and intimidate his victim is admissible in a prosecution under this section,

although the admission of such evidence must be accompanied by a limiting instruction by the trial judge. *Weber v. State*, Del. Supr., 547 A.2d 948 (1988).

**BURNS**  
**INDIANA STATUTES**  
**ANNOTATED**

**CODE EDITION**

**TITLE 35**

Articles 1-40

**1994 REPLACEMENT VOLUME**

*Annotations from North Eastern Reporter through  
Volume 616, second series*

Original Edition by

**HARRISON BURNS**

Prepared by the Editorial Staff of the Publishers

*Under the Direction of*

**DEBORAH S. TUSSEY, KAREN S. MAWYER, JOHN A. STONER,  
RUTH B. LAYNE, AND FRANCINE J. PAYNE**

**THE MICHIE COMPANY**  
*Law Publishers*  
**CHARLOTTESVILLE, VIRGINIA**

**35-37-4-12. Disclosure of personal information.** — (a) If the physical safety of a victim or the victim's immediate family is in danger, a victim may not be required to give personal information during the course of sworn testimony regarding the following:

- (1) Telephone numbers.
- (2) Place of employment.
- (3) Residential address.

(b) In any hearing to determine the introduction into evidence of the personal information specified in subsection (a), the court, if the court finds an actual danger to the victim or the victim's immediate family exists, may require the party possessing the personal information to disclose the personal information to the court for in camera review. [P.L.1-1991, § 193.]

**35-37-4-13. Forensic DNA analysis — Admissibility as evidence.** —

(a) As used in this section, "forensic DNA analysis" means an identification process in which the unique genetic code of an individual that is carried by the individual's deoxyribonucleic acid (DNA) is compared to genetic codes carried in DNA found in bodily substance samples obtained by a law enforcement agency in the exercise of the law enforcement agency's investigative function.

(b) In a criminal trial or hearing, the results of forensic DNA analysis are admissible in evidence without antecedent expert testimony that forensic DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material. [P.L.1-1991, § 194.]

Indiana Law Review. Statutory Control of DNA Fingerprinting in Indiana, 25 Ind. L. Rev. 205 (1991).

Developments in the Law of Evidence, 25 Ind. L. Rev. 1213 (1992).

Valparaiso University Law Review.

DNA Profiling Evidence: The Need for a Uniform and Workable Evidentiary Standard of Admissibility, 26 Val. U.L. Rev. 595 (1992).

Cited: Hopkins v. State, 579 N.E.2d 1297 (Ind. 1991).

#### NOTES TO DECISIONS

**Defendant's Evidence.**

Since the exculpatory potential of the evidence was first discovered after trial because the deoxyribonucleic acid (DNA) comparisons were unavailable to the defendant at the

time of his trial, the defendant did not waive his rights due to his lack of pretrial pursuit of the reports. Sewell v. State, 592 N.E.2d 705 (Ind. App. 1992).

**Collateral References.** Admissibility of DNA identification evidence. 84 A.L.R.4th 313.

**35-37-4-14. Admissibility of evidence of previous battery.** — (a) This section applies even if no criminal charges were filed concerning the act that is the basis of the evidence of a previous battery.

(b) As used in this section, "evidence of a previous battery" means evidence that a person charged with a crime described in subsection (c)(1)

# MINNESOTA STATUTES

Embracing laws of a general and permanent nature and certain other laws in force or to be in force after the 1994 regular session and 1994 First Special Session.

Compiled, edited, and published by  
the Revisor of Statutes,  
State of Minnesota



OFFICIAL PUBLICATION  
OF THE  
STATE OF MINNESOTA

performed by a person who has been fully trained in the use of an infrared breath-testing instrument, as defined in section 169.01, subdivision 68, pursuant to training given or approved by the commissioner of public safety or the commissioner's acting agent, are admissible in evidence without antecedent expert testimony that an infrared breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.

*History: 1984 c 430 s 9; 1986 c 444*

#### **634.20 EVIDENCE OF PRIOR CONDUCT.**

Evidence of similar prior conduct by the accused against the victim of domestic abuse, as defined under section 518B.01, subdivision 2, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

*History: 1985 c 159 s 3*

### **DNA EVIDENCE**

#### **634.25 ADMISSIBILITY OF RESULTS OF DNA ANALYSIS.**

In a civil or criminal trial or hearing, the results of DNA analysis, as defined in section 299C.155, are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material upon a showing that the offered testimony meets the standards for admissibility set forth in the Rules of Evidence.

*History: 1989 c 290 art 4 s 18; 1989 c 356 s 55*

#### **634.26 STATISTICAL PROBABILITY EVIDENCE.**

In a civil or criminal trial or hearing, statistical population frequency evidence, based on genetic or blood test results, is admissible to demonstrate the fraction of the population that would have the same combination of genetic markers as was found in a specific human biological specimen. "Genetic marker" means the various blood types or DNA types that an individual may possess.

*History: 1989 c 290 art 4 s 19*

### **OUT-OF-STATE EVIDENCE**

#### **634.30 EVIDENCE OBTAINED IN FOREIGN JURISDICTIONS.**

Relevant evidence shall not be excluded in any criminal trial or hearing or in any proceeding arising under section 169.123 on the ground that it existed or was obtained outside of this state.

*History: 1990 c 449 s 4*

# Tennessee Code Annotated *1994 Supplement*

Updated through the 1994 Session of the General Assembly

## Volume 4A

*1980 Replacement*

### THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the  
Tennessee Code Commission



LYLE REID, Chair  
JAMES A. CLODFELTER, Executive Secretary  
CHARLES W. BURSON  
FRANK F. DROWOTA, III  
RUSSELL B. ENNIX

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1994

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ing a child's condition at the time the tape was made, but should not be introduced to prove the truth of the complaint asserted unless taken by way of deposition under Tenn. R. Crim. P. 15 or on court order pursuant to subsection (d) or (e), supported by specific findings of necessity, un-

less defendant agrees or waives the issue. *State v. Pilkey*, 776 S.W.2d 943 (Tenn. 1989), cert. denied, 494 U.S. 1032, 110 S. Ct. 1483, 108 L. Ed. 2d 619 (1990), cert. denied, 494 U.S. 1406, 110 S. Ct. 1510, 108 L. Ed. 2d 646 (1990).

**24-7-117. DNA analysis — Admissibility in evidence.** — (a) As used in this section, unless the context otherwise requires, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

(b)(1) In any civil or criminal trial, hearing or proceeding, the results of DNA analysis, as defined in subsection (a), are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material upon a showing that the offered testimony meets the standards of admissibility set forth in the Tennessee Rules of Evidence.

(2) Nothing in this section shall be construed as prohibiting any party in a civil or criminal trial from offering proof that DNA analysis does not provide a trustworthy and reliable method of identifying characteristics in an individual's genetic material, nor shall it prohibit a party from cross-examining the other party's expert as to the lack of trustworthiness and reliability of such analysis.

(c) In any civil or criminal trial, hearing or proceeding, statistical population frequency evidence, based on genetic or blood test results, is admissible in evidence to demonstrate the fraction of the population that would have the same combination of genetic markers as was found in a specific biological specimen. For purposes of this subsection, "genetic marker" means the various blood types or DNA types that an individual may possess. [Acts 1991, ch. 480, § 3.]

**Compiler's Notes.** Acts 1991, ch. 480, § 5, provided that this section shall apply to all persons committing or attempting to commit one of the offenses set out in § 40-35-321 on or after July 1, 1991.

**Cross-References.** DNA analysis, collection

and preservation of human biological specimens, § 38-6-113.

DNA analysis, collection of biological specimens from persons convicted of certain offenses, § 40-35-321.

#### NOTES TO DECISIONS

##### 1. Expert Testimony.

Trial court correctly denied defendant's motion seeking to prohibit the introduction of deoxyribonucleic acid (DNA) evidence in an aggravated rape prosecution, since through this act the legislature has clearly mandated

that DNA analysis is to be admissible in evidence without the need for expert testimony as to its reliability as long as it meets the standards set forth in the Tenn. R. Evid. *State v. Harris*, 866 S.W.2d 583 (Tenn. Crim. App. 1992).

**24-7-118. Voluntary acknowledgment of paternity.** — (a) A voluntary acknowledgment of paternity which is completed under the provisions of § 68-3-203(g), § 68-3-302, or § 68-3-305(b) or under similar provisions of another state or government, when certified by the state registrar or other governmental or institutional entity maintaining the record of the acknowl-

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105


**MEMORANDUM**

February 9, 1995

**SUBJECT:** Sponsor Substitute for House Bill 52, relating to admissibility of DNA profile evidence in criminal and civil proceedings, and modifying various related court rules: sectional analysis (Work Order No. 9-LS0242\F)

**TO:** Representative Joe Green  
Attn: Lisa Mock

**FROM:** Jack Chenoweth  
Legislative Counsel



The bill proposes a series of changes to the body of the Alaska Statutes and to several court rules generally to assure that relevant DNA profile evidence based on changing scientific techniques may be more readily admitted in criminal and civil proceedings. The changes look to replace the approach derived from the so-called "Frye" principle with one that reflects more contemporary United States Supreme Court thinking as set out in the recent "Daubert" decision.

**Bill section 1** provides legislative findings and a brief statement of legislative purpose for the bill.

**Bill section 2** adds a new section to the evidence provisions of the Civil Procedure code, AS 09.25, declaring that deoxyribonucleic acid (DNA) profile evidence may be admitted in civil proceedings to prove or disprove the identity of a person.

**Bill section 3** adds a new section to the evidence provisions of the Criminal code, AS 12.45, for the admissibility of DNA profile evidence in criminal proceedings under the same circumstances.

\*

The remaining sections of the bill treat with court rules and require a two-thirds vote to take effect:

**Bill section 4** amends Evidence Rule 702(a) applicable to use of expert testimony during trial to explain scientific and technical evidence. The general rule is to allow expert testimony in

Representative Joe Green  
February 9, 1995  
Page 2

those instances for that purpose. The bill's modification of the court rule adds a further sentence limiting the use of expert testimony going to a scientific theory or technique. Under the "Frye" rule, testimony by expert witnesses given at trial lays the basis for indicating that the data is generally accepted within the appropriate scientific community. However, this additional sentence to the Evidence Rule substitutes, with reference to expert testimony based on scientific theory or technique, a directive that the court admit the expert testimony not with reference to the generally acceptability of the data but, instead, with reference to the standard--and, procedurally, based on the court's finding--that "the theory or technique in question is scientifically valid for the purpose for which it is applied."

**Bill section 5** amends Evidence Rule 703, a section that addresses the basis of opinion testimony by experts. The nature of the change made by the underlined language is to abandon the key element of the "Frye rule," that is, to set aside the requirement that facts or data supportive of expert opinion evidence related to scientific knowledge may not be admitted without prior "general acceptance in the particular field to which the facts or data belong."

**Bill section 6** notes the effects of the changes made by the addition of the two earlier statute sections on three related Evidence Rules.

\*

Since bill sections 4 and 5 directly make court rule changes and since, in effect, the statutory changes of sections 2 and 3 of the bill affect other court rules, the bill really needs at least a two-thirds vote for all of its operative provisions to become law in the manner contemplated.

JBC:klb  
95-054.klb

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES GREEN, Toohey**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the admissibility into evidence of deoxyribonucleic acid (DNA)  
2 profiles in civil and criminal proceedings; and amending Rule 703 of the Alaska Rules  
3 of Evidence."

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

5 \* Section 1. AS 09.25 is amended by adding a new section to read:

6           Sec. 09.25.051. **ADMISSIBILITY OF DNA PROFILES.** (a) In a civil action or  
7 proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
8 fact if the court finds that the technique underlying the evidence is scientifically valid.  
9 The admission of the DNA profile does not require a finding of general acceptance in the  
10 relevant scientific community of DNA profile evidence.

11           (b) In this section,

12                   (1) "deoxyribonucleic acid" means the molecules in all cellular forms that  
13 contain genetic information in a patterned chemical structure for each individual;

14                   (2) "DNA profile"

1 (A) means an analysis of blood, semen, tissue, or other cells  
2 bearing deoxyribonucleic acid resulting in the identification of the individual's  
3 patterned chemical structure of genetic information;

4 (B) includes statistical population frequency comparisons of the  
5 patterned chemical structures described in (A) of this paragraph.

6 \* Sec. 2. AS 12.45 is amended by adding a new section to read:

7 Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal action  
8 or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
9 fact, if the court finds that the technique underlying the evidence is scientifically valid.  
10 The admission of the DNA profile does not require a finding of general acceptance in the  
11 relevant scientific community of DNA profile evidence.

12 (b) In this section,

13 (1) "deoxyribonucleic acid" means the molecules in all cellular forms that  
14 contain genetic information in a patterned chemical structure for each individual;

15 (2) "DNA profile"

16 (A) means an analysis of blood, semen, tissue, or other cells  
17 bearing deoxyribonucleic acid resulting in the identification of the individual's  
18 patterned chemical structure of genetic information;

19 (B) includes statistical population frequency comparisons of the  
20 patterned chemical structures described in (A) of this paragraph.

21 \* Sec. 3. AS 09.25.051, added by sec. 1 of this Act, and AS 12.45.035, added by sec. 2 of this  
22 Act, have the effect of amending Rule 703, Alaska Rules of Evidence, to the extent that Rule 703  
23 would limit the admissibility of DNA profile evidence as a result of the application of the  
24 standard previously adopted by the Alaska Supreme Court in *Pulakis v. State*, 476 P.2d 474  
25 (Alaska 1970), that requires a finding of general acceptance of scientific evidence in the relevant  
26 scientific community as a precondition of admission of scientific evidence.

# ALASKA CIVIL LIBERTIES UNION

*An Affiliate of the American Civil Liberties Union*  
P. O. Box 201844 Anchorage, AK 99520-1844  
Phone: 1-907-258-0044 Fax: 1-907-258-0288

February 14, 1995

**R E C E I V E D**  
FEB 21 1995

The Honorable Brian Porter  
Chair, Judiciary Committee  
Alaska House of Representatives  
State Capitol Building - Room 118  
Juneau, AK 99801-1182

**Rep. Brian Porter**

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union (AkCLU) to express concerns about sponsor substitute for House Bill 52 which is currently pending before the House Judiciary Committee. The AkCLU has concerns both with the introduction of DNA evidence and with the erosion of the standard governing admission of DNA evidence in Alaska courts.

Our basic mandate as an organization is to protect the Constitution and the Bill of Rights which are the cornerstones of our democracy. The most basic of all of our cherished democratic rights is the right to due process; namely, a fair and open trial whenever the government is attempting to deprive a person of liberty or property. We are very concerned at what appears to be an erosion of due process rights in the guise of fighting the "war on crime." Without the protections of due process, the risks of repression and unfair conviction are very high.

The introduction of DNA identification testimony may present significant due process problems if:

(1) it is presented to juries with the infallible aura of science;

(2) laboratories that conduct forensic testing, including DNA testing, are not regulated and test results are not reliable or valid;

(3) given the difficulty of litigating the complexities of this issue and the fact that the defendant is likely to have fewer resources than the government, it is difficult for lay finders of fact (i.e., juries) to understand the scientific processes leading to the conclusory testimony presented to them; or

(4) its claims are so ambitious that the testimony often threatens to subvert the standard of proof beyond a reasonable doubt required by due process in a criminal trial.

Accordingly, the AkCLU believes that before DNA identification should be admitted, the prosecution must prove that (1) the general principles underlying the forensic use of the DNA test are accepted as accurate by a consensus of the scientific community; (2) the actual procedures used in an individual case comport with those general principles and, in particular, that the laboratories involved in the testing were sufficiently regulated to ensure the reliability and validity of these results; and (3) the probability derived from the DNA evidence used to identify the defendant was calculated through use of appropriate statistical principles of population genetics and adequately developed data bases. Until this showing can be made, DNA testimony should not be admitted in criminal cases.

The Alaska Civil Liberties Union is not per se opposed to the introduction of DNA evidence in criminal or civil proceedings. Rather, we caution that the aura of infallibility which is associated with DNA testing poses a potentially grave problem. Instead of loosening the requirements for admissibility of DNA evidence, we believe that even tighter protocols should apply when the prosecution seeks to use DNA evidence to convict a defendant.<sup>1</sup> Unless the trier of fact understands the underlying processes of DNA testing to such a degree that it can adequately judge the reliability of the testing, the trier of fact will assume that the test results "conclusively" establish a fact which may not be true.

It is unclear from the language of the bill if, and to what extent, the defendant would be allowed to challenge the validity of the DNA evidence. It is also unclear if this challenge would be in front of the judge or in front of the jury. The bill appears to presume that DNA evidence would automatically be admitted regardless of whether it is scientifically established. This is deeply troubling to the AKCLU.

Part of the confusion stems from the language of Section 1 of the bill, which claims that the legislature wishes to change the standard for admissibility from the standard of Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), to the more recent standard of Daubert v. Merrill Dow Pharmaceutical, Inc., 113 S.Ct. 2786 (1993); unfortunately, however, the language of HB 52 does not follow the holding of the Daubert case.

In Daubert, the U. S. Supreme Court announced a new test for determining the admissibility of evidence in federal court. The Frye test had previously required that before evidence could be admitted in court it first had to reach a general level of

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<sup>1</sup> A different question is presented when the defendant is the proponent of such evidence. See Chambers v. Mississippi, 410 U.S. 284 (1983).

acceptance within the scientific community. In the Daubert case, the trial court had dismissed plaintiff's suit against Dow pharmaceutical for birth defects caused by a drug manufactured by Dow. To establish its case, the plaintiff had called experts who testified that the drug Bendectin had caused the birth defects; the defendants called different experts who refuted those studies and their methodology. The court ruled that the lack of consensus on the testing established that a general level of acceptance had not yet been reached within the scientific community and accordingly dismissed the plaintiff's case.

The United States Supreme Court reversed the lower court's decision, holding that the Federal Rules of Evidence replaced the Frye test and that the Rules were intended to be "flexible" and "liberal" and should allow new and progressive scientific techniques to be considered if certain scientific criteria had been established. The Daubert court did not say that a certain body of evidence (such as DNA) could be admitted in court without any type of scrutiny. Rather, the court laid out numerous criterion to be examined in determining the admissibility of evidence, including: (1) whether the testing hypotheses could be falsified; (2) whether the testing had been subjected to peer review and publication; (3) what the known or potential rate of error in the testing protocol was; and (4) whether the test had been generally accepted within the scientific community.

Instead of the absolute standard established in Frye, the Daubert court set out a standard which weighed many different factors, including the general acceptance of the methodology within the scientific community. The Daubert court still required the judge to determine the admissibility of evidence weighing the above criteria; it did not presume the wholesale admission of one particular type of evidence under any circumstance.

Herein lies our major concern for House Bill 52 -- it is very dangerous to allow the wholesale introduction of one particular type of evidence without the requirement of reliability, both in the underlying scientific theory and in the testing protocol used in each particular case. The civil liberties concern is obvious: if evidence is admitted without the requirement of establishing its validity, innocent persons may be convicted.

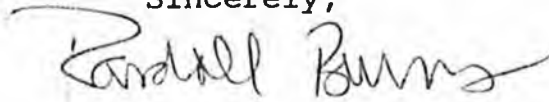
Not only is this bill of concern from a civil liberties perspective, it is unnecessary from a legal perspective. Alaska Courts have already ruled in a number of instances that DNA evidence may be admitted in court, even when using the Frye test (which is the current test relied upon by Alaska courts). There is no need to change the rules of evidence presently governing the admission of DNA evidence. If the DNA testing protocol is sound, the evidence will be admitted -- if the testing protocol is not sound, then allowing the evidence to be admitted could have

Page Four - Representative Brian Porter - February 14, 1995

disastrous consequences.

In short, there is no need to change the law governing the introduction of DNA evidence. Passing this bill could have extremely negative consequences. Please do not allow this bill to go any further.

Sincerely,

A handwritten signature in cursive script that reads "Randall Burns". The signature is written in dark ink and is positioned above the typed name.

Randall Burns,  
Executive Director  
Alaska Civil Liberties Union

9-LS0242M ✓

Chenoweth

2/22/95

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES GREEN, Toohey

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the admissibility into evidence of deoxyribonucleic acid (DNA)  
2 profiles in civil and criminal proceedings; and amending Rule 703 of the Alaska Rules  
3 of Evidence."

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

5 \* Section 1. AS 09.25 is amended by adding a new section to read:

6 Sec. 09.25.051. ADMISSIBILITY OF DNA PROFILES. (a) In a civil action or  
7 proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
8 fact if the court finds that the technique underlying the evidence is scientifically valid.  
9 The admission of the DNA profile does not require a finding of general acceptance in the  
10 relevant scientific community of DNA profile evidence.

11 (b) In this section,

12 (1) "deoxyribonucleic acid" means the molecules in all cellular forms that  
13 contain genetic information in a patterned chemical structure for each individual;

14 (2) "DNA profile"

1 (A) means an analysis of blood, semen, tissue, or other cells  
2 bearing deoxyribonucleic acid resulting in the identification of the individual's  
3 patterned chemical structure of genetic information;

4 (B) includes statistical population frequency comparisons of the  
5 patterned chemical structures described in (A) of this paragraph.

6 \* Sec. 2. AS 12.45 is amended by adding a new section to read:

7 Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal action  
8 or proceeding, evidence of a DNA profile is admissible to prove or disprove any relevant  
9 fact, if the court finds that the technique underlying the evidence is scientifically valid.  
10 The admission of the DNA profile does not require a finding of general acceptance in the  
11 relevant scientific community of DNA profile evidence.

12 (b) In this section,

13 (1) "deoxyribonucleic acid" means the molecules in all cellular forms that  
14 contain genetic information in a patterned chemical structure for each individual;

15 (2) "DNA profile"

16 (A) means an analysis of blood, semen, tissue, or other cells  
17 bearing deoxyribonucleic acid resulting in the identification of the individual's  
18 patterned chemical structure of genetic information;

19 (B) includes statistical population frequency comparisons of the  
20 patterned chemical structures described in (A) of this paragraph.

21 \* Sec. 3. AS 09.25.051, added by sec. 1 of this Act, and AS 12.45.035, added by sec. 2 of this  
22 Act, have the effect of amending Rule 703, Alaska Rules of Evidence, to the extent that Rule 703  
23 would limit the admissibility of DNA profile evidence as a result of the application of the  
24 standard previously adopted by the Alaska Supreme Court in *Pulakis v. State*, 476 P.2d 474  
25 (Alaska 1970), that requires a finding of general acceptance of scientific evidence in the relevant  
26 scientific community as a precondition of admission of scientific evidence.

HOUSE BILL NO. 52

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE GREEN

Introduced: 1/16/95

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the admissibility into evidence of deoxyribonucleic acid (DNA)  
 2 profiles in civil and criminal proceedings; directing the Department of Public Safety  
 3 to establish and maintain a DNA data bank and requiring DNA registration by  
 4 persons convicted of felony offenses; amending Rules 702(a) and 703 of the Alaska  
 5 Rules of Evidence to modify the rule relating to the basis or foundation for the  
 6 admissibility of expert opinion testimony that is based on scientific evidence as it  
 7 relates to DNA profile evidence; and amending Rules 401, 403, and 705 of the Alaska  
 8 Rules of Evidence; and providing for an effective date."

Handwritten annotations: A vertical line is drawn through the text. At the bottom, the numbers 401, 403, and 705 are circled, with arrows pointing down to the word "no" written twice.

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

10 \* Section 1. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE. (a) The  
 11 legislature finds that

1 (1) recent developments in molecular biology and genetics have important  
2 applications for forensic science; it has been scientifically established that there is a unique  
3 pattern to the chemical structure of the deoxyribonucleic acid (DNA) contained in each cell of  
4 the human body; the process for identifying this pattern is called "DNA identification";

5 (2) the accuracy of identification provided by this method is superior to that of  
6 any presently existing technique and recognizes the importance of this scientific breakthrough  
7 in providing a reliable and accurate tool for the investigation and prosecution of crimes;

8 (3) scientific evidence provides an increasingly critical source of information in  
9 civil and criminal litigation;

10 (4) court decisions guiding the admissibility of scientific evidence in the state  
11 courts impose a requirement on the introduction of expert scientific testimony that conditions the  
12 introduction of that testimony on a degree of its validation within the community, that is, to its  
13 general acceptance by experts in the relevant scientific field; under those court decisions, trial  
14 courts are empowered to evaluate the quality of expert witnesses' opinions and to exclude  
15 opinions that have not achieved general acceptance in the scientific community;

16 (5) the ability of a trial court to exclude opinion evidence that has not achieved  
17 general acceptance in the scientific community may prohibit introduction and consideration of  
18 evidence and testimony based on experimental scientific information that could be useful to the  
19 trier of fact; and

20 (6) to better assure that relevant evidence based on emerging scientific techniques  
21 and processes of debatable reliability may be considered, the "general acceptance" principle for  
22 admissibility of scientific testimony should be replaced and a more flexible approach to the use  
23 of opinion testimony should be adopted.

24 (b) In amending Alaska Rules of Evidence 702(a) and 703 in secs. 7 and 8 of this Act,  
25 it is the purpose of the legislature to change the appropriate standard for the admissibility of  
26 DNA evidence in civil and criminal proceedings. The legislature's amendment of this rule would  
27 eliminate, as to DNA evidence, the principle of "general acceptance" underlying scientific  
28 evidence as a precondition to the admissibility of scientific evidence in a criminal or civil action,  
29 a principle first enunciated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and adopted  
30 for the courts of this state in *Pulakis v. State*, 476 P.2d 474, 478 (Alaska 1970). In its place, the  
31 legislature opts to substitute the comparable rule applicable to the introduction of scientific

1 evidence in cases in the federal courts. That standard was announced in Daubert v. Merrill Dow  
2 Pharmaceuticals, Inc., 509 U.S. --, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993). Under the Daubert  
3 standard, the reliability of scientific evidence is to be determined based on the evidence's  
4 scientific validity without reference to the quality of expert opinion, and without the qualifying  
5 condition that an expert opinion that has not achieved general acceptance in the scientific  
6 community must be excluded.

7 \* Sec. 2. AS 09.25 is amended by adding a new section to read:

8 Sec. 09.25.051. **ADMISSIBILITY OF DNA PROFILES.** (a) In a civil action or  
9 proceeding, the evidence of a DNA profile is admissible to prove or disprove the identity  
10 of a person.

11 (b) In this section,

12 (1) "deoxyribonucleic acid" means the molecules in all cellular forms that  
13 contain genetic information in a patterned chemical structure for each individual;

14 (2) "DNA profile" means an analysis that uses the restriction fragment  
15 length polymorphism analysis of deoxyribonucleic acid material in a human sample of  
16 blood, semen, tissue, or other DNA-bearing cells resulting in the identification of the  
17 individual's patterned chemical structure of genetic information.

18 \* Sec. 3. AS 09.65 is amended by adding a new section to read:

19 Sec. 09.65.096. **LIABILITY FOR ADMINISTRATION OF BLOOD TEST FOR**  
20 **DNA SAMPLE.** A person who, under AS 44.41.060(b), is authorized to draw blood  
21 samples for purposes of DNA identification analysis, is not liable for civil damage  
22 resulting from an act or omission arising out of the drawing of the blood sample unless  
23 the act or omission constitutes gross negligence or reckless or intentional misconduct.

24 \* Sec. 4. AS 11.56.860(a) is amended to read:

25 (a) A person [WHO IS OR HAS BEEN A PUBLIC SERVANT] commits the  
26 crime of misuse of confidential information

27 (1) if the person

28 (A) is or has been a public servant;

29 (B) [(1)] learns confidential information through employment as  
30 a public servant; and

31 (C) [(2)] while in office or after leaving office, uses the

1 confidential information for personal gain or in a manner not connected with the  
2 performance of official duties other than by giving sworn testimony or evidence  
3 in a legal proceeding in conformity with a court order; or

4 (2) if the person, without authority, uses information that is made  
5 confidential by AS 44.41.060 other than for a purpose authorized by AS 09.25.051,  
6 AS 12.45.035, or AS 44.41.060.

7 \* Sec. 5. AS 12.45 is amended by adding a new section to read:

8 Sec. 12.45.035. ADMISSIBILITY OF DNA PROFILES. (a) In a criminal action  
9 or proceeding, the evidence of a DNA profile is admissible to prove or disprove the  
10 identity of a person.

11 (b) In this section,

12 (1) "deoxyribonucleic acid" means the molecules in all cellular forms that  
13 contain genetic information in a patterned chemical structure for each individual;

14 (2) "DNA profile" means an analysis that uses the restriction fragment  
15 length polymorphism analysis of deoxyribonucleic acid material in a human sample of  
16 blood, semen, tissue, or other DNA-bearing cells resulting in the identification of the  
17 individual's patterned chemical structure of genetic information.

18 \* Sec. 6. AS 44.41 is amended by adding a new section to read:

19 Sec. 44.41.060. DNA DATA BANK. (a) To support criminal justice services  
20 in this state, the Department of Public Safety shall establish and maintain a  
21 deoxyribonucleic acid (DNA) data bank. The DNA data bank shall be consistent with  
22 the provisions of this section.

23 (b) A person convicted in this state of an offense that is a felony shall have a  
24 blood sample drawn for purposes of DNA identification analysis. The blood sample shall  
25 be drawn substantially in the following manner:

26 (1) a blood sample from a person

27 (A) who is to be incarcerated in a correctional facility shall be  
28 drawn at the correctional facility at which the person is committed to the custody  
29 of the commissioner of corrections, unless the Department of Corrections  
30 designates another place;

31 (B) who, as a part of the person's sentence, is not to be

1           incarcerated in a correctional facility shall be drawn at a time and place specified  
2           by the sentencing court;

3                   (2) the blood sample may be taken only by a correctional health nurse  
4           technician or a physician, registered professional nurse, licensed practical nurse, graduate  
5           laboratory technician, or phlebotomist;

6                   (3) chemically clean sterile disposable needles and vacuum draw tubes  
7           shall be used for all samples; the tube shall be sealed and labeled with the subject's name,  
8           social security number, date of birth, race, and sex, the name of the person collecting the  
9           sample, and the date and place of collection; the vacuum draw tubes shall be secured to  
10          prevent tampering with the contents;

11                   (4) the vacuum draw tubes containing the samples shall be transported to  
12          the location specified by the Department of Public Safety not later than 15 days following  
13          withdrawal, and shall be analyzed and stored in the DNA data bank.

14           (c) The Department of Public Safety shall conduct the DNA identification  
15          analysis in accordance with procedures that it has adopted to determine identification  
16          characteristics specific to the individual whose sample is being analyzed. For each  
17          vacuum draw tube received, the commissioner of public safety or the commissioner's  
18          designated representative shall complete and maintain on file a form indicating the name  
19          of the person whose sample is to be analyzed, the date and by whom the blood sample  
20          was received and examined, and, if the seal on the vacuum draw tube had not been  
21          broken or otherwise tampered with, a statement to that effect. The blood sample may be  
22          divided, but, if divided, each part of the sample must be labeled as provided for the  
23          original sample and securely stored by the department in accordance with specific  
24          procedures to ensure the integrity and confidentiality of the samples adopted by the  
25          department by regulation.

26           (d) A blood sample received by the Department of Public Safety under this  
27          section may be used only

28                   (1) to create a statistical data base, provided no identifying information  
29          on the individual whose sample is being analyzed is included; or

30                   (2) for retesting by the department to validate or update an original DNA  
31          analysis prepared under this section.

1 (e) The Department of Public Safety shall prepare and maintain a report of the  
2 results of a DNA identification analysis conducted by the department, including the  
3 profile and identifying information.

4 (f) To assist in the investigation of a criminal offense, the Department of Public  
5 Safety may make available the results of DNA identification characteristics profiles of  
6 blood samples and the results of an analysis and comparison of the identification  
7 characteristics from two or more blood samples to federal, state, and local law  
8 enforcement officers upon request. A request may be made by personal contact, mail,  
9 or electronic means. The department shall maintain on file the name of the person  
10 making the request and the purpose for which the information is requested.

11 (g) At the request of a person who has been charged with an offense based in  
12 whole or in part on the result of a search of information in the DNA data bank, the  
13 Department of Public Safety shall furnish to the person a copy of the request for search.  
14 If a sample or DNA profile supplied by the person making a request under this subsection  
15 satisfactorily matches a profile in the DNA data bank, the department shall confirm the  
16 existence of data in the DNA data bank or disseminate identifying information from the  
17 DNA data bank.

18 (h) The Department of Public Safety

19 (1) shall create a separate statistical data base comprised of DNA profiles  
20 of blood samples of persons whose identity is unknown;

21 (2) may share the information in the statistical data base with law  
22 enforcement or criminal justice agencies in or outside the state.

23 (i) Except as specifically provided in (e) - (h) of this section, the results of a  
24 DNA analysis are confidential.

25 (j) A person whose DNA profile has been included in the data bank may request  
26 expungement of the DNA profile from the data bank if the felony conviction on which  
27 the authority for including the DNA profile was based was reversed and dismissed with  
28 prejudice to the right to renew the prosecution. The Department of Public Safety shall  
29 purge all records and identifiable information in the data bank pertaining to the person  
30 and destroy all samples from the person when the department receives

31 (1) a written request for expungement under this section; and

1 (2) a certified copy of the court order reversing the conviction having the  
2 effect of dismissing the case with prejudice.

3 (k) The Department of Public Safety

4 (1) may charge a reasonable fee to any authorized law enforcement  
5 agency to search and provide a comparative analysis of DNA profiles in the data bank;

6 (2) shall adopt regulations establishing

7 (A) methods of obtaining information from the DNA data bank;

8 and

9 (B) procedures for verification of the identity and authority of  
10 persons making requests for information from the data base; and

11 (3) shall specify the positions in the department that, as a necessary  
12 function of the position, require regular access to the DNA data bank and samples  
13 submitted.

14 \* Sec. 7. Rule 702(a), Alaska Rules of Evidence, is amended to read:

15 (a) If scientific, technical, or other specialized knowledge will assist the trier of  
16 fact to understand the evidence or to determine a fact in issue, a witness qualified as an  
17 expert by knowledge, skill, experience, training, or education, may testify thereto in the  
18 form of an opinion or otherwise. However, when expert testimony that is based upon  
19 a scientific theory or technique is used to support the admission of evidence of or  
20 based upon a deoxyribonucleic acid (DNA) profile, the court may not admit the  
21 evidence if the court finds that the theory or technique in question is scientifically  
22 valid for the purpose for which it is applied. ?

23 \* Sec. 8. Rule 703, Alaska Rules of Evidence, is amended to read:

24 Rule 703. BASIS OF OPINION TESTIMONY BY EXPERTS. The facts or data  
25 in the particular case upon which an expert bases an opinion or inference

26 (1) may be those perceived by or made known to the expert at or before  
27 the hearing;

28 (2) [. FACTS OR DATA] need not be admissible in evidence; and

29 (3) [BUT] must be of a type reasonably relied upon by experts in the  
30 particular field in forming opinions or inferences upon the subject; however, when used  
31 to support the admission of evidence that is based on a deoxyribonucleic acid (DNA)

1 profile, the facts or data that relate to and support the expert opinion or inference  
2 as to scientific knowledge need not be sufficiently established to have become  
3 generally accepted in the particular field to which the facts or the data belong.

4 \* Sec. 9. DNA DATA BANK: APPLICABILITY OF SAMPLE REQUIREMENT TO  
5 PERSONS PRESENTLY INCARCERATED. To the extent permitted by the United States and  
6 state constitutions, a person who was convicted of a felony and, on the effective date of this Act,  
7 is serving a term of imprisonment in a correctional facility in the state shall have a blood sample  
8 drawn for the purposes of DNA identification analysis and storage in the DNA data bank  
9 established by AS 44.41.060(a), added by sec. 6 of this Act. The sample shall be drawn in the  
10 manner provided in AS 44.41.060(b), added by sec. 6 of this Act.

11 \* Sec. 10. AS 09.25.051, added by sec. 2 of this Act, and AS 12.45.035, added by sec. 5 of  
12 this Act, have the effect of amending

13 (1) Rules 401 and 403, Alaska Rules of Evidence, by determining that, when  
14 offered in civil and criminal actions and proceedings, DNA profile evidence has probative value  
15 and that its probative value outweighs the danger of unfair prejudice;

16 (2) Rule 705, Alaska Rules of Evidence, by eliminating a requirement that the  
17 court require or allow antecedent expert testimony concerning the reliability of DNA profiles as  
18 a method of identification prior to its receipt into evidence in the action or proceeding.

19 \* Sec. 11. This Act takes effect September 1, 1995.

**HB**

**57**

# Alaska State Legislature



Representative Joe Green

## Sponsor Statement

### HB 57 - "Licensing Requirements for Drivers"

HB 57 establishes new rules for young drivers. Due to the high incidence of accidents, injury, and death among teenage drivers many states, and other political jurisdictions, are changing the rules which grant teenagers the "license" to drive.

One strategy to reduce young driver accidents is the provisional licensing system. HB 57 establishes a graduated system whereby a new, young driver must begin his/her progression to "driver-hood" with a learners permit, graduate to a restricted, provisional license, and then, if driving performance has been satisfactory during the provisional period, an unrestricted license is awarded.

Language in HB 57 establishes certain conditions during the provisional stage which include restrictions on nighttime driving, so that driving takes place in less dangerous circumstances. Currently, 12 states have laws which limit teenagers from operating motor vehicles during late evening or early morning hours. Studies in these states have shown that nighttime restrictions have significantly reduced accidents.

Finally, HB 57 is designed to allow the Department of Public Safety to take advantage of new federal legislation. The "High Risk Drivers Act of 1993" established monetary incentives for states that implement programs for young drivers. I believe that passage of HB 57, along with federal support, will help stop the teenage carnage on our highways.

HOUSE COMMITTEE REPORT

3/10/95

(7)  
Date Referred: January 16, 1995

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 3/8/95

The TRANSPORTATION Committee considered:

HB 57

HOUSE BILL NO. 57

LICENSING REQUIREMENTS FOR DRIVERS

"An Act relating to driver's licensing; and providing for an effective date."

recommends it be replaced with the following committee substitute \_\_\_\_\_ [ ] the same title [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee

[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ / ] fiscal note(s) Public Safety

[ ] fiscal note(s) \_\_\_\_\_

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

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<u>Launette James</u>	<u>James</u>	✓			
<u>Beverly Masek</u>	<u>MASEK</u>			✓	
<u>W. R. William</u>	<u>Williams</u>	✓			
<u>John Sanders</u>	<u>Sanders</u>			✓	
<u>G. Davis</u>	<u>G. DAVIS</u>			✓	
		(2)		(3)	

CHAIR'S SIGNATURE

G. Davis

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL N

Bill Version: HB 57  
(H) Publish Date: 3/10/95

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: An Act relating to driver licensing... BRU: Motor Vehicles  
Component: Driver Services  
Sponsor: Representative Green  
Requestor: H. TRA. COMPONENT SERIAL NO. 500

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	41.2	36.7	36.7	36.7	36.7	36.7
TRAVEL	5.6	0	0	0	0	0
CONTRACTUAL	52.8	2.3	2.3	2.3	2.3	2.3
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	16.5	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	126.6	39.5	39.5	39.5	39.5	39.5

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES (1005) Revenue Code	163.0	163.0	163.0	163.0	163.0	163.0
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts	77.1	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	49.5	39.5	39.5	39.5	39.5	39.5
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	126.6	39.5	39.5	39.5	39.5	39.5

Estimate of current year (FY 95) impact: \$ \_\_\_\_\_

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)  
SEE ATTACHED

Prepared By: Juanita M. Hensley Phone: 465-2650  
Division: Motor Vehicles Date: 2/1/95  
Approved by Commissioner: Ronald L. Otte Date: 2-6-95  
Agency: Ronald L. Otte, Dept. of Public Safety

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ORIGINAL

Traffic crashes are the number one cause of death for youth nationwide. Alaska statistics are no different than the national statistics.

The impact this bill has on the Division of Motor Vehicles is the issuance of the full driver's license after the provisional license period is over. This bill requires the person to come into the office and be re-issued a driver's license without the provisional license restriction. The person will be required to pay a duplicate license fee of \$10. The division issued approximately 10,000 driver's licenses in 1994 to individuals in this age group. This will generate approximately \$100.0 in new general fund program receipts.

A person of this age group will have the driver's license suspended for accumulation of points at 6 point level instead of 12 points in a 12 month period. In 1994, 1,205 warning notices were sent to individuals in this age group. It is anticipated, this bill, will cause a deterrent effect on this age group and, approximately 500 of these individuals will not reach the 6 point accumulation. This will result in approximately 700 additional point suspensions yearly. Since the point suspension notices are automated, the cost the Division will incur is for the postage to mail the suspension notices to the individual. The law requires these notices to be mailed by certified mail return receipt. Postage rate for certified mail is \$2.52 each.

It is estimated, 90 percent of all persons whose license is suspended will reinstate their driver's license. A \$100.00 reinstatement fee is charged anytime a person has had their license suspended. This will generate approximately \$63.0 in new general fund program receipts revenue. The total amount of additional new general fund program receipt revenue generated by this bill is \$163.0

The Division of Motor Vehicles applied for a grant to assist in implementation cost for a graduated license program. Alaska was awarded the grant from the National Highway Traffic Safety Administration in the amount of \$77.1 for this pilot project. The only other state to receive this type of grant was North Carolina.

The following analysis is an estimate of the operational cost the Division of Motor Vehicles anticipates with the passage of this bill.

	<u>FY96</u>	<u>FY97</u>
<b><u>PERSONAL SERVICES</u></b>		
1 Motor Vehicle Representative (Anchorage)	\$36.7	\$36.7
Federal Grant Receipts	\$4.5	
<b><u>TRAVEL</u></b>		
Federal Grant Receipts	\$5.6	
<b><u>CONTRACTUAL</u></b>		
Postage 700 notices (certified mail) @ \$2.52 each	\$1.8	\$1.8
Computer (Mainframe Connection)..yearly costs	\$0.5	\$0.5
Federal Grant Receipts	\$60.5	
\$9.6 Data Processing Fees		
\$30.0 Computer Programming		
\$6.6 Public Service Announcements and Brochures		
\$13.0 Public Opinion Survey		
\$1.3 Tuition-National Judicial College for Hearing Officer Training		
<b><u>SUPPLIES</u></b>		
Routine office supplies	\$0.5	\$0.5
<b><u>EQUIPMENT</u></b>		
1 Complete Computer Workstation	\$10.0	
One time costs		
Federal Grant Receipts	\$6.5	
Upgrade of Computer equipment and software		
<b><u>TOTAL</u></b>	<b>\$126.6</b>	<b>\$39.5</b>

**DEPT. OF HEALTH AND SOCIAL SERVICES**

DIVISION OF PUBLIC HEALTH  
EMERGENCY MEDICAL SERVICES SECTION

P.O. BOX 110616  
JUNEAU, ALASKA 99811-0616  
PHONE: (907) 465-3027  
FAX: (907) 465-4101

February 2, 1995

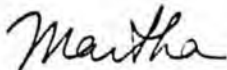
Juanita Hensley  
Chief, Driver Services  
Department of Public Safety  
Division of Motor Vehicles

Dear Nita,

Attached is information from the Alaska Trauma Registry on motor vehicle drivers involved in crashes and admitted to an Alaskan hospital for 1991 through 1994. Missing from this data are passengers requiring hospitalization after a vehicle crash involving a youthful driver.

Please let me know if you have any questions or if there is additional information that you need.

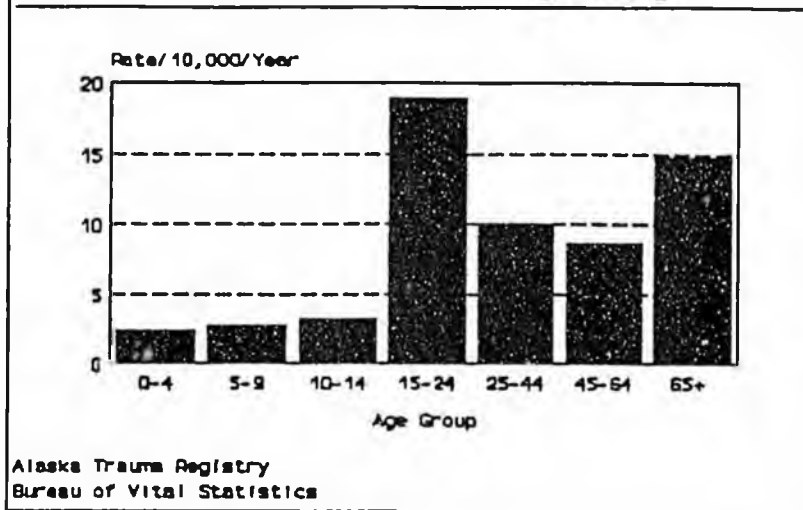
Sincerely,



Martha Moore  
Trauma Registry Coordinator

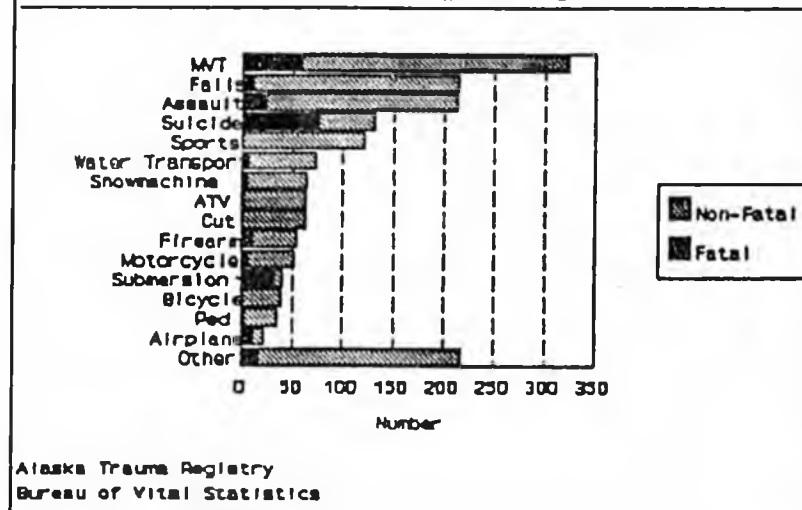
For the years 1991 and 1992, the 15-24 age group had the largest rates of fatal and non-fatal hospitalized motor vehicle crash injuries in Alaska.

Fatal and Non-Fatal (Hospitalized) Injuries, 1991-1992  
Alaska Statewide  
Motor Vehicle Traffic [N=1057]



In these two years, motor vehicle crash was clearly the most common cause of hospitalization for this age group.

Fatal and Non-Fatal (Hospitalized) Injuries, 1991-1992  
Alaska Statewide  
Age 15-24 [N=1721]



From 1991 through 1994, the Alaska Trauma Registry has information on traumatic injuries resulting in hospitalization, transfer to another hospital, or emergency department death, including 'Dead on Arrival'. Data for 1994 is not yet complete.

Out of 979 drivers hospitalized due to motor vehicle crashes, 128 (13%) were age 20 and under. Of the hospitalized youth, alcohol was suspected to be a factor in 31 (24%) of the incidents. Of the 277 hospitalized drivers for whom alcohol was suspected to be a factor, 11% were age 20 and under.

Injury time was indicated for 106 of the youth drivers. In 24 (21%) of the cases, the injury occurred between 1:00 AM and 5:00 AM. In another 29 cases (36%), the injury occurred between 9:00 PM and 1:00 AM.

Of the 128 youth drivers 8 (6.3%) were critically injured, 11 (8.6) were severely injured, 41 (32%) seriously injured, 53 (41.1%) moderately injured, and 11 (8.6) sustained minor injuries. Four were not scored for injury severity.

Of the 128 youth drivers hospitalized, 8 died and 12 were discharged with a permanent disability. Five were discharged to an inpatient rehabilitation facility and 1 to a residential facility.

Based on available hospital charge information, the average cost per patient per admission in the 14 through 20 age group was about \$20,000. Not included is physician fees, rehabilitation costs, and subsequent disability payments.

Alaska Trauma Registry, 1991-1994 (1994 not yet complete), hospitalized motor vehicle crash drivers.

Age Group	# Hosp	% Total	% Licensed Drivers
<16	12.0	1.2	0.0
16-20	116.0	11.8	6.2
21-25	167.0	17.1	10.6
26-30	133.0	13.6	12.4
31-35	130.0	13.3	14.7
36-40	107.0	10.9	14.9
41-45	72.0	7.4	12.8
46-50	63.0	6.4	9.5
51-55	37.0	3.8	6.6
56-60	43.0	4.4	4.4
61-65	29.0	3.0	3.1
66-70	36.0	3.7	2.3
71+	34.0	3.5	2.6
Total	979.0		

Hospitalized motor vehicle crash drivers, 1991-1994 (1994 not complete), by year.

Year	Total Pts	≤ Age 20	% Youth of Total
1991	277.0	40.0	14.4
1992	261.0	32.0	12.3
1993	276.0	34.0	12.3
1994	165.0	22.0	13.3
Total	979.0	128.0	13.1

Hospitalized motor vehicle crash drivers, 1991-1994 (1994 not complete), alcohol involvement suspected.

Year	Total Alcohol	Youth Alcohol	% Youth of Total
1991	62.0	12.0	19.4
1992	76.0	7.0	9.2
1993	90.0	8.0	8.9
1994	49.0	4.0	8.2
Total	277.0	31.0	11.2

# NATIONWIDER

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## Graduated Teen Licensing Means Fewer Teen Fatalities

It's pretty easy to get a driver's license in most states. As long as you're 16 (15 in some states), you can take to the road with essentially full privileges. In most states, all that's required is passing a driving test and a simple written exam. The only other requirement in many states for full licensing is completion of an approved driver training course. Unfortunately, even the best driver's education courses don't create safe drivers overnight.

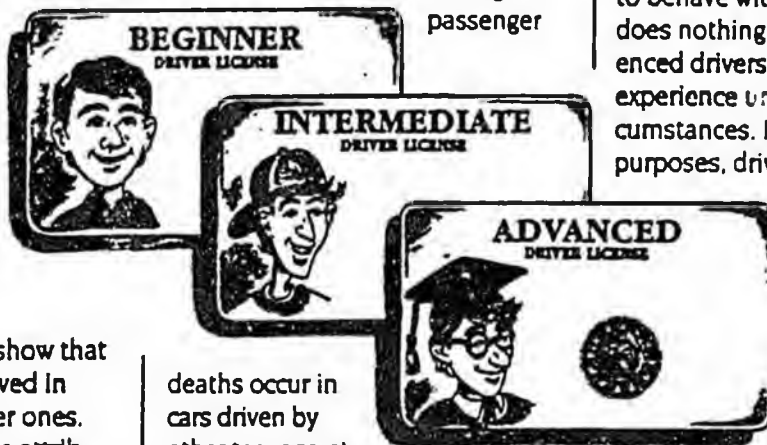
### Inexperienced drivers have more accidents.

Time and again, studies show that younger drivers are involved in more accidents than older ones. And, the problem can't be attributed entirely to more aggressive behavior or attitude. It's related more fundamentally to experience. That's an important distinction, because it means that even if the young driver in your household behaves conscientiously and carefully on the road, he or she is still more likely to have an accident than drivers in any other age group, including the elderly. There's simply no substitute for on-the-road experience.

### Graduated licensing: how it works, how it helps.

Under graduated licensing, beginners learn to drive step by step in a controlled progression before being awarded full driving privileges. While graduated systems may vary somewhat, an essential

feature of all is a ban on late-night driving, when the threat of accidents is greatest because of poor visibility. Other requirements usually include the supervision of a parent during the beginner stage, and limits on the number of passengers a beginner may transport (research shows the majority of teenage passenger



deaths occur in cars driven by other teenagers).

In any case, restrictions are gradually lifted as drivers gain experience and pass advanced driving tests. Penalties for violations are also more severe than for unrestricted drivers, and may trigger specific driver improvement requirements.

### Older licensing ages, probationary periods not as effective.

Raising licensing ages provides some improvement in teenage crash rates, but it still doesn't take the place of on-the-road experience. Statistics show that drivers in their twenties still have more accidents than slightly older drivers.

Many states have tried to deal with the problem by instituting what is called a 'probationary'

licensing program. This means that legal actions like suspension can be imposed more quickly and easily in the event of a traffic violation or accident.

Unlike graduated licensing, probationary licensing uses only the threat of punishment to encourage younger or inexperienced drivers to behave with greater caution. It does nothing to help inexperienced drivers gain on-the-road experience under controlled circumstances. For all practical purposes, drivers with probationary licenses have unrestricted driving privileges.

### New Zealand's experience.

In New Zealand, graduated licens-

ing has been in effect since 1987 and has reduced accidents among young drivers dramatically. The effect is particularly noticeable among 15-19 year olds. And, it's important to note that the New Zealand plan applies to all drivers under the age of 25, not just to teenagers.

In Ontario, Canada, graduated licensing was recently implemented, requiring all new drivers, regardless of age, to drive for a minimum of 20 months before an unrestricted license can be granted.

Based on the New Zealand experience, and with further research and experimentation, graduated licensing may be tried in the United States in the near future.

# THE DRIVER LICENSING

## *Eagle Eye*



Volume 1

November, 1994



### INTRODUCTION

This is the inaugural issue of The Driver Licensing Eagle Eye, a bi-monthly newsletter reporting the latest news and developments in driver licensing. The Eagle Eye is published by Eagle Vision Consultants

and is available by subscription only. A subscription form is enclosed for your convenience. Please send it to: Eagle Vision Consultants, P.O. Box 34, Williamston, MI 48895.

### GRADUATED DRIVER LICENSING

Momentum continues to build for states to adopt graduated driver licensing systems. Recent releases from NHTSA and the NTSB clearly indicate their programs will emphasize graduated licensing as a measure to improve traffic safety for under 21 year old drivers. In addition, the High Risk Drivers Act (HR 1719), a bill that would provide incentives to states to try innovative graduated licensing programs is being revived.

locate programs that work, such as approaches that develop vehicle-handling skills more quickly, change risk-taking attitudes, or help young drivers develop good judgment and spatial awareness. Northport will present an integrated package of recommendations, including changes in enforcement, sanctions, and graduated licensing. Graduated licensing, in combination with improved driver education, holds promise as a way to provide positive incentives to new drivers to drive safely. The project is scheduled for completion in January, 1995.

#### NHTSA

On September 8, 1994, the National Highway Traffic Safety Administration (NHTSA) announced it has developed a plan to improve driver education for young drivers that seeks to help foster positive attitudes in addition to teaching them to drive safely.

#### NTSB

The National Transportation Safety Board (NTSB) recently sent a letter to the governor of each state informing them of revisions in NTSB's "Most Wanted" list. The "Most Wanted" list highlights those transportation safety improvements sought by the Board that offer the greatest potential for significant and immediate reductions in accidents and loss of lives.

In a report to Congress, NHTSA pointed out that while most teenagers are safe drivers, about 15 percent of them have a crash in their first year of driving. In many cases, these crashes are not caused by a lack of knowledge of traffic laws or driving skill. The reasons are complex and reflect risk-taking, susceptibility to peer pressure, inexperience, poor judgment, or alcohol use.

Among the recommendations were:

NHTSA's plan includes these recommendations:

- Driver licensing should be done in three stages—commonly known as graduated licensing—so that learning to drive is spread over an extended period. The novice would have to comply with certain restrictions for at least six months in each stage before qualifying for a less restrictive license.
- Driver education should be an integral part of the graduated licensing process. Basic vehicle handling skills would be taught under a learner permit, while more complex decision and perception skills would be taught under a provisional license, the stage before full-license privileges.
- Research also should be done on ways to involve parents and other adults in the education and licensing of novice drivers, in order to help form mature attitudes toward driving.

- Enact comprehensive laws that prohibit drivers under the age of 21 from driving with any measurable blood alcohol concentration.
- Enact laws to provide for a provisional license system for young novice drivers.
- Enact laws that prohibit driving by young novice drivers

#### IIHS

Recent Insurance Institute of Highway Safety (IIHS) research indicates that teenagers living in states with short learners permit terms obtain their licenses sooner and have higher crash rates than teens in states that delay or restrict licensure or require longer supervised driving periods.

Allen F. Williams of IIHS indicates that states can reduce teenage crash risk by delaying the age at which practice driving is permitted, providing learners permits that are valid for long periods of time, and establishing a higher minimum licensing age.

#### AAA

In a recent news release, the AAA Foundation for Traffic Safety announced the Foundation has contracted with Northport Associates to develop a new model curriculum outline to improve the training of novice drivers in North America.

The research examined the driving records of 15, 16, and 17 year old drivers in Delaware, Pennsylvania, New York, Connecticut, and New Jersey. For copies of "Teenage Driving Practices and Licensing Laws: Differences in Four States" and "Differences in Young Driver Crash Involvement in Five States with Varying Licensure Practices" write: Publications, IIHS, 1005 North Glebe Road, Arlington, VA 22201.

The project researchers will interview traffic safety training experts and

## Growing Up Behind the Wheel



BY JOHN ARCHER

When are you treated as an adult? When you graduate from school? Get your first full-time job? Cast your first vote? American society recognizes all those events as mileposts along the road to maturity.

But long before most of us earn a diploma, get a regular job, or cast a ballot, we obtain society's ticket to mobility in the world of grown-ups—a driver's license.

Unfortunately, because in many places little more than a warm body is required to obtain that license, it too often becomes a ticket to tragedy. In 1992, for example, more than 6,000 teenagers were involved in fatal crashes. Half of them died. In fact, although teenagers represent only 5 percent of all drivers and on average drive much less than you and I, they account for 13 percent of all collisions.

Congress is now considering legislation sponsored by Rep. Frank Wolf (R-Va.) and Sen. John Danforth (R-Mo.) that focuses attention on teenagers and other high-risk motorists. Known as the High-Risk Drivers Act, it encourages states to take several steps that would make new drivers safer drivers, most notably:

- ◆ Establish graduated licensing under which a novice driver would earn first an instructional license, then a provisional license, and finally a full license. No one under age 18 could earn a full license without a clean driving record for one year.

- ◆ Encourage improved driver education. Research would identify ways to make driver's ed more effective, relevant, and stimulating for new drivers. States would set minimum standards for public and private driver training programs.

- ◆ Crack down on alcohol use. In addition to prohibiting open alcoholic beverages in a car and imposing stiffer penalties on sales to minors, states would set a maximum .02 blood alcohol content for drivers under 21.

The High-Risk Drivers Act offers a common-sense approach to improve safety for everyone on the road. It would help address a very disturbing trend: as statistics continue to pile up demonstrating that teenagers pose higher risks than any other age group, training for them has dwindled. In fact during the last 20 years, the percentage of students taking driver education has dropped by a third. And many states no longer even offer driver education programs.

The High-Risk Drivers Act can help reverse that trend by stimulating innovative driver education. Particularly attractive options include interactive computer and video technology that have the potential to revolutionize driver training by conveying well-established driving concepts through techniques today's MTV generation views as "user friendly."

Graduated licensing would legally recognize what we all know intuitively: maturity and driving capability aren't marked by a single event, but by a gradual process. Safe driving demands practiced skills, sound judgement and a sober attitude. A system of graduated licensing would allow teenagers to develop those traits as they acquire behind-the-wheel experience.

If we only eliminate the overrepresentation of novice drivers in collisions, thousands of lives could be saved. How can we afford not to try?

*John Archer is managing director of AAA Public Policy and Special Programs in Washington, D.C.*

## LETTERS

### Building Roads Right

John Archer's article, "Let's Build Roads Right" [January/February] was on target about using new technologies rather than relying on "the same, tired ways" of building roads.

By rewarding use of the cheapest, lowest-quality materials and the least-expensive labor—as we do now—we actually penalize innovative efforts to improve road quality or offer superior workmanship. Our current system is inflexible, unwise, and short-sighted, costs taxpayers billions of dollars in unnecessary highway repair bills, and results in intolerable and costly traffic delays.

I have introduced legislation that would permit states to include contractor guarantees and to set performance standards for highway projects.

Demanding that contractors guarantee

a minimum standard of quality would not, by itself, cure our country's infrastructure ills. But Americans should be outraged that, in an era of huge budget deficits, we have failed to fulfill our responsibility to see that federal highway money is well spent.

REP. ANTHONY C. BEILENSON  
U.S. House of Representatives  
Washington, D.C.

### Water, Water, Everywhere?

Although you tried to think of all eventualities to prevent accidents ("What to Do When Your Home's Alone," May/

*Let us know what you think about the issues raised in AAA World. Write "Letters," AAA World, 1000 AAA Dr., Heathrow, FL 32746-5063. Letters may be edited for clarity and length.*

June), you missed something very important. We always turn off the toilets and washing machine faucets when we leave town. We have two friends who had major toilet problems with a leak or a crack while they were on the other side of the world. And washing machine hoses can spring a leak anytime.

BETTY RUBIN  
Albuquerque, N. Mex.

### Where I Begins

I enjoyed your May/June issue, as always, but as a former resident of Madawaska, Maine, I must tell you that U.S. 1 starts in Fort Kent—not Madawaska ["Rediscovering Our National Routes"]—about 25 miles north.

ALINE KOPF  
St. Augustine, Fla.

## Provisional Licensing for Teenagers

### MADD's Position

**M**ADD advocates that each state adopt laws providing that persons under 21 receive driver's licenses which are more restrictive than full licenses, under which violations would result in driver improvement actions and license revocation and civil sanctions in addition to any criminal sanctions and penalties.

### What Is It?

The standard age for full adult licensing is 18. However, most states have provided for licensing teenagers at a considerably earlier age, in some farm states as early as 14 but more generally at age 16. Learners' permits may be available at age fifteen and a half. Provisional licensing provides special rules for those who apply for and receive licenses below the age of 18. These rules cover the period between the age an individual receives a license and age 18. During this period, young drivers may be limited to driving only in the daytime or early evening. There may be special conditions placed on these provisional licenses. If, for example, youth are guilty of a serious traffic offense, they will lose their provisional license until they reach age 18. The purpose of such provisional licensing is to ease the young driver into the adult driving population by limiting his or her exposure to more dangerous late-night driving and by providing special incentives to drive carefully during the period when a youthful driver is gaining the experience necessary to become a safe driver.

### What Is needed?

#### Legislation

A law which requires at least six months driving with parent or adult on a learner's permit before provisional licensing.

A provisional licensing law which covers the period between ages 16 and 18 and provides:

- a. A requirement of six months of citation-free daytime driving before late-night solo driving is permitted.
- b. A limit of only one passenger in vehicle for the first twelve months unless an adult is present in the vehicle.
- c. A requirement that all passengers be safety-belted.
- d. License suspension to age 18 in the event of a DWI offense.

### What Can Be Done?

- Support legislation to establish a comprehensive provisional licensing system which requires these recommended limits and conditions.
- Work with local police and schools to publicized and enforce the provisional licensing system.

**MADD®**

## Provisional Licensing

**E**ach year, 16- and 17-year-old drivers are involved in more than twice the average number of crashes per mile driven as are experienced adult drivers. These crashes occur most frequently between midnight and 5:00 a.m. Studies show that although only 2 percent of the miles driven by 16-year-olds occurs in these hours, 17 percent of their fatal crashes occurred in that five-hour period. Also, novice driving between 9:00 p.m. and 6:00 a.m. account for 16 percent of their miles driven, but 43 percent of their fatal crashes.<sup>1</sup> Driving inexperience is further compounded when alcohol consumption is also involved.

One way to reduce this disproportionate involvement is through the use of provisional licenses for novice drivers. The provisional license serves as a tool to "ease" young drivers into gaining driving experience on the road. With restrictions mandated under a provisional license, the novice driver would gradually gain driving skills through education, driving during lower-risk hours or with supervision.

When young drivers do not have the option to drive during the high-risk hours under high-risk conditions, their driving experience is gained during the lower-risk hours, with fewer deaths as a result.

MADD advocates the adoption of the following provisional licensing elements.

1. Nighttime restriction either as a phase/stage of the system or as a remedial action.
2. Parent-supervised basic driving practice and advanced sessions during high-risk hours.
3. Improved licensing and testing procedures tailored to the needs of young drivers.
4. Youth-oriented and prompt driver improvement action.
5. Mandatory safety belt usage by all occupants of motor vehicles while operated by a teenager.
6. .00 blood alcohol concentration (BAC) requirements for underage drivers.
7. Driver education, required learner's permit and a behind-the-wheel training period.
8. A license distinctive from regular driver's licenses.<sup>2</sup>

At the end of a predetermined period, the driving restrictions could be removed or extended depending upon the driver's crash or violation records.

Although no state has all the aspects of this model, provisional licensing programs are becoming more common<sup>3</sup> as more states adopt restrictions for young drivers. For "hands on" training, most states require a learner's permit (often used in driver education classes). Several states have a .00 BAC tolerance for youth and six states have restrictions against nighttime driving.

The results from provisional licensing programs are encouraging. States which place certain restrictions on driver's licenses show a sharp decline in the number of crashes and fatal crashes. The states with curfews show significant reductions in fatal crashes involving 16-year-olds during restricted hours: Pennsylvania, 69 percent; New York, 62 percent; Maryland, 40 percent; and Louisiana, 25 percent. The states which have the earliest curfew hours show the greatest crash reduction totals.<sup>3</sup>

MADD advocates that all states adopt such measures as a means of further reducing youthful crash involvement.

1. National Highway Traffic Safety Administration. "Provisional Licensing or New Driver Entry System."

2. Ibid.

3. Insurance Institute for Highway Safety. *Teenage Drivers*, 1984.

**MADD**<sup>®</sup>

## Provisional Licensing for Teenagers

### What Is It?

The standard age for full-adult licensing is 18. However, most states have provided for licensing teenagers at a considerably earlier age, through learners' permits available at ages 14 - 16. Provisional licensing provides for special rules for those who apply for and receive licenses below the age of 18 for the time between the age they receive their license and age 18. During this period, young drivers may be limited to driving only in the daytime and may have a special restriction that if they are guilty of a serious traffic offense, they will lose their provisional license until age 18. The purpose of such restricted licenses is to ease the young driver into the adult driving population by limiting his or her exposure to the more dangerous nighttime driving and by providing a special incentive to drive carefully during the period when a youthful driver is gaining the experience necessary to become a safe driver.

### How Does It Work?

The American Association of Motor Vehicle Administrators has developed a program for easing young people into the driving population. They describe the goal of this program as follows:

"The purpose of this proposed improved driver entry system is to ease young novice drivers, under more controlled conditions, into the driving environment by increasing the amount of their behind-the-wheel driving practice and their exposure to progressively more difficult driving experiences. The program requires novice drivers to earn their full

Figure 6.1

driving privilege by demonstrating safe driving performance, and by being crash- and conviction-free for a minimum driving period."

The program provides for the three step process outlined in Figure 6.1 and includes the nine elements listed in Figure 6.2.

Licensing normally begins with the issuance of a learner's permit which, for states that provide an initial license at age 16, may be provided as early as age 15+. The learner's permit becomes the basis for on-the-road training which provides sufficient skill to pass the road test and move on to the second stage which is the issuance of a provisional license. Provisional licenses cover the period between age 16 and age 18 after which all states provide for full adult licensing (though special laws applicable to drivers under 21, such as a zero BAC limit, may apply).

### Step 1. Learner's Permit

The first step in this driver entry system is obtaining a learner's permit and using this privilege to begin to develop the essential skill and experience which are required to drive safely. The young person should be protected as he or she learns to cope with traffic by being required to drive only with an adult over 21 years of age — preferably a parent and not, in any case, a slightly older friend who happens to have a license. This period of supervised practice should extend for at least six months. Some states permit a novice driver to receive a full driving permit as soon as they can pass the road test. Finally, any traffic citations received while on a learner's

Stages in the Licensing of Teenagers

Step 1	Learner's Permit Drive only with adult over 25 Must pass license test to go to step 2	15½ - 16	6 months minimum
Step 2a	Limited License With nighttime curfew Must have 6 months offense-free driving	16 - 18	6 months minimum
Step 2b	Limited License With special point limits	16 - 18	up to 2 years
Step 3	Full License Subject to under age 21 0.00 BAC limits	18 - 21	up to 3 years

permit should result in an extension by six months in the waiting period for a provisional license.

### Step 2.

#### Provisional Licensing, Phase A

Once the young person has driven under parental supervision for at least six months and passed the licensing examination, a provisional license, which allows the individual to drive alone, is issued but restrictions on driving are continued to limit the risks to which the novice driver will be exposed. Normally, these restrictions are phased out over the provisional licensing period.

#### **Elements of the AAMVA Provisional Licensing Program**

- 1 Provisional license system to facilitate implementation of a program designed to ease the novice driver into the mainstream of driving
- 2 Learner's permit required for a specified period
- 3 Parent/adult supervised basic driving practice, especially during high risk hours
- 4 Improved licensing and testing procedures tailored to the needs of young/novice drivers
- 5 Zero legal blood alcohol concentration (BAC) requirements for young drivers
- 6 Youth-oriented and prompt driver improvement actions
- 7 Mandatory safety belt usage by all occupants of a motor vehicle being operated by a teenager/novice driver
- 8 Demonstrated safe driving performance for a specified period
- 9 License distinctive from regular driver's license

Figure 6.2

Twelve states (New York, Louisiana, and Maryland are examples) provide for an initial period during which novice drivers are not permitted to drive during certain hours. Other states provide for early intervention with the novice driver who commits a serious traffic offense, such as DWI. The provisional licensing program in California, for example, requires that the potential novice driver complete additional parent-supervised driving practice with the learner permit prior to applying for a driver's license, and requires a longer waiting period after failing a written or on-the-road test for such a license before re-testing, and, finally, provides that

the department of motor vehicles can suspend the license on a lower point count for drivers under the age of 18.

### Step 2.

#### Provisional Licensing, Phase B

Those states which provide for an initial nighttime restriction will normally have a second phase of the limited licensing period when the novice may drive twenty-four hours a day. However, limits are still placed on the license, empowering the state motor vehicle department to take action to require remedial training or to suspend the license at a lower point count than for adults. This second phase of the limited license lasts until the novice reaches age 18.

### Step 3. Full Licensing

At age 18, the driver generally moves to Step 3, which is full-adult licensing with the feature, however, that, being under age 21, he or she is subject to a zero BAC limit (see the next issue). The process described in these three steps is intended first to stretch out the learning period for new drivers while protecting them from the worst risks on the road and, secondly, to separate learning to drink from learning to drive by use of the age 21 limit and associated underage zero BAC limit for DWI.

Aside from nighttime restrictions and earlier intervention with poor-record drivers, three elements that should be included in a provisional licensing system are parental supervision, a restriction on the number of passengers, and the requirement for safety belt use by both driver and passengers. The purpose of requiring a period of time when the novice drives with a parent, guardian or older driver in the car is to take advantage of the adult as an individual who can exercise discipline over the tendency of young drivers to take risks and can call to the novice driver's attention the risks he may be encountering without being aware of them. This type of supervision both reduces risk exposure and provides instruction on safe driving. Further, an extended period of driving with the parent may help condition good driving habits. It is important, therefore, not to shortcut the period of the learner's permit, when the parent is required to be in the car. In those states which prohibit nighttime driving for the first six months of provisional licensing, the parent can continue to supervise driving at night for a period of time before the novice qualifies for driving solo twenty-four hours a day.

A restriction on the number of passengers in the vehicle as a condition of provisional licensing can be important in reducing the distractions which lead to crashes among young drivers who have not yet perfected their driving skills. Moreover, peers can often be a motivating factor in producing dangerous driving. A group of teenagers in the car may challenge the driver to take risks that would not occur if he or she were alone. Therefore, it is desirable for provisional licensing systems to include a limitation on the number of passengers in vehicles driven by those under 18. Finally, increased use of safety belts by youthful drivers would save many lives and injuries. Where a state does not make the driver responsible for safety belt wearing by all passengers in his or her vehicle, this requirement should at least be placed on the provisional licenses for drivers under age 18.

Thus the provisional license embodies limitations that fall between the learner's permit (where the young person can drive only when accompanied by a parent or an adult) and the full license privilege (which is only available at age 18). The concept behind provisional licensing is to ease the youthful driver into the traffic stream protecting him or her until there is an opportunity to build driving skill through on-the-road experience. Currently, only a few states have legislation providing this protection to young people. While, in theory, the administrator of the state motor vehicle department has authority to place some special restrictions on teenage drivers because of their relatively high risk of crash involvement, legislative action will normally be required to establish a provisional licensing program. The program developed by the AAMVA (1989) should be used as the basis for this legislation.

### Why is It Needed?

Practice and experience are important in the development of any skill. It is particularly important where the activity involves significant risk to the participant. A perennial problem for highway safety has been the development of good systems for bringing young, unskilled individuals into the driving population safely. Teenage drivers lack skill, they lack experience, and they frequently lack judgment and take greater risks than adults. These limitations are ultimately overcome through maturation and driving experience. In the meantime, however, these youthful drivers remain at significantly higher risk per mile driven than adult drivers. States have attempted to ensure that teenagers applying for licen-

ses are adequately trained by providing for learners' permits which allow the individual to gain driving experience under the supervision of a parent or

### Drivers in Fatal Car Crashes Per 100 Million Miles, by Age, Sex and Times of Day

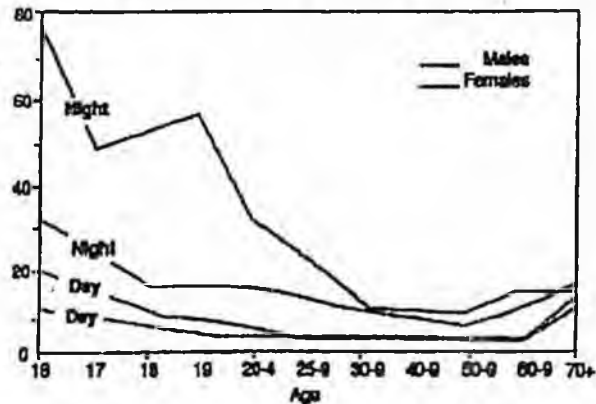


Figure 6.3 Source: IIHS, 1987

teacher, by providing for driver education in the schools, and, finally, by testing the novice driver before a license is issued. Unfortunately, the license tests are too brief and too simple to measure all the skills and knowledge required to drive safely on the roadways. Thus, each year millions of new teenage drivers enter the driving population without the skill and experience of the typical adult driver.

One method of reducing the hazard to teenagers is to increase the length of time during which they can receive training and gain experience in driving without full exposure to the hazards of normal vehicle operation. Prohibiting nighttime driving reduces the risk of death and injury while the young person is gaining experience, because teenagers are at much greater risk of death and injury at night. This is clearly illustrated by Figure 6.3 which shows the fatal car crash rate at night as compared to daytime driving as a function of age. As can be seen, 16-year-olds are at four times greater risk of involvement in a fatal crash at night than during the day. Thus, one way to protect these young drivers is to limit their driving at night until they have built up considerable experience driving during the day.

Young drivers tend to be risk takers, both because they are inexperienced judges of risk and simply because they are more risk-tolerant than adults. Provisional licenses are designed to control risk taking in three ways: (1) by allowing the motor vehicle department to intervene earlier with drivers who are caught speeding and taking other risks,

(2) by motivating the young person to maintain a clean record through the increased threat of license action, and (3) by increasing parental supervision of novice drivers by requiring the parent to approve the elimination of the driving curfew. All of these procedures are designed to help ease the novice driver safely into the traffic stream.

### **How Effective Is This Limited Licensing Procedure?**

A study by Preusser et al. of four of the twelve states which provide for curfews for novice drivers demonstrated that these laws were effective in reducing the nighttime crash involvement of teenagers. The results shown in Figure 6.4, were obtained despite the fact that over half of the teenagers subject to the curfew admitted to driving at night anyway and despite the fact that the same teenagers reported believing that the probability of being caught by the police was relatively low (Williams, Lund, and Preusser, 1983). These researchers noted that in the states surveyed (New York and Louisiana), the teenagers appeared to believe that the police do not enforce the curfew laws vigorously; it appeared most of the enforcement came from parents rather than police. The investigators suggest that while it may be unreasonable to expect that a curfew would completely eliminate crashes in the hours covered, such curfews could be more effective if the publicity given to the curfew were increased and if the police enforcement of existing curfew laws was strengthened. Thus, reductions even

greater than those shown in Figure 6.4 might be possible with better application of these laws in the states that have them. However, it is noteworthy that such significant reductions in crash rates were achieved despite this limitation in publicity and enforcement.

Hagge and Marsh (1988) have studied the impact of provisional licensing in California, which does not include a curfew law but does require an extended period of supervised driving by the parent, a longer waiting time if the driving test is failed, and a lower point count for triggering department of motor vehicle action. Their study indicated that provisional licensing prevented a 13% rise in fatal and injury crashes for 15- to 17-year olds which might otherwise have occurred. They estimated that the effect of provisional licensing on teenagers from 15 to 17 in California prevented 540 crashes per year. Thus there is good evidence that these limitations on novice driving can be effective in reducing the crash experience of this high risk group.

### **How Many States Have It?**

Figure 6.5 summarizes the licensing systems for novice drivers in the fifty states and the District of Columbia. As can be seen from the figure, only ten states have officially established provisional licensing programs though several more are in the process of developing such programs. Most states, however, have one or another of the special provisions for youthful drivers discussed in this section.

**Reductions in Crash Involvement  
During Curfew Hours**

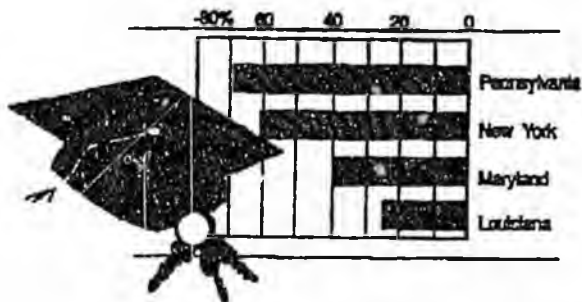


Figure 6.4

State	License Required	Prev. License	Right Rest.	Manual & Test	Parent Part.	Lower BAC	Model Of Prog.	Mandatory Safety Ed.	Minor License	Clean Record	Driver Ed. Req.	Parent Consent
Alabama												
Alaska	yes											yes
Arizona	yes					(.06)						yes
Arkansas	yes											
California	yes	yes		M	yes	(.05)	yes	yes	yes	yes	18	yes
Colorado	yes	yes							yes			yes
Connecticut	yes			M							18	yes
Delaware	yes								yes		18	yes
District of Columbia	yes											yes
Florida	yes		Considering Program						yes			yes
Georgia	yes								yes			yes
Hawaii	yes								yes			(20)
Idaho			day/one						yes			yes
Illinois	yes	yes	11-6	M	yes		yes		yes		18	yes
Indiana	yes	yes					yes		yes		18	yes
Iowa	yes		Considering Program				yes				18	yes
Kansas	yes								yes			(16)
Kentucky	yes											yes
Louisiana	yes		11-5						yes		17	(21)
Maine	yes					(.02)			yes		17	yes
Maryland	yes	yes	12-6	M	yes	(.02)			yes	yes	18	(21)
Massachusetts	yes		1-4		yes				yes		18	yes
Michigan	yes						yes				18	(21)
Minnesota	yes	yes					yes		yes		18	yes
Mississippi	yes								yes			(17)
Missouri	yes											
Montana			Considering Program						yes		18	yes
Nebraska												
Nevada								yes	yes			yes
New Hampshire			Considering Program								18	
New Jersey	yes		night	M								
New Mexico	yes					(.05)			yes		18	yes
New York	yes		9-5						yes		18	yes
North Carolina	yes					(.00)					18	yes
North Dakota												yes
Ohio	yes					(.02)			yes		18	yes
Oklahoma			New Law							yes		(16)
Oregon			Considering Program			(.00)			yes			yes
Pennsylvania	yes	yes	12-5						yes		18	yes
Rhode Island			Considering Program			(.04)			yes		18	yes
South Carolina			Considering Program			yes						(21)
South Dakota												yes
Tennessee												yes
Texas	yes								yes		18	yes
Utah	yes								yes		18	yes
Vermont	yes	yes			yes		yes		yes			yes
Virginia	yes										19	yes
Washington	yes							yes	yes		18	yes
West Virginia	yes	yes							yes		18	yes
Wisconsin	yes				yes	(.00)		yes			18	yes
Wyoming	yes						yes		yes			yes

Figure 6.5

**To interpret the table, the following definitions are provided:**

**Learner's Permit Required** - A learner's permit is required of all new drivers prior to issuance of a provisional or regular driver's license. Such requirement can provide the applicant with supervised daytime driving experience and to develop basic behind-the-wheel skills.

**Provisional Driver's License** - A provisional or similar type driver's license issued to new young drivers prior to full licensure.

**Nighttime Restriction** - A nighttime restriction is applied to all new drivers (or age 15/16) to provide the applicant with a period of supervised driving practice during the hours of greatest hazard.

**Manual and Test** - State driver's license manual or supplemental manual (M) and the knowledge test (T) tailored for young/novice driver license applicants' needs.

**Parent Participation** - State has a program and materials which encourages the parent/guardian, may even be required, to provide supervised behind-the-wheel driving practice to their young/novice driver.

**Lower BAC** - State has established a lower BAC (less than 0.10) for drivers under the State's legal drinking age (age 21) which means loss of license for one year or until age 21, whichever is less.

**Model Driver Improvement Program** - State has a driver control program which provides for quicker intervention for young new novice drivers than the general driver population.

**Mandatory Safety Belt Use** - State law requires all occupants of a motor vehicle being driven by a provisional or other licensed driver to be wearing safety belts.

**Minor Driver License** - State minor (under age 21) driver's license different from adult to facilitate enforcement of drinking age laws.

**Clean Record** - Demonstrated period of safe driving performance prior to issuance of unrestricted or regular State's driver's license.

**Driver Education Required** - Successful completion of a driver education program required prior to issuance of regular State driver's license to young drivers under specified age.

**Parent Consent** - Parent/Guardian consent required prior to licensing an unemancipated minor under age 18; ages in parenthesis indicate a different age of majority for licensing purposes.

Source: An Improved Driver Entry System for Young Novice Drivers, NHTSA, (September 1989).

## Points Often Raised

**A. Why not let an individual with a learner's permit receive a license as soon as he or she can pass the written and road tests?**

Currently available written and road tests are not sufficiently rigorous to test for all of the skills and knowledge required to be a safe driver. The current test principally determines that the novice driver has enough skill to drive around the block. It does not demonstrate that he has the judgment to avoid crashes or the skill for handling driving emergencies.

**B. How long does it take for a young person to learn to drive an automobile?**

To learn basic skills to keep the vehicle on the roadway may require only a short time, but to learn the much more complex skills involved in assuring that the driver can watch out for other vehicles and take effective action to avoid crashes in emergencies requires considerably longer. It is difficult to separate the learning required to develop the specific skills of driving from the maturation and judgment which comes only from increasing age and experience while driving. The risk per mile driven is highest for the very youngest drivers and gradually declines as one ages up to about age 25. What seems clear is that provisional licensing is effective because it applies to those who are both young and inexperienced.

**C. Will not provisional licenses limit the employment opportunities of teenagers?**

Since provisional licenses permit solo driving during the daytime, they should not affect employment for most persons. Where the young person operates a company car at night, special provisions could be made for driving on the job. However, it should be kept in mind that employing novice drivers to drive at nighttime is an increased risk to both employer and employee.

**D. Many adults are poor drivers. Will requiring a parent in the car really help?**

Yes, even the relatively poor adult drivers have considerably more experience than the novice driver, and young people are much less likely to take risks with a parent or guardian in the car.

**E. Is it fair to impose heavier penalties on novice drivers who receive tickets than on adult drivers?**

Yes, it is fair and appropriate since the novice driver should be driving much more carefully than the experienced driver. A novice driver is less able to handle emergencies and should therefore be driving with particular care. Young people who speed or run traffic lights while learning to operate a vehicle and getting sufficient experience to operate it safely are likely to be involved in crashes.

# STATUS INSURANCE INSTITUTE FOR HIGHWAY SAFETY REPORT

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## Slower Graduation to Full Licensing Means Fewer Teenage Deaths

It's easy to get a license to drive in the United States. It's inexpensive, and licensing exams aren't hard to pass. As long as you're at least 16 years old — 15 in some states — you can take to the road with essentially full privileges. In many states, the only other hurdle is passing approved driver training.

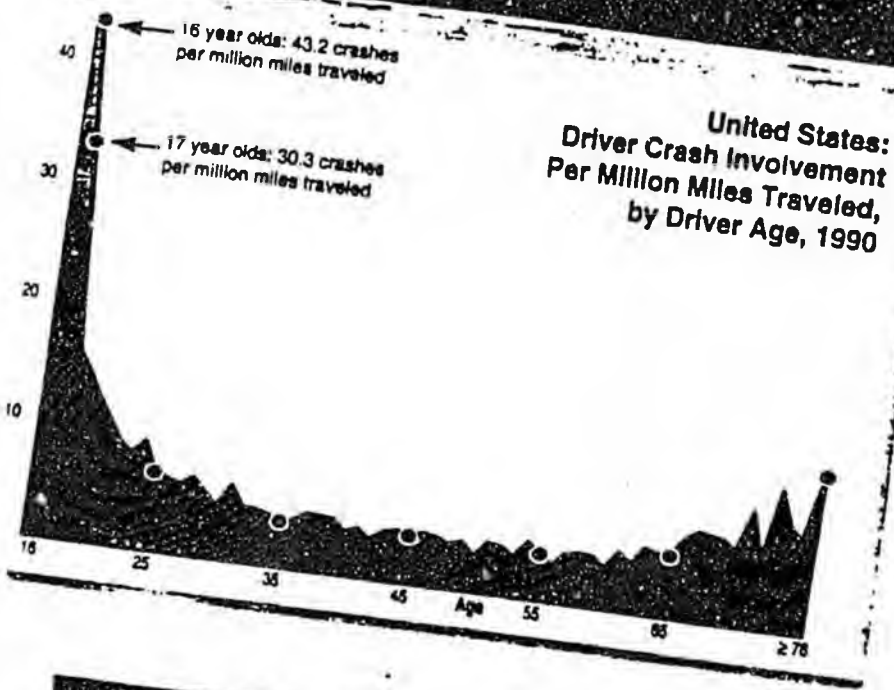
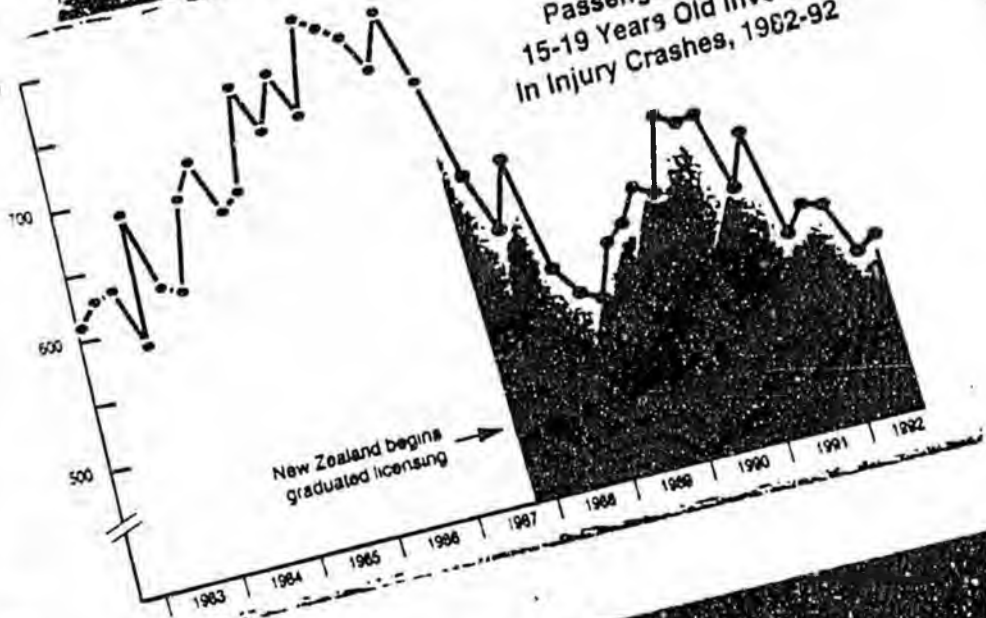
It's somewhat harder to get a license in most European countries, where teenagers have to be 17 or 18 before driving legally. But even where licensing ages are higher than in the United States and requirements are tougher, young drivers are still immature and lack on-the-road experience.

The result is that young drivers in every motorized country constitute a major highway safety problem. They're disproportionately involved in crashes compared with older people. In 1992, teenagers comprised 9 percent of the U.S. population and 13 percent of all motor vehicle deaths. Crash injuries are the leading health problem among 16-19 year olds. They account for about 40 percent of all deaths in this group.

"If society is serious about reducing the young driver problem, it must bite the bullet and modify teenagers' driving through graduated licensing," says Institute Senior Vice President Allan F. Williams. "There's no substitute for on-the-road experience. But restricting the time and manner of driving in stages allows beginning drivers to acquire that experience in lower-risk settings before getting a regular, unrestricted license."

**How Graduated Licensing Works:** The idea is to help beginners learn to drive step by step by controlling their progression toward full driving privileges. Restrictions are lifted gradually and systematically until a

**New Zealand:  
Passenger Car Drivers  
15-19 Years Old Involved  
In Injury Crashes, 1962-92**



Crash involvement among 15-19 year olds went down when New Zealand began graduated licensing (top). In the United States (above), 16-19 year olds had the highest crash rate in 1990 — 20.1 per million miles traveled compared with 5.3 per million for all other ages. Sixteen and 17 year olds had by far the highest rates. Rates for drivers 76 and older were higher than average but much lower than those for teenagers.

driver "graduates" to an unrestricted license. This helps two ways. It ensures that new drivers accumulate behind-the-wheel experience in low-risk settings. It also means drivers are older and maybe more mature by the time they get their regular licenses.

Graduated licensing has already reduced crash deaths and injuries in New Zealand,

where it has been in effect since 1987. In Ontario, Canada, graduated licensing will take effect next month and is under active consideration in several other provinces.

In the United States, the National Highway Traffic Safety Administration has budgeted \$1.2 million over the next two years in incentive grants for states that implement

and evaluate graduated licensing programs. This isn't the first time the agency has endorsed the plan. During the mid-1970s, it developed a model system that was never fully implemented by any state. California and Maryland did adopt weakened versions, and both experienced modest reductions in crash involvement among young drivers.

**Some Progress but Teens Still at Risk:** The young driver problem has improved in recent years. For example, the greatest gains against alcohol-impaired driving during the 1980s were among 16-20 year olds. (See *Status Report*, Vol. 28, No. 13, Nov. 27, 1993.) Still, crash rates among this group remain a lot higher than those of other age groups including the elderly.

Immaturity and lack of driving experience are considered the main reasons for young drivers' high crash rates. The immaturity associated with youth is manifested in risky practices like speeding, following too closely, accelerating rapidly, and maneuvering in a variety of aggressive ways that heighten the likelihood of a crash.

So why not just raise the licensing age? In most of the United States, the minimum age for regular licensure is 16. In some states it's 15, and several states allow restricted licenses at 14 or 15. New Jersey prohibits regular licensure before age 17, and research shows this policy has substantially reduced the combined crash involvement of 16 and 17 year olds, compared with involvement in neighboring states that allow licenses at 16. (See *Status Report*, Vol. 19, No. 1, Jan. 10, 1984.)

Though it's safer to delay licensure until teenagers are older, Williams notes that "it can be difficult, politically, to restrict young people's mobility in the interest of safety." He also points out that raising the licensing age alone doesn't address the need for new drivers to gain on-the-road experience.

"Drivers with some experience have a lower crash risk than drivers who are new to the road," says Herb M. Simpson, executive director of the Traffic Injury Research Foundation of Canada. "Graduated licensing recognizes that the way we license people now isn't the best way. What we do is give them a vision test, a knowledge test, and ask them to drive around the block. Then

we say, 'Here are the keys, go out and drive on a freeway in a snowstorm at night with a car full of people.' And the result is predictable. We've basically created the situation of high risk of a collision." A longtime proponent of graduated licensing, Simpson adds that it "represents an opportunity to try and control some of the risks faced by new drivers without necessarily impinging or infringing on their mobility needs."

**How Programs Compare:** In the United States, there aren't any full-fledged graduated licensing systems, but all states provide for learning periods prior to licensure during which driving must be supervised. Many states grant new drivers probationary or provisional licenses for set time periods.

Simpson describes these two approaches as different from graduated licensing. Probationary license holders are typically allowed full driving privileges except that, during probation, actions like suspension can be imposed more quickly and after fewer violations. Probationary systems use the threat of punishment to encourage people to drive with care, but they do nothing to help new drivers acquire on-the-road experience.

Provisional licensing, Simpson explains, imposes some restrictions on young drivers, usually coupled with the same kinds of penalties associated with probationary systems. Restrictions are lifted after a specified time, in full and all at once, at which point a regular, unrestricted license is granted.

Graduated licensing is different in that drivers progress through a multistage licensing process that's equivalent to receiving a learner's permit, then a provisional or restricted license, and finally a regular license. Although specific driving restrictions may vary among graduated systems, a ban on nighttime driving is an essential feature. Keeping young beginners off the road during the high-risk late-night hours forces them to gain more of their early driving experience during daylight, when increased visibility makes driving less demanding.

Other restrictions apply with graduated licensing. One is a zero or near-zero blood alcohol concentration (BAC) requirement. Beginners must practice driving for a specified time under the supervision of a parent

or adult licensed driver and may be barred from major roads. Sometimes limits are imposed on the number of passengers a beginner may transport because of research showing the majority of teenage passenger deaths occurs in cars driven by other teenagers.

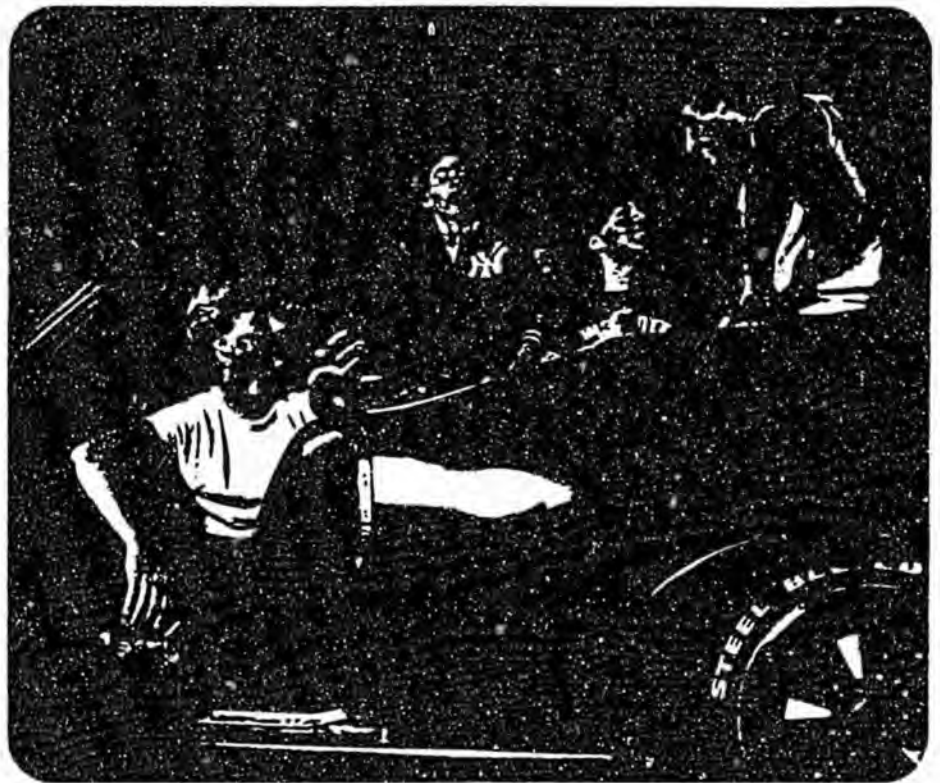
During restricted periods, penalties are usually more severe than those imposed on regular license holders and may trigger special driver improvement actions. Restrictions are lengthened for traffic violations and may sometimes be shortened by completing driver training. In any case, restrictions are lifted gradually as drivers gain experience and pass advanced driving tests.

**New Zealand's Experience:** Graduated licensing has been in effect in New Zealand since 1987 and has reduced crash rates among affected ages. The reduction is particularly noticeable among 15-19 year olds.

BAC of 0.03 percent, compared with 0.08 percent for unrestricted drivers. There's a ban on passengers in vehicles operated by restricted drivers unless they're accompanied by a front-seat passenger who's older than 20 and has had an unrestricted license for more than two years.

**Startup in Canada:** Beginning next month, it will take all new drivers in Ontario a minimum of 20 months to get an unrestricted license, regardless of age. Applicants who are at least 16 years old can practice driving when accompanied by someone with a full license and four years of experience. New drivers must adhere to a zero BAC rule, and they're barred from driving between midnight and 5 a.m. and on multilane, controlled access freeways.

After 12 months (8 with approved driver training) and successful completion of a



The New Zealand plan applies to all new drivers younger than 25. A learner's permit may be obtained at age 15 and then, after at least six months of supervised practice, drivers who pass a road test get an 18-month restricted license (9-month with approved training). Restrictions include a driving curfew from 10 p.m. to 5 a.m. and a maximum

road test, new drivers may progress to the second level — another 12 months when they may drive unsupervised but the zero BAC rule remains in effect. At the end of this second stage, drivers who pass an advanced road test qualify for an unrestricted license.

"It's time to try a similar program in the United States," Williams concludes.