

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 86/2

10253 HOUSE JUDICIARY

98

Explanation of Amendments

Amendment #1: Requested by DMV. Allows DMV to reissue a registration when a co-owner under a business name's registration is to be revoked.

Amendment #2: Increases the fees for reinstatement of a license when a license has been revoked for refusal to submit to a chemical test.

Amendment #3: Puts back in certain minimum sentences initially taken out by the bill, and increases their fines. Mike Ford says we need these because there might be repeat offenders who would not be subject to punishment under AS 28.35.010(n), which is the felony DWI section.

Amendment #4: Fixes a conflict between the bill and existing law on minimum license revocation periods.

- AS 28.35.030 (n) requires permanent revocation for a felony DWI.
- AS 28.35.032(p)(3) refers back to AS 28.15.181(c), which provides the minimum periods of revocation in cases of refusal to submit to a chemical test.

Amendment #5: Increases the period of revocation of a license to "not more than 90 days" from "not less than 45 days" when the person has not been previously convicted and the court has suspended the execution of the sentence of imprisonment.

Gives the DMV discretion in whether or not to restore a permanently revoked driver's license.

Allows DMV access to ASPIN. Has language narrowing who can have this access.

Amendment #6: Changes your diversion program so that a BAC level of .10 is NOT included.

Amendment #7: Allows the suspension of a portion of a mandatory sentence for persons who have successfully complete a therapeutic court program.

Amendment #8: Adds the requirement of proof of paid restitution for those who want their permanently revoked licenses reinstated.

Amendment #9: Adds a new section to the enabler statute, which allows an affirmative defense if the conduct was justified by necessity.

Amendment #10: Allows for a hospital to be an "appropriate place" when the person requires medical treatment.

Amendment #11: Page 7, line 27:
Does the same thing as amendment #4.

Page 18, lines 5-8:

This applies to the misdemeanor portion of the statute:

- includes watercraft in what may be forfeited
- makes forfeiture mandatory if the person has been previously convicted two or more times

Page 25, following line 20:

This section creates a new bill section and applies to refusal to submit to a chemical test:

- changes fines and penalties for refusal to submit to a chemical test
- Also requires vehicle forfeiture if the person has been previously convicted two or more times

- adds watercraft to that which may be forfeited
- adds an additional bill section which requires treatment providers to supply treatment information to the designated parties

Page 25, following line 26:

Creates four new bill sections that applies to refusal to submit to a chemical test.

- the first new section (43) requires treatment as much as possible which incarcerated, and includes language about treatment payment
- the second new section (44) increases maximum amount defendant must pay to \$2000 and defines "appropriate place"
- the third new section (45) applies to felonies. It:
 - changes the look back to 10 years
 - increases fines and penalties
 - permanently revokes their license
 - requires vehicle forfeiture
 - requires vehicle registration to be revoked
- the fourth new section (46) adds new subsections as those added to the DWI provisions in section 33

Page 27, lines 27-31:

Removes previous provision in the bill that required the state to move for forfeiture of the vehicle if there had been a previous conviction. (See top of next page)

Changes the provision to allow the state to move for forfeiture only when the defendant has been previously convicted twice.

Page 28, following line 6:

Creates a new bill section that allows a municipality to adopt an ordinance that may include a fee for the administrative costs incurred by the municipality.

Amendment #12:

Page 1, line 8 following "Code":

Adds new language to the title of the bill

Page 18, line 29, through page 19, line 3:

Deletes language requiring the Dept. of Health & Social Services to establish standards for clinically appropriate treatment.

Page 19, lines 16-18:

Exempts cost of treatment from being included in the subsection when the treatment is not required under the subsection.

Page 28, following line 6:

Redefines "alcohol safety action program" (ASAP)

Page 28, following line 25:

Adds new sections to the bill:

-the first new section (51): adds a new paragraph to the Duties of the Division of Alcoholism and Drug Abuse regarding ASAP.

-the second new section (52): adds an additional requirement to what treatment programs, created by the Division of Alcoholism and Drug Abuse, must include.

-the third new section (53): adds further duties to the Div. of Alcoholism and Drug Abuse in regards to their treatment programs.

Amendment #13A & 13B:

13A:

- Changes the title of the bill
- Puts back in "Intoxicated"
- Includes "hazardous volatile material or substance" as an element of driving while intoxicated
- Changes references to "an alcoholic beverage" back to "intoxicating liquor"

13B:

- Changes the title of the bill
- Adds "inhalant" after "beverage" everywhere it is written "under the influence of an alcoholic beverage or controlled substance"
- Defines "inhalant"

Amendment #14: -Provides the Dept. of Public Safety with discretion in the disposition of forfeited property.
-Renumbers some sections.

Amendment #15: -Changes "execution" of sentence to "imposition" of sentence
-Gives the court five working days to notify DMV of a conviction under Title 28
-Changes your diversion program: requires jail time, 24 hours community service, and changes the BAC level to up to, but not including .10 BAC
-Makes sure diversion does not include a BAC level of .10

-Includes suspended imposition of sentence under the diversion program as part of definition of "previously convicted"

Amendment #16: This is your civil forfeiture amendment.

Margo Knut.

Amendment #17: -Requested by the Criminal Justice Commission.
-Deletes: "appropriate place" does not mean a residential treatment facility or a hospital
-Restores originally deleted language: residential treatment facility, hospital

Amendment #18: -Requested by the Dept. of Corrections
-Delete paragraph (q) on page 22, lines 21-23
-This would delete the provision that a person who fails to satisfy alcoholism treatment requirements imposed by the court is not eligible for good time deductions

Amendment #19: Creates a new section (7) that allows for seizure of registration plates resulting from chemical sobriety tests and refusals to submit to tests

- requires the officer to issue a temporary permit
- the person has seven days to request an administrative review
- the period of revocation shall be the same as the minimum period for driver's license revocations

Replaced w/ #34

Creates a new section (11) that includes the new section for license plate seizures under the administrative review rules

Creates a new section (12) same as above

Creates a new section (13) that allows the DMV to issue a temporary motor vehicle registration

Page 18, line 8

The section requires vehicle forfeiture on the second DWI offense, or vehicle immobilization on the person's property for the period of time their license has been revoked. Requires payment of administrative costs for keeping the vehicle immobilized.

Amendment #20:

Page 4, lines 16-18

Deletes requirement that the DMV shall refuse to register a vehicle if the applicant does not have a valid driver's license, or the privilege to obtain a license has been suspended or revoked

Page 28, Lines 7-12

Deletes section establishing the Alaska Repeat Offender Status System

Page 29, Line 2

Deletes section referring to the Alaska Repeat Offender Status System

Page 29, Line 3

Deletes a further reference to the Alaska Repeat Offender Status System

Amendment #21:

Allows the court to suspend up to \$5000 of the \$10,000 fine

Other Amendments offered:

Amendment #22:
(Berkowitz)

Changes Sec. 6 (Page 4, lines 16-19) to read that the department shall refuse to register a vehicle only when the applicant's license or privilege to obtain a license has been suspended or revoked. ~~Deletes~~

*lines
1-4
already taken
care of in
Am. #20*

reference to a valid driver's license and requirement of using a first middle and last name.

Amendment #23:
(Berkowitz)

Page 7, delete lines 28-31

This would delete the different license revocation period you have in the bill for people who go through the diversion program

Page 8, delete lines 1-2

Deletes language that refers to the diversion program when the court has not suspended the execution of the sentence

Page 8, line 17

Conforms bill with previous deletions made above

Amendment #24:
(Berkowitz)

Page 9, delete lines 7-24

Deletes all of Sec. 15, which allows for limited licenses and ignition interlock device

Amendment #25:
(Berkowitz)

Page 11, delete lines 2-11

Deletes all of Sec. 18, the enabler section

Amendment #26:
(Berkowitz)

Conforms bill with provisions deleted under Amendment #23 (deleting the different license revocation periods for those in the diversion program)

Amendment #27:
(Berkowitz)

Page 16, lines 11-31, following "convicted"

Deletes entire diversion program

Page 17, line 1-4

Continues deletion of diversion program

Amendment #28: Page 17, lines 5-10
(Berkowitz) Deletes a further provision of the diversion program

Amendment #29: Page 17, lines 30-31, following "not"
(Berkowitz) Deletes reference to the diversion program

Amendment #30: Page 19, lines 8-9, following "treated"
(Berkowitz) Deletes limit on the cost of treatment an inmate may be required to pay

This amendment should probably be withdrawn.

Amendment #31: Page 24, delete lines 19-21
(Berkowitz) Deletes Sec. 37 which states: "Nothing in this section shall be construed to restrict searched or seizures under a warrant issued by a judicial officer."

Amendment #32: Page 27, line 28
(Berkowitz) Changes "shall" back to "may"

This amendment was already covered by Amendment #11 and should be withdrawn.

Amendment #33: Page 27, delete lines 19-25
(Berkowitz) Deletes Sec. 45 which allows testing in exigent circumstances without the person's consent

Amendment #34: Page 27, lines 24-25
(Ogan) Changes the exigent circumstance's exception to be allowed only when determining the presence of a controlled substance in the person's urine

Amendment #35:
(Ogan)

Page 11, lines 9-11

Deletes the requirement of an alcoholism
program for a enabler who has been
previously convicted

#36. Same as 19 only add
some co. other language

ADOPTED

AMENDMENT #1

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

- 1 Page 21, line 14, following the first occurrence of "vehicle":
- 2 Insert "or is registered as a co-owner under a business name"

ADOPTED

AMENDMENT #2

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 4(TRA)

1 Page 10, line 28, following "AS 28.35.030":

2 Insert "or 28.35.032"

3

4 Page 10, line 31, following "AS 28.35.030":

5 Insert "or 28.35.032"



ADOPTED

AMENDMENT #3

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 Page 17, lines 14 - 29:

2 Delete

3 "[C) NOT LESS THAN 60 DAYS AND A FINE OF NOT
4 LESS THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY
5 CONVICTED TWICE AND IS NOT SUBJECT TO PUNISHMENT UNDER
6 (n) OF THIS SECTION;

7 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
8 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
9 CONVICTED THREE TIMES AND IS NOT SUBJECT TO PUNISHMENT
10 UNDER (n) OF THIS SECTION;

11 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
12 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
13 CONVICTED FOUR TIMES AND IS NOT SUBJECT TO PUNISHMENT
14 UNDER (n) OF THIS SECTION;

15 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT
16 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
17 CONVICTED MORE THAN FOUR TIMES AND IS NOT SUBJECT TO
18 PUNISHMENT UNDER (n) OF THIS SECTION;]"

19
20 Insert

21 "(C) not less than 60 days and a fine of not less than \$4,000
22 [\$1,000] if the person has been previously convicted twice and is not subject to
23 punishment under (n) of this section;

24 (D) not less than 120 days and a fine of not less than \$5,000

1 [\$2,000] if the person has been previously convicted three times and is not
2 subject to punishment under (n) of this section;

3 (E) not less than 240 days and a fine of not less than \$6,000
4 [\$3,000] if the person has been previously convicted four times and is not
5 subject to punishment under (n) of this section;

6 (F) not less than 360 days and a fine of not less than \$7,000
7 [\$4,000] if the person has been previously convicted more than four times and
8 is not subject to punishment under (n) of this section;"

ADOPTED

AMENDMENT #4

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

- 1 Page 7, line 27:
- 2 Delete "The"
- 3 Insert "Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the
- 4 [THE]"

ADOPTED
AS AMENDED

AMENDMENT #5

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 ~~Page 7, line 28:~~

2 ~~Delete "not less than 45"~~

3 ~~Insert "not more than 90"~~

4

5 Page 22, line 16:

6 Delete "shall"

7 Insert "may"

8

9 Page 23, following line 3:

10 Insert a new subsection to read:

11 "(s) For purposes of this section, the director of the division within the
12 department responsible for administration of this section or a person designated by the
13 director may request and receive criminal justice information available under
14 AS 12.62. In this subsection, "criminal justice information" has the meaning given in
15 AS 12.62.900."

removed from
amendment



ADOPTED

AMENDMENT #4

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

- 1 Page 16, lines 16 -- 17:
- 2 Delete "not more"
- 3 Insert "less"
- 4
- 5 Page 16, line 18:
- 6 Delete "not more"
- 7 Insert "less"
- 8
- 9 Page 16, line 19:
- 10 Delete "not more"
- 11 Insert "less"
- 12
- 13 Page 17, line 7:
- 14 Delete "more than 0.10 percent"
- 15 Insert "0.10 percent or more"
- 16
- 17 Page 17, line 8:
- 18 Delete "more than 100 milligrams"
- 19 Insert "100 milligrams or more"
- 20
- 21 Page 17, line 9:
- 22 Delete "more than 0.10 grams"
- 23 Insert "0.10 grams or more"

*Not needed
because diversion
program deleted
from bill in Amend # 27*



ADOPTED

AMENDMENT #7

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 Page 16, line 9, following "shall":

2 Insert "except as provided under (s) of this section,"

3

4 Page 20, line 19, following "shall":

5 Insert "except as provided under (s) of this section,"

6

7 Page 23, following line 3:

8 insert a new subsection to read:

9 "(s) The court may suspend execution of a portion of the mandatory minimum
10 sentence required under (b)(1) or (n)(1) of this section if the court determines that the
11 person has successfully completed a therapeutic court program."

Amended
by Amendment #37

WITHDRAWN

22-LS0046\S.17
Ford
3/22/01

✓

AMENDMENT #8

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

- 1 Page 22, line 20, following "responsibility":
- 2 Insert "and proof that the person has paid all court-ordered restitution"

ADOPTED

22-LS0046\S.18
Ford
3/23/01

AMENDMENT #9

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 Page 11, line 2:

2 Delete "a new subsection"

3 Insert "new subsections"

4

5 Page 11, following line 11

6 Insert a new subsection to read:

7 "(d) It is an affirmative defense to a violation of (c) of this section that the
8 conduct was justified by necessity."

Later deleted
by Amendment #25

ADOPTED

22-LS0046\S.19
Ford
3/23/01

AMENDMENT #10

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

- 1 Page 20, line 11, following "hospital":
- 2 Insert ", unless the person requires medical treatment"

Deleted by
Amendment #17

Adopted
AS AMENDMENTS

Amended by Amend. #40 21 18
41 17

22-LS0046\S.16
Ford
3/23/01

11EB 31
110A

AMENDMENT #11

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

delete

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Page 7, line 27:

Delete "The"

Insert "Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the

~~THE~~"

Page 18, lines 5 - 8:

Delete

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

Insert

"(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, [OR] aircraft, or watercraft that was used in commission of the offense [TO] be forfeited under AS 28.35.036;

(4) the court shall order that any motor vehicle, aircraft, or watercraft that was used in the commission of the offense be forfeited under AS 28.35.036 if the person has been previously convicted two or more times."

Page 25, following line 20:

Insert new bill sections to read:

"* Sec. 40. AS 28.35.032(g) is amended to read:

1 Amend. #
41
2
3
4 Amend.
5 116B

(g) Upon conviction under this section,

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

(A) not less than 72 consecutive hours and a fine of not less than \$500 [\$250] if the person has not been previously convicted;

(B) not less than 30 days, or not less than 20 days if the person performs 10 days of community service, and a fine of not less than \$3,000 [\$500] if the person has been previously convicted once;

(C) not less than 60 days and a fine of not less than \$4,000 [\$1,000] if the person has been previously convicted twice and is not subject to punishment under (p) of this section;

(D) not less than 120 days and a fine of not less than \$5,000 [\$2,000] if the person has been previously convicted three times and is not subject to punishment under (p) of this section;

(E) not less than 240 days and a fine of not less than \$6,000 [\$3,000] if the person has been previously convicted four times and is not subject to punishment under (p) of this section;

(F) not less than 360 days and a fine of not less than \$7,000 [\$4,000] if the person has been previously convicted more than four times and is not subject to punishment under (p) of this section;

(2) the court may not

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

(B) suspend imposition of sentence;

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

(4) the court shall order that any motor vehicle, aircraft, or watercraft that was used in the commission of the offense be forfeited under AS 28.35.036 if the person has been previously convicted two or more times; and

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

3 * Sec. 41. AS 28.35.032(h) is amended to read:

4 (h) Except as prohibited by federal law or regulation, every provider of
5 treatment programs to which persons are ordered under [(l) OF] this section shall
6 supply the judge, prosecutor, defendant, and an agency involved in the
7 defendant's treatment with information and reports concerning the defendant's
8 past and present assessment, treatment, and progress [ALASKA COURT
9 SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND
10 TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY
11 REQUIRE BY RULE]. Information compiled under this subsection is confidential
12 and may only be used in connection with court proceedings involving the
13 defendant or the defendant's treatment [BY A COURT IN SENTENCING A
14 PERSON CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE
15 COURT IN PREPARING A PRE-SENTENCE REPORT FOR THE USE OF THE
16 COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION]."

delete
see
Amend.
#16A

17
18 Renumber the following bill sections accordingly.

19
20 Page 25, following line 26:

21 Insert new bill sections to read:

22 ** Sec. 43. AS 28.35.032(l) is amended to read:

23 (l) The court shall order a person convicted under this section to satisfy the
24 screening, evaluation, referral, and program requirements of an alcohol safety action
25 program if such a program is available in the community where the person resides, or
26 a private or public treatment facility approved by the division of alcoholism and drug
27 abuse, of the Department of Health and Social Services, under AS 47.37 to make
28 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
29 is convicted under (p) of this section, the court shall order the person to be evaluated
30 as required by this subsection before the court imposes sentence for the offense.
31 Treatment required under this subsection shall occur, as much as possible, when

Same amendment to
Page 19, Line 9

22-LS0046\S.16

1 the person is incarcerated. The cost of treatment required under this subsection
2 shall be paid to the state by the person being treated. The cost of treatment
3 required to be paid to the state under this subsection may not exceed \$2,000. 10,000
4 Upon the person's conviction, the court shall include reimbursement of the cost
5 of treatment as a part of the sentence. Except for reimbursement from a
6 permanent fund dividend as provided in this subsection, payment of the cost of
7 treatment is not required if the court determines the person is indigent. For costs
8 of treatment that are not paid by the person as required by this subsection, the
9 state shall seek reimbursement from the person's permanent fund dividend as
10 provided in AS 43.23.065. In this subsection, "cost of treatment" does not
11 include costs incurred as a result of treatment not required under the treatment
12 standards established under this subsection.

13 * Sec. 44. AS 28.35.032(o) is amended to read:

14 (o) Imprisonment required under (g)(1)(A) or (B) of this section shall be
15 served at a community residential center, or if a community residential center is not
16 available, at another appropriate place determined by the commissioner of corrections.
17 The cost of imprisonment resulting from the sentence imposed under (g)(1) of this
18 section shall be paid to the state by the person being sentenced provided, however, that
19 the cost of imprisonment required to be paid under this subsection may not exceed
20 \$2,000 [\$1,000]. Upon the person's conviction, the court shall include the costs of
21 imprisonment as a part of the judgment of conviction. Except for reimbursement from
22 a permanent fund dividend as provided in this subsection, payment of the cost of
23 imprisonment is not required if the court determines the person is indigent. For costs
24 of imprisonment that are not paid by the person as required by this subsection, the
25 state shall seek reimbursement from the person's permanent fund dividend as provided
26 under AS 43.23.065. While at the community residential center or other appropriate
27 place, a person sentenced under (g)(1)(A) of this section shall perform at least 24
28 hours of community service work and a person sentenced under (g)(1)(B) of this
29 section shall perform at least 160 hours of community service work, as required by the
30 director of the community residential center or other appropriate place. In this
31 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision

1 that is specifically adapted to provide a residence, and includes a correctional center,
2 [RESIDENTIAL TREATMENT FACILITY, HOSPITAL,] halfway house, group
3 home, work farm, work camp, or other place that provides varying levels of
4 restriction; "appropriate place" does not mean a residential treatment facility or a
5 hospital.

#17

6 * Sec. 45. AS 28.35.032(p) is amended to read:

7 (p) A person is guilty of a class C felony if the person is convicted under this
8 section and has been previously convicted two or more times since January 1, 1996,
9 and within the 10 [FIVE] years preceding the date of the present offense. For
10 purposes of determining minimum sentences based on previous convictions, the
11 provisions of AS 28.35.030(o)(4) apply. Upon conviction,

Amend
21+37

12 (1) the court shall impose a fine of not less than \$10,000 [\$5,000] and
13 a minimum sentence of imprisonment of not less than

Amend
#40

14 (A) 240 [120] days if the person has been previously convicted
15 twice;

16 (B) 480 [240] days if the person has been previously convicted
17 three times;

18 (C) two years [360] days if the person has been previously
19 convicted four or more times;

20 (2) the court may not

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

24 (B) suspend imposition of sentence;

25 (3) the court shall permanently revoke the person's driver's license,
26 privilege to drive, or privilege to obtain a license subject to restoration under (r) of
27 this section [UNDER AS 28.15.181(c)];

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

1 (5) the sentence imposed by the court under this subsection shall run
2 consecutively with any other sentence of imprisonment imposed on the person; [AND]

3 (6) the court shall [MAY] also order forfeiture under AS 28.35.036, of
4 the motor vehicle, [OR] aircraft, or watercraft used in the commission of the offense,
5 subject to remission under AS 28.35.037; and

6 (7) shall order the department to revoke the registration for any
7 vehicle registered by the department in the name of the person convicted under
8 this subsection; if a person convicted under this subsection is a registered co-
9 owner of a vehicle, the department shall reissue the vehicle registration and omit
10 the name of the person convicted under this subsection.

11 * Sec. 46. AS 28.35.032 is amended by adding new subsections to read:

12 (r) Upon request, the department shall review a driver's license revocation
13 imposed under (p)(3) of this section and may restore the driver's license if

14 (1) the license has been revoked for a period of at least 10 years;

15 (2) the person has not been convicted of a criminal offense since the
16 license was revoked; and

17 (3) the person provides proof of financial responsibility.

18 (s) A person who fails to satisfy alcoholism treatment requirements imposed
19 by the court or an authorized agency under (l) of this section is not eligible for good
20 time deductions credited under AS 33.20.

21 (t) If a person is convicted under this section and has been previously
22 convicted, the court shall order the person to surrender the registration plates for any
23 vehicle registered or co-registered in the person's name. The person shall surrender
24 the registration plates to the department by the close of the next business day. A
25 person other than the person convicted under this section who applies to register a
26 motor vehicle that has registration plates that were required to be surrendered under
27 this section but that were not surrendered as required by this subsection may not
28 register the vehicle unless the person registering the vehicle provides proof
29 satisfactory to the department that the person did not know that the registration plates
30 were required to be surrendered under this subsection or the person pays twice the
31 applicable registration fee required under AS 28.10.421."

1

2 Renumber the following bill sections accordingly.

3

4 Page 27, lines 27 - 31:

5 Delete "(a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state
6 shall [MAY] move the court to order the forfeiture of the motor vehicle [,] or aircraft
7 involved in the commission of the offense if the convicted person has been previously
8 convicted in this or another jurisdiction [OF MORE THAN ONE OF THE FOLLOWING
9 OFFENSES] or has [MORE THAN ONCE] been previously convicted"

10 Insert "(a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state
11 may move the court to order the forfeiture of the motor vehicle [,] or aircraft involved in the
12 commission of the offense if the convicted person has been previously convicted twice in this
13 or another jurisdiction [OF MORE THAN ONE OF THE FOLLOWING OFFENSES OR
14 HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED]"

15

16 Page 28, following line 6:

17 Insert a new bill section to read:

18 **** Sec. 53.** AS 28.35.038 is amended to read:

19 **Sec. 28.35.038. Municipal impoundment and forfeiturc.** Notwithstanding
20 other provisions in this title, a municipality may adopt an ordinance providing for the
21 impoundment or forfeiture of a motor vehicle [,] or aircraft [,] involved in the
22 commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with
23 elements substantially similar to AS 28.35.030 or 28.35.032. An ordinance adopted
24 under this section may include a fee for the administrative costs incurred by the
25 municipality and is not required to be consistent with this title or regulations adopted
26 under this title." ✓

27

28 Renumber the following bill sections accordingly.

29

30 Page 29, line 2:

31 Delete "Section 47"

1 Insert "Section 54"

2

3 Page 29, line 3:

4 Delete "Section 51"

5 Insert "Section 58"

ADOPTED
AS AMENDED

AMENDMENT #12

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 Page 1, line 8, following "Code;":

2 Insert "relating to alcoholism treatment for offenders convicted of certain offenses
3 involving operating a motor vehicle, aircraft, or watercraft;"

4
5 Page 18, line 29, through page 19, line 3:

6 Delete "The Department of Health and Social Services shall, by regulation,
7 establish standards for clinically appropriate treatment required under this subsection.
8 The treatment standards established under this subsection must include compliance
9 with alcohol or drug treatment, anger management, counseling, parent training, and
10 domestic violence prevention."

11
12 Page 19, lines 16 - 18:

13 Delete "In this subsection, "cost of treatment" does not include costs incurred as
14 a result of treatment not required under the treatment standards established under this
15 subsection."

16 Insert "This subsection does not apply to costs of treatment incurred by a person
17 if the cost is incurred as a result of treatment not required under this subsection."

18
19 Page 28, following line 6:

20 Insert a new bill section to read:

21 "* Sec. 47. AS 28.35.039(2) is amended to read:

22 (2) "alcohol safety action program" means a program for alcohol and
23 substance abuse screening, referral, and monitoring developed and implemented
24 or approved by the Department of Health and Social Services under AS 47.37

1 [DESIGNATED BY THE COMMISSIONER OF HEALTH AND SOCIAL
2 SERVICES AS AN ALCOHOL SAFETY ACTION PROGRAM]."

3

4 Renumber the following bill sections accordingly.

5

6 Page 28, following line 25:

7

Insert new bill sections to read:

8

"* Sec. 51. AS 47.37.040 is amended by adding a new paragraph to read:

9

(20) develop and implement, or designate, in cooperation with other
10 state or local agencies, an alcohol safety action program that provides alcohol and
11 substance abuse screening, referral, and monitoring services to persons ~~21 years of age~~ *delete*
12 ~~or older~~ who have been referred by a court in connection with a charge or conviction
13 of a misdemeanor involving the use of a motor vehicle, aircraft, or watercraft and
14 alcohol or a controlled substance, or referred by an agency of the state with the
15 responsibility for administering motor vehicle laws in connection with a driver's
16 license action involving the use of alcohol or a controlled substance.

17

* Sec. 52. AS 47.37.130(b) is amended to read:

18

(b) The program of the division must include

19

(1) emergency treatment provided by a facility affiliated with or part of
20 the medical service of a general hospital;

21

(2) inpatient treatment;

22

(3) intermediate treatment; [AND]

23

(4) outpatient and follow-up treatment; and

24

(5) standards for alcohol safety action programs; the standards

25

may vary in their requirements and stringency according to the population, price

26

level, remoteness, access to transportation, and availability of ancillary services of

27

the area to be served; a program must meet the applicable standards before it is

28

approved by the division as an alcohol safety action program; the standards

29

required under this paragraph shall be established in a manner that provides

30

protection of the health, safety, and well-being of clients of the affected programs

31

and protection for the affected programs from exposure to malpractice and

1 **liability actions.**

2 * Sec. 53. AS 47.37.130 is amended by adding new subsections to read:

3 (h) The division shall

4 (1) inspect, on a regular basis, approved public and private alcohol
5 safety action programs at reasonable times and in a reasonable manner; and

6 (2) maintain a list of approved public and private alcohol safety action
7 programs.

8 (i) An approved public and private alcohol safety action program shall file
9 with the division on request data, statistics, schedules, and information that the
10 division reasonably requires. An approved program that fails without good cause to
11 furnish any data, statistics, schedules, or information as requested, or files fraudulent
12 returns of them, shall be removed from the list of approved programs.

13 (j) The director, after holding a hearing under the provisions of AS 44.62
14 (Administrative Procedure Act), may suspend, revoke, limit, restrict, or refuse to grant
15 an approval for an alcohol safety action program for failure to meet standards
16 established under (b) of this section."

17
18 Renumber the following bill sections accordingly.

19
20 Page 29, line 2:

21 Delete "Section 47"

22 Insert "Section 48"

23
24 Page 29, line 3:

25 Delete "sec. 51"

26 Insert "sec. 55"

NOT
OFFERED

AMENDMENT #13A

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

- 1 Page 1, line 2:
- 2 Delete "under the influence of an alcoholic beverage or controlled substance"
- 3 Insert "intoxicated"
- 4
- 5 Page 1, lines 7 - 8:
- 6 Delete "relating to the definition of 'controlled substance' for purposes of the
- 7 Alaska Uniform Vehicle Code;"
- 8
- 9 Page 2, lines 15 - 28:
- 10 Delete all material.
- 11
- 12 Renumber the following bill sections accordingly.
- 13
- 14 Page 3, lines 17 - 18:
- 15 Delete "under the influence of an alcoholic beverage or controlled substance"
- 16 Insert "intoxicated"
- 17
- 18 Page 3, line 22, through page 4, line 13:
- 19 Delete all material.
- 20
- 21 Renumber the following bill sections accordingly.
- 22
- 23 Page 4, line 20, through page 6, line 8:
- 24 Delete all material.

1 Renumber the following bill sections accordingly.

2

3 Page 6, lines 15 - 16:

4 Delete "under the influence of an alcoholic beverage or controlled substance
5 [INTOXICATED]"

6 Insert "intoxicated"

7

8 Page 6, line 27, through page 7, line 19:

9 Delete all material.

10

11 Renumber the following bill sections accordingly.

12

13 Page 12, line 14, through page 13, line 8:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 13, lines 14 - 15:

19 Delete "under the influence of an alcoholic beverage or controlled substance
20 [INTOXICATED]"

21 Insert "intoxicated"

22

23 Page 13, lines 17 - 18:

24 Delete "under the influence of an alcoholic beverage or controlled substance
25 [INTOXICATED]"

26 Insert "intoxicated"

27

28 Page 14, line 12, through page 15, line 22:

29 Delete all material.

30

31 Renumber the following bill sections accordingly.

1

2 Page 15, lines 24 - 25:

3 Delete "under the influence of an alcoholic beverage or controlled substance
4 [INTOXICATED]"

5 Insert "intoxicated"

6

7 Page 15, line 27:

8 Delete "an alcoholic beverage"9 Insert "a hazardous volatile material or substance"

10

11 Page 16, lines 3 - 4:

12 Delete "an alcoholic beverage"13 Insert "a hazardous volatile material or substance"

14

15 Page 16, lines 6 - 7:

16 Delete "under the influence of an alcoholic beverage or controlled substance
17 [INTOXICATED]"

18 Insert "intoxicated"

19

20 Page 21, line 18:

21 Delete "REPEALED"

22 Insert "\"hazardous volatile material or substance\" has the meaning given in
23 AS 47.37.270; [REPEALED]"

24

25 Page 21, line 31, through page 22, line 1:

26 Delete "under the influence of an alcoholic beverage or controlled substance
27 [INTOXICATED,]"

28 Insert "intoxicated [,]"

29

30 Page 22, lines 8 - 10:

31 Delete "under the influence of an alcoholic beverage or controlled substance

1 [INTOXICATED]"

2 Insert "intoxicated"

3

4 Page 23, lines 12 - 13:

5 Delete "under the influence of an alcoholic beverage or controlled substance

6 [INTOXICATED]"

7 Insert "intoxicated"

8

9 Page 23, lines 17 - 18:

10 Delete "under the influence of an alcoholic beverage or controlled substance

11 [INTOXICATED]"

12 Insert "intoxicated"

13

14 Page 24, line 22, through page 25, line 26:

15 Delete all material.

16

17 Renumber the following bill sections accordingly.

18

19 Page 25, lines 30 - 31:

20 Delete "under the influence of an alcoholic beverage or controlled substance

21 [INTOXICATED]"

22 Insert "intoxicated"

23

24 Page 26, lines 6 - 7:

25 Delete "an alcoholic beverage [INTOXICATING LIQUOR]"

26 Insert "intoxicating liquor"

27

28 Page 26, lines 13 - 14:

29 Delete "an alcoholic beverage [INTOXICATING LIQUOR]"

30 Insert "intoxicating liquor"

31

1 Page 26, lines 15 - 16:

2 Delete "an alcoholic beverage [INTOXICATING LIQUOR]"

3 Insert "intoxicating liquor"

4

5 Page 26, lines 21 - 22:

6 Delete "an alcoholic beverage [INTOXICATING LIQUOR]"

7 Insert "intoxicating liquor"

8

9 Page 27, lines 6 - 14:

10 Delete all material.

11

12 Renumber the following bill sections accordingly.

13

14 Page 28, lines 2 - 3:

15 Delete "under the influence of an alcoholic beverage or controlled substance
16 [INTOXICATED]"

17 Insert "intoxicated"

18

19 Page 28, lines 13 - 25:

20 Delete all material.

21

22 Renumber the following bill sections accordingly.

23

24 Page 28, line 28:

25 Delete "Section 6"

26 Insert "Section 3"

27

28 Page 29, line 2:

29 Delete "Section 47"

30 Insert "Section 32"

31

- 1 Page 29, line 3:
- 2 Delete "sec. 51"
- 3 Insert "sec. 34"

ADOPTED

AMENDMENT #13B

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 4(TRA)

1 Page 1, line 2, following "**beverage**":

2 Insert "**inhalant**,"

3

4 Page 1, lines 7 - 8:

5 Delete "relating to the definition of 'controlled substance' for purposes of the
6 Alaska Uniform Vehicle Code;"

7

8 Page 2, line 16, following "**beverage**":

9 Insert "**inhalant**,"

10

11 Page 2, line 19, following "**beverage**":

12 Insert "**inhalant**,"

13

14 Page 2, line 22, following "**beverage**":

15 Insert "**inhalant**,"

16

17 Page 3, line 18, following "**beverage**":

18 Insert "**inhalant**,"

19

20 Page 4, line 10, following "**beverage**":

21 Insert "**inhalant**,"

22

23 Page 4, line 12, following "**beverage**":

24 Insert "**inhalant**,"

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Page 4, line 22, following "beverage":

Insert ", inhalant,"

Page 4, line 25, following "beverage":

Insert ", inhalant,"

Page 5, line 2, following "beverage":

Insert ", inhalant,"

Page 6, line 3, following "beverage":

Insert ", inhalant,"

Page 6, line 16, following "beverage":

Insert ", inhalant,"

Page 7, line 7, following "beverage":

Insert ", inhalant,"

Page 7, line 14, following "beverage":

Insert ", inhalant,"

Page 12, line 16, following "beverage":

Insert ", inhalant,"

Page 12, line 18, following "beverage":

Insert ", inhalant,"

Page 12, line 20, following "beverage":

Insert "or inhalant"

1 Page 12, line 27, following "beverage":

2 Insert "inhalant,"

3

4 Page 12, line 30, following "beverage":

5 Insert "inhalant,"

6

7 Page 13, line 5, following "beverage":

8 Insert "inhalant,"

9

10 Page 13, line 14, following "beverage":

11 Insert "inhalant,"

12

13 Page 13, line 18, following "beverage":

14 Insert "inhalant,"

15

16 Page 15, line 9, following "beverage":

17 Insert "inhalant,"

18

19 Page 15, line 13, following "beverage":

20 Insert "inhalant,"

21

22 Page 15, line 25, following "beverage":

23 Insert "inhalant,"

24

25 Page 15, line 28, following "liquor,":

26 Insert "inhalant,"

27

28 Page 16, line 4, following "liquor,":

29 Insert "an inhalant,"

30

31 Page 16, line 7, following "beverage":

1 Insert ", inhalant,"

2

3 Page 21, line 18:

4 Delete "REPEALED"

5 Insert "inhalant" has the meaning given to the "phrase hazardous volatile
6 material or substance" in AS 47.37.270;

7

8 Page 21, line 31, following "beverage":

9 Insert ", inhalant,"

10

11 Page 22, line 9, following "beverage":

12 Insert ", inhalant,"

13

14 Page 23, line 12, following "beverage":

15 Insert ", inhalant,"

16

17 Page 23, line 18, following "beverage":

18 Insert ", inhalant,"

19

20 Page 24, line 24, following "beverage":

21 Insert ", inhalant,"

22

23 Page 25, line 3, following "beverage":

24 Insert ", inhalant,"

25

26 Page 25, line 6, following "beverage":

27 Insert ", inhalant,"

28

29 Page 25, line 11, following "beverage":

30 Insert ", inhalant,"

31

- 1 Page 25, line 19, following "beverage":
2 Insert ", inhalant,"
3
- 4 Page 25, line 23, following "beverage":
5 Insert ", inhalant,"
6
- 7 Page 25, line 31, following "beverage":
8 Insert ", inhalant,"
9
- 10 Page 27, line 9, following "beverage":
11 Insert ", inhalant,"
12
- 13 Page 28, line 2, following "beverage":
14 Insert ", inhalant,"
15
- 16 Page 28, lines 13 - 17:
17 Delete all material.
18
- 19 Renumber the following bill sections accordingly.
20
- 21 Page 28, line 22, following "beverage":
22 Insert ", inhalant,"

ADOPTED

AMENDMENT #14

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 Page 28, following line 6:

2 Insert a new bill section to read:

3 **** Sec. 47. AS 28.35.036(e) is amended to read:**

4 (e) If not released under AS 28.35.037, a motor vehicle, aircraft, or
5 watercraft forfeited under this section may be disposed of at the discretion of the
6 Department of Public Safety. Disposal under this subsection includes, by way of
7 example and not of limitation,

8 (1) sale, as a unit or in parts, including sale at an auction, and the
9 proceeds deposited into the general fund;

10 (2) transfer to a state or municipal law enforcement agency;

11 (3) being declared surplus and transferred to the Department of
12 Administration; or

13 (4) being destroyed."

14

15 Renumber the following bill sections accordingly.

16

17 Page 29, line 2:

18 Delete "Section 47"

19 Insert "Section 48"

20

21 Page 29, line 3:

22 Delete "sec. 51"

23 Insert "sec. 52"

ADOPTED

✓

AMENDMENT #15

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 Page 7, line 29:

2 Delete "execution"

3 Insert "imposition"

4

5 Page 8, line 1:

6 Delete "execution"

7 Insert "imposition"

8

9 Page 8, line 13:

10 Delete "by the end of the following business day"

11 Insert "within five working days"

12

13 Page 16, line 13, through page 17, line 4:

14 Delete

15

16

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"(i) there were no aggravating circumstances associated with the acts upon which the conviction is based and, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 percent but not more than 0.1 percent by weight of alcohol in the person's blood or 80 milligrams but not more than 100 milligrams of alcohol per 100 milliliters of blood, or when there is 0.08 grams but not more than 0.10 grams of alcohol per 210 liters of the person's breath, the court shall suspend the execution of the sentence of imprisonment upon the condition that the person successfully completes one year

all that remains in this amendment the rest deleted by a later amendment #27

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of probation during which the person does not commit an alcohol-related offense or a traffic offense, the person successfully completes the program requirements imposed under (h) of this section, the person pays the cost of treatment required under (h) of this section, the person performs three days of community service, and the person pays the fine imposed by the court under this subparagraph; upon determination by the court that the person has satisfied the terms of probation, the court shall discharge the defendant; however, if the court determines that the terms of probation have not been satisfied within one year from the date on which the terms were set by the court, the court shall require the execution of the sentence of imprisonment determined under this subparagraph;"

Insert

"(i) the person had, as determined by a chemical test taken within four hours after the alleged offense was committed, 0.08 percent but less than 0.10 percent by weight of alcohol in the person's blood or 80 milligrams but less than 100 milligrams of alcohol per 100 milliliters of blood, or if there is 0.08 grams but less than 0.10 grams of alcohol per 210 liters of the person's breath, the court shall suspend imposition of the sentence; the suspended imposition of sentence is conditioned upon the person's serving 72 consecutive hours of imprisonment and successfully completing a period of probation of at least one year during which the person does not commit an alcohol-related offense or a traffic offense, the person's successfully completing the treatment program requirements imposed under (h) of this section, the person's paying the cost of treatment under (h) of this section, the person's performing 24 hours of community service, and the person's paying the fine imposed by the court under this paragraph;"

*Conceptual amendment
add back in aggravator language
ADOPTED*

1 Page 17, line 7:

2 Delete "more than 0.10 percent"

3 Insert "0.10 percent or more"

4

5 Page 17, line 8:

6 Delete "more than 100 milligrams"

7 Insert "100 milligrams or more"

8

9 Page 17, line 9:

10 Delete "more than 0.10 grams"

11 Insert "0.10 grams or more"

12

13 Page 22, line 1, following "section":

14 Insert ", including a conviction in which the person receives a suspended
15 imposition of sentence under (b)(1)(A)(i) of this section,"

Movers
By Rokeberg
Adopted as
Amended

Conceptual amendment to amendment
remove any civil
structure & impoundment
provisions
AMENDMENT #16A

22-LS0046\S.8
Ford
3/21/01

ADOPTED

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG
See Amendments #
4, 11, 12, 17, 21, 40, 41

1 Page 2, following line 28:

2 Insert a new bill section to read:

3 **** Sec. 4.** AS 12.30.020 is amended by adding new subsections to read:

4 (i) In addition to the conditions of release imposed under (b) of this section,
5 the conditions of release established for a person charged with a violation of
6 AS 28.35.030 or 28.35.032 must include at a minimum an order that the person's
7 interest, if any, in the motor vehicle, aircraft, or watercraft alleged in an oral statement
8 by a police officer, criminal complaint, information, or indictment to have been used
9 in the commission of the offense be forfeited if the person does not appear as ordered.
10 This subsection applies to any release before judgment of conviction on a charge of
11 violating AS 28.35.030 or 28.35.032, including any release on the person's own
12 recognizance.

13 (j) The judicial officer who sets the conditions of release for a person arrested
14 for a violation of AS 28.35.030 or 28.35.032 shall, in addition to the conditions of
15 release required under (b) of this section, set a motor vehicle, aircraft, or watercraft
16 return bond for the motor vehicle, aircraft, or watercraft alleged in an oral statement of
17 a police officer or criminal complaint, information, or indictment to have been used in
18 the commission of the offense if the records of the Department of Administration, or
19 the records of an agency with similar responsibilities in another state, show that the
20 person arrested for the offense has any interest in the motor vehicle, aircraft, or
21 watercraft. The purpose of setting a motor vehicle, aircraft, or watercraft return bond
22 is to secure the presence of the motor vehicle, aircraft, or watercraft pending trial and
23 to provide security to be forfeited along with the proceeds of a sale, transfer, or
24 encumbrance if the person's interest in the motor vehicle, aircraft, or watercraft is sold,

1 transferred, or encumbered after the motor vehicle, aircraft, or watercraft has been
2 released pending trial. A person who secures the release of a motor vehicle, aircraft,
3 or watercraft under a motor vehicle, aircraft, or watercraft return bond must return the
4 motor vehicle, aircraft, or watercraft to the custody of the state upon order of the court.
5 If the motor vehicle's, aircraft's, or watercraft's release has been obtained through the
6 posting of a motor vehicle, aircraft, or watercraft return bond and the motor vehicle,
7 aircraft, or watercraft is not returned as required by the court's order after a judgment
8 of conviction, the state may, in addition to obtaining the forfeited return bond funds,
9 seize the motor vehicle, aircraft, or watercraft to implement the impoundment or
10 forfeiture ordered by the court. If the person has not been previously convicted, the
11 judicial officer setting the motor vehicle, aircraft, or watercraft return bond shall order
12 that the requirement of the motor vehicle, aircraft, or watercraft return bond shall
13 automatically expire 30 days after the motor vehicle, aircraft, or watercraft has been
14 seized if the motor vehicle, aircraft, or watercraft has not been released under a motor
15 vehicle, aircraft, or watercraft return bond. The motor vehicle, aircraft, or watercraft
16 return bond set under this subsection may only be posted by a person alleged to have
17 used the motor vehicle, aircraft, or watercraft while violating AS 28.35.030 or
18 28.35.032 or by a person who agrees to return the motor vehicle, aircraft, or watercraft
19 upon order of the court upon penalty of forfeiture of the bond. A motor vehicle,
20 aircraft, or watercraft return bond may only be posted in cash and must be set at a
21 minimum of (1) \$250 if the person has not been previously convicted;(2) \$500 if the
22 person has been previously convicted and the motor vehicle, aircraft, or watercraft is
23 20 years old or older; (3) \$1,000 if the person has been previously convicted and the
24 motor vehicle, aircraft, or watercraft is 15 years old or older but less than 20 years old;
25 (4) \$1,500 if the person has been previously convicted and the motor vehicle, aircraft,
26 or watercraft is 10 years old or older but less than 15 years old; (5) \$2,000 if the
27 person has been previously convicted and the motor vehicle, aircraft, or watercraft is
28 five years old or older but less than 10 years old; and (6) \$2,500 if the person has been
29 previously convicted and the motor vehicle, aircraft, or watercraft is less than five
30 years old. In this subsection, "previously convicted" has the meaning given in
31 AS 28.35.030(o).

1 (k) A motor vehicle, aircraft, or watercraft return bond may be set above the
2 minimum provided under (j) of this section if the motor vehicle, aircraft, or watercraft
3 appears to have unusually high value for its age. A motor vehicle, aircraft, or
4 watercraft for which a bond is required under (j) of this section may not be released
5 pending trial until (1) the person seeking release of the motor vehicle, aircraft, or
6 watercraft has provided proof of ownership of the motor vehicle, aircraft, or watercraft
7 and paid or provided proof of payment of the motor vehicle, aircraft, or watercraft
8 return bond and towing and storage fees, including the \$160 administrative fee to
9 offset the department's processing costs; or (2) the court makes a specific finding that
10 the seizure of the motor vehicle, aircraft, or watercraft was legally unjustified and the
11 specific finding follows a contested hearing or is established by a stipulation between
12 the parties. If a motor vehicle, aircraft, or watercraft has not been impounded for a
13 longer period than the motor vehicle, aircraft, or watercraft would be impounded if the
14 person were convicted, the court may not delete the requirement of the motor vehicle,
15 aircraft, or watercraft return bond or exonerate a posted motor vehicle, aircraft, or
16 watercraft return bond until the motor vehicle, aircraft, or watercraft for which bond
17 has been posted is returned to the department under a court order. In this subsection,
18 "legally unjustified" means there was no reasonable suspicion for the stop or probable
19 cause for the arrest.

20 (l) A motor vehicle, aircraft, or watercraft that is subject to a court order
21 setting a motor vehicle, aircraft, or watercraft return bond under (j) of this section and
22 that has not been released under that order is subject to the disposal provisions of
23 AS 28.10.502(c) if a criminal complaint, information, or indictment is not filed by the
24 date and time of the scheduled arraignment alleging a violation of AS 28.35.030 or
25 28.35.032, or if the count of the criminal complaint, information, or indictment
26 alleging a violation of AS 28.35.030 or 28.35.032 is dismissed or is resolved by the
27 acquittal of the person alleged to have violated AS 28.35.030 or 28.35.032. A motor
28 vehicle, aircraft, or watercraft return bond expires on the date and time of the
29 scheduled arraignment if a criminal complaint, information, or indictment alleging a
30 violation of AS 28.35.030 or 28.35.032 is not filed by the date and time of the
31 scheduled arraignment."

1 Renumber the following bill sections accordingly.

2

3 Page 7, line 27:

4 Delete "The"

5 Insert "Except as provided under AS 28.35.030(n)(3) and AS 28.35.032(p)(3), the

6 [THE]"

7

8 Page 18, lines 5 - 8:

9 Delete

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

14

15 Insert

16 "(3) the court shall revoke the person's driver's license, privilege to
17 drive, or privilege to obtain a license under AS 28.15.181, shall order the motor
18 vehicle, aircraft, or watercraft used in the commission of the offense impounded
19 as required under AS 28.35.036, and may order the motor vehicle, [OR] aircraft, or
20 watercraft that was used in commission of the offense to be forfeited under
21 AS 28.35.037;

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(4) the court shall order that any motor vehicle, aircraft, or
watercraft return bond that has been posted under AS 12.30.020(i) to secure the
release of the motor vehicle, aircraft, or watercraft be forfeited to the state if the
motor vehicle, aircraft, or watercraft subject to the motor vehicle, aircraft, or
watercraft return bond is not returned to the custody of the state within five days
after the sentencing; the court shall order that any motor vehicle, aircraft, or
watercraft return bond posted to secure the release of the motor vehicle, aircraft,
or watercraft be exonerated when the motor vehicle, aircraft, or watercraft has
been returned to the custody of the state; the court may also order that any
proceeds of any sale, transfer, or encumbrance of the motor vehicle, aircraft, or

*Amendment # 4
see also*

1 watercraft be forfeited to the state if the motor vehicle, aircraft, or watercraft has
 2 been sold, transferred, or encumbered while the motor vehicle, aircraft, or
 3 watercraft has been subject to a motor vehicle, aircraft, or watercraft return
 4 bond; a motor vehicle, aircraft, or watercraft ordered impounded under
 5 AS 28.35.036 may not be released until after the person seeking release of the
 6 motor vehicle, aircraft, or watercraft has satisfied the release provisions of
 7 AS 12.30.020(k); any order of impoundment under AS 28.35.036 or forfeiture
 8 under AS 28.35.037 is subject to the rights of lienholders and coowners who are
 9 not the person convicted under this section as those rights are adjudicated in
 10 proceedings under AS 28.35.037; if the state has brought a civil action under
 11 AS 28.35.037 seeking forfeiture as against all those with an interest in the motor
 12 vehicle, aircraft, or watercraft except the person charged with a violation of this
 13 section, that civil action shall provide the sole forum in which lienholders and
 14 coowners who claim an interest in the motor vehicle, aircraft, or watercraft but
 15 are not the person charged with a violation of this section can seek relief; in this
 16 paragraph, "interest in the motor vehicle, aircraft, or watercraft" means a right,
 17 claim, or title to the motor vehicle, aircraft, or watercraft or a legal share in the
 18 motor vehicle, aircraft, or watercraft that the oral statement of a police officer,
 19 complaint, indictment, or information alleges was used in the commission of a
 20 violation of this section [AS 28.35.036]."

21
 22 Page 18, line 29, through page 19, line 3:

23 Delete "The Department of Health and Social Services shall, by regulation,
 24 establish standards for clinically appropriate treatment required under this subsection.
 25 The treatment standards established under this subsection must include compliance
 26 with alcohol or drug treatment, anger management, counseling, parent training, and
 27 domestic violence prevention."

28
 29 Page 21, lines 8 - 10:

30 Delete

31 "(5) shall [MAY] also order forfeiture under AS 28.35.036 of the

See
 AMPL
 #12

1 vehicle, watercraft, or aircraft used in the commission of the offense, subject to
2 remission under AS 28.35.037; and"

3
4 Insert

5 "(5) shall [MAY] also order impoundment [FORFEITURE] under
6 AS 28.35.036 of the motor vehicle, [OR] aircraft, or watercraft used in the
7 commission of the offense, and forfeiture of the motor vehicle, aircraft, or
8 watercraft [SUBJECT TO REMISSION] under AS 28.35.037; and"

9
10 Page 25, following line 20: — *Sec Amendment #11*

11 Insert new bill sections to read:

12 **** Sec. 41.** AS 28.35.032(g) is amended to read:

13 (g) Upon conviction under this section,

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

15 (A) not less than 72 consecutive hours and a fine of not less
16 *Amend. #41* than \$500 [\$250] if the person has not been previously convicted;

17 (B) not less than 30 days, or not less than 20 days *Amend #116B* if the
18 person performs 10 days of community service, and a fine of not less than
19 \$3,000 [\$500] if the person has been previously convicted once;

20 (C) not less than 60 days and a fine of not less than \$4,000
21 [\$1,000] if the person has been previously convicted twice and is not subject to
22 punishment under (p) of this section;

23 (D) not less than 120 days and a fine of not less than \$5,000
24 [\$2,000] if the person has been previously convicted three times and is not
25 subject to punishment under (p) of this section;

26 (E) not less than 240 days and a fine of not less than \$6,000
27 [\$3,000] if the person has been previously convicted four times and is not
28 subject to punishment under (p) of this section;

29 (F) not less than 360 days and a fine of not less than \$7,000
30 [\$4,000] if the person has been previously convicted more than four times and
31 is not subject to punishment under (p) of this section;

1 (2) the court may not

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

5 (B) suspend imposition of sentence;

6 (3) the court shall revoke the person's driver's license, privilege to
7 drive, or privilege to obtain a license under AS 28.15.181, shall order the motor
8 vehicle, aircraft, or watercraft used in the commission of the offense impounded
9 as required under AS 28.35.036, and may order the motor vehicle, [OR] aircraft, or
10 watercraft that was used in commission of the offense be forfeited under
11 AS 28.35.037 [AS 28.35.036]; [AND]

12 (4) the sentence imposed by the court under this subsection shall run
13 consecutively with any other sentence of imprisonment imposed on the person; and

14 (5) the court shall order that any motor vehicle, aircraft, or
15 watercraft return bond that has been posted to secure the release of the motor
16 vehicle, aircraft, or watercraft be forfeited to the state if the motor vehicle,
17 aircraft, or watercraft subject to the motor vehicle, aircraft, or watercraft return
18 bond is not returned to the custody of the state within five days after the
19 sentencing; the court shall order that any motor vehicle, aircraft, or watercraft
20 return bond posted to secure the release of the motor vehicle, aircraft, or
21 watercraft be exonerated when the motor vehicle, aircraft, or watercraft has been
22 returned to the custody of the state; the court may also order that any proceeds
23 of any sale, transfer, or encumbrance of the motor vehicle, aircraft, or watercraft
24 be forfeited to the state if the motor vehicle, aircraft, or watercraft has been sold,
25 transferred, or encumbered while the motor vehicle, aircraft, or watercraft has
26 been subject to a motor vehicle, aircraft, or watercraft return bond; a motor
27 vehicle, aircraft, or watercraft ordered impounded under AS 28.35.036 may not
28 be released until after the person seeking release of the motor vehicle, aircraft, or
29 watercraft has satisfied the release provisions of AS 12.30.020(k); an order of
30 impoundment under AS 28.35.036 or forfeiture under AS 28.35.037 is subject to
31 the rights of lienholders and coowners who are not the person convicted of a

violation of this section as those rights are adjudicated in proceedings under AS 28.35.037; if the state has brought a civil action under AS 28.35.037 seeking impoundment or forfeiture as against all those with an interest in the motor vehicle, aircraft, or watercraft except the person charged with a violation of this section, that civil action shall provide the sole forum in which lienholders and coowners who claim an interest in the motor vehicle, aircraft, or watercraft but are not the person charged with a violation of this section can seek relief; in this paragraph, "interest in the motor vehicle, aircraft, or watercraft" has the meaning given in AS 28.35.030(b)(4).

* Sec. 42. AS 28.35.032(h) is amended to read: — See Amend #11

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under [(1) OF] this section shall supply the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress [ALASKA COURT SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY REQUIRE BY RULE]. Information compiled under this subsection is confidential and may only be used in connection with court proceedings involving the defendant or the defendant's treatment [BY A COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE COURT IN PREPARING A PRE-SENTENCE REPORT FOR THE USE OF THE COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION]."

*Amendment
confirm
also
pg w/ 18
line
18-19
DB CSM 4
(LTC)*

Renumber the following bill sections accordingly.

Page 25, following line 26: — See Amend #11

Insert new bill sections to read:

"* Sec. 44. AS 28.35.032(l) is amended to read:

(l) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action

1 program if such a program is available in the community where the person resides, or
 2 a private or public treatment facility approved by the division of alcoholism and drug
 3 abuse, of the Department of Health and Social Services, under AS 47.37 to make
 4 referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person
 5 is convicted under (p) of this section, the court shall order the person to be evaluated
 6 as required by this subsection before the court imposes sentence for the offense.
 7 Treatment required under this subsection shall occur, as much as possible, when
 8 the person is incarcerated. The cost of treatment required under this subsection
 9 shall be paid to the state by the person being treated. The cost of treatment
 10 required to be paid to the state under this subsection may not exceed \$2,000. 10,000
 11 Upon the person's conviction, the court shall include reimbursement of the cost Amend
 12 of treatment as a part of the sentence. Except for reimbursement from a #11
 13 permanent fund dividend as provided in this subsection, payment of the cost of
 14 treatment is not required if the court determines the person is indigent. For costs
 15 of treatment that are not paid by the person as required by this subsection, the
 16 state shall seek reimbursement from the person's permanent fund dividend as
 17 provided in AS 43.23.065. In this subsection, "cost of treatment" does not
 18 include costs incurred as a result of treatment not required under the treatment
 19 standards established under this subsection.

20 * Sec. 45. AS 28.35.032(o) is amended to read:

21 (o) Imprisonment required under (g)(1)(A) or (B) of this section shall be
 22 served at a community residential center, or if a community residential center is not
 23 available, at another appropriate place determined by the commissioner of corrections.
 24 The cost of imprisonment resulting from the sentence imposed under (g)(1) of this
 25 section shall be paid to the state by the person being sentenced provided, however, that
 26 the cost of imprisonment required to be paid under this subsection may not exceed
 27 \$2,000 [\$1,000]. Upon the person's conviction, the court shall include the costs of
 28 imprisonment as a part of the judgment of conviction. Except for reimbursement from
 29 a permanent fund dividend as provided in this subsection, payment of the cost of
 30 imprisonment is not required if the court determines the person is indigent. For costs
 31 of imprisonment that are not paid by the person as required by this subsection, the

1 state shall seek reimbursement from the person's permanent fund dividend as provided
 2 under AS 43.23.065. While at the community residential center or other appropriate
 3 place, a person sentenced under (g)(1)(A) of this section shall perform at least 24
 4 hours of community service work and a person sentenced under (g)(1)(B) of this
 5 section shall perform at least 160 hours of community service work, as required by the
 6 director of the community residential center or other appropriate place. In this
 7 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision
 8 that is specifically adapted to provide a residence, and includes a correctional center,
 9 [RESIDENTIAL TREATMENT FACILITY, HOSPITAL,] halfway house, group
 10 home, work farm, work camp, or other place that provides varying levels of
 11 restriction: "appropriate place" does not mean a residential treatment facility or a
 12 hospital.

13 * Sec. 46. AS 28.35.032(p) is amended to read: — *Amend #11*

14 (p) A person is guilty of a class C felony if the person is convicted under this
 15 section and has been previously convicted two or more times since January 1, 1996,
 16 and within the 10 [FIVE] years preceding the date of the present offense. For
 17 purposes of determining minimum sentences based on previous convictions, the
 18 provisions of AS 28.35.030(o)(4) apply. Upon conviction,

19 (1) the court shall impose a fine of not less than \$10,000 [\$5,000] and
 20 a minimum sentence of imprisonment of not less than

21 (A) 240 [120] days if the person has been previously convicted
 22 twice;

23 (B) 480 [240] days if the person has been previously convicted
 24 three times;

25 (C) two years [360] days if the person has been previously
 26 convicted four or more times;

27 (2) the court may not

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

31 (B) suspend imposition of sentence;

1 (3) the court shall permanently revoke the person's driver's license,
2 privilege to drive, or privilege to obtain a license subject to restoration under (r) of
3 this section [UNDER AS 28.15.181(c)];

4 (4) the court may order as a condition of probation or parole that the
5 person take a drug, or combination of drugs, intended to prevent consumption of an
6 alcoholic beverage; a condition of probation imposed under this paragraph is in
7 addition to any other condition authorized under another provision of law;

8 (5) the sentence imposed by the court under this subsection shall run
9 consecutively with any other sentence of imprisonment imposed on the person; [AND]

10 (6) the court may also order impoundment [FORFEITURE] under
11 AS 28.35.036, of the motor vehicle, [OR] aircraft, or watercraft used in the
12 commission of the offense, or forfeiture of the motor vehicle, aircraft, or
13 watercraft [SUBJECT TO REMISSION] under AS 28.35.037; and

14 (7) shall order the department to revoke the registration for any
15 vehicle registered by the department in the name of the person convicted under
16 this subsection; if a person convicted under this subsection is a registered co-
17 owner of a vehicle, the department shall reissue the vehicle registration and omit
18 the name of the person convicted under this subsection.

19 * Sec. 47. AS 28.35.032 is amended by adding new subsections to read: - Amend # 11

20 (r) Upon request, the department shall review a driver's license revocation
21 imposed under (p)(3) of this section and may restore the driver's license if

22 (1) the license has been revoked for a period of at least 10 years;

23 (2) the person has not been convicted of a criminal offense since the
24 license was revoked; and

25 (3) the person provides proof of financial responsibility.

26 (s) A person who fails to satisfy alcoholism treatment requirements imposed
27 by the court or an authorized agency under (l) of this section is not eligible for good
28 time deductions credited under AS 33.20.

29 (t) If a person is convicted under this section and has been previously
30 convicted, the court shall order the person to surrender the registration plates for any
31 vehicle registered or co-registered in the person's name. The person shall surrender

1 the registration plates to the department by the close of the next business day. A
2 person other than the person convicted under this section who applies to register a
3 motor vehicle that has registration plates that were required to be surrendered under
4 this section but that were not surrendered as required by this subsection may not
5 register the vehicle unless the person registering the vehicle provides proof
6 satisfactory to the department that the person did not know that the registration plates
7 were required to be surrendered under this subsection or the person pays twice the
8 applicable registration fee required under AS 28.10.421."

9
10 Renumber the following bill sections accordingly.

11
12 Page 27, line 26, through page 28, line 6:

13 Delete all material.

14 Insert new bill sections to read:

15 **"* Sec. 53.** AS 28.35.036 is repealed and reenacted to read:

16 **Sec. 28.35.036. Impoundment of a motor vehicle, aircraft, or watercraft.**

17 (a) A motor vehicle, aircraft, or watercraft may be impounded if the impoundment is
18 incident to a valid arrest by a peace officer and there is probable cause to believe the
19 motor vehicle, aircraft, or watercraft was operated or driven by a person while
20 committing a violation of AS 28.35.030 or 28.35.032. A motor vehicle, aircraft, or
21 watercraft impounded under this subsection may not be held for more than two days,
22 unless a court orders continuation of the impoundment.

23 (b) If a person is convicted under AS 28.35.030 or 28.35.032, the court shall
24 order impoundment of the motor vehicle, aircraft, or watercraft involved in the
25 commission of the offense for a period of at least 30 days.

26 (c) Notwithstanding any other provisions of law, costs of impoundment
27 incurred by the state shall be waived by the state or, if already collected, refunded by
28 the state, if the person operating the motor vehicle, aircraft, or watercraft during the
29 incident that resulted in impoundment is not convicted of a violation of AS 28.35.030
30 or 28.35.032.

31 (d) A motor vehicle, aircraft, or watercraft ordered impounded under this

1 section that is not claimed at the end of the court-ordered period of impoundment may
2 be disposed of under the provisions of this section. If the contents of the motor
3 vehicle, aircraft, or watercraft have not been recovered before disposal, the contents
4 may be disposed of with the motor vehicle, aircraft, or watercraft. Personal property
5 in a motor vehicle, aircraft, or watercraft that is subject to a motor vehicle, aircraft, or
6 watercraft return bond and that has not been released under the motor vehicle, aircraft,
7 or watercraft return bond can be recovered only by the owner of the motor vehicle,
8 aircraft, or watercraft and only upon payment of a fee charged for monitoring the
9 recovery of the personal property. The fee shall be set by contract between the towing
10 and storage contractor and the state if it is not established by the department. The fee
11 shall be recoverable by the owner of the motor vehicle, aircraft, or watercraft if a court
12 makes a specific finding that the seizure of the motor vehicle, aircraft, or watercraft
13 was legally unjustified following a contested hearing or under a stipulation between
14 the parties.

15 (e) A motor vehicle, aircraft, or watercraft that is impounded and that has not
16 been released under (g) of this section shall be held in the custody of the department or
17 a private corporation authorized by the department to retain custody of the motor
18 vehicle, aircraft, or watercraft, subject only to an order of a court of competent
19 jurisdiction. If a motor vehicle, aircraft, or watercraft is impounded under this section,
20 the department or an authorized designee may

21 (1) remove the motor vehicle, aircraft, or watercraft and any contents
22 of the motor vehicle, aircraft, or watercraft to a place designated by the court; or

23 (2) take custody of the motor vehicle, aircraft, or watercraft and any
24 contents of the motor vehicle, aircraft, or watercraft and remove it to an appropriate
25 location for disposition in accordance with law.

26 (f) A private corporation may not make or perform a contract to tow, store, or
27 retain custody of a motor vehicle, aircraft, or watercraft impounded under this section
28 if any of the owners of that private corporation have been convicted of a felony or a
29 crime involving larceny, theft, or receiving and concealing stolen property within 10
30 years before the date of execution of the contract or during the term of the contract. A
31 private corporation may not make or perform a contract to tow, store, or retain custody

1 of a motor vehicle, aircraft, or watercraft seized or impounded under this section if an
2 employee of the private corporation has been convicted of a felony or a crime
3 involving larceny, theft, or receiving and concealing stolen property within five years
4 before the date of execution of the contract or during the term of the contract.

5 (g) Unless a motor vehicle, aircraft, or watercraft is released under an
6 agreement under AS 28.35.037(j), the person seeking possession of a motor vehicle,
7 aircraft, or watercraft impounded by the state must obtain an order authorizing release
8 of the motor vehicle, aircraft, or watercraft. A release may not be granted unless the
9 applicant can satisfy the release provisions established under AS 12.30.020(k).

10 (h) An impoundment may be resolved under AS 28.35.037(j).

11 * **Sec. 54.** AS 28.35.037 is repealed and reenacted to read:

12 **Sec. 28.35.037. Forfeiture of a motor vehicle, aircraft, or**
13 **watercraft.** (a) After a person is convicted of an offense under AS 28.35.030 or
14 28.35.032, the court may order that the person's interest in the motor vehicle, aircraft,
15 or watercraft involved in the commission of the offense be forfeited to the state if the
16 person has any interest in the motor vehicle, aircraft, or watercraft.

17 (b) If forfeiture is ordered under (a) of this section, the court shall schedule a
18 hearing on the matter and shall notify the state and the convicted person of the time
19 and place set for the hearing.

20 (c) In addition to forfeiture in conjunction with a criminal proceeding under
21 (b) of this section, the department shall seek forfeiture of a motor vehicle, aircraft, or
22 watercraft in a civil action or in an administrative action if the person who operates or
23 drives the motor vehicle, aircraft, or watercraft involved in a violation of
24 AS 28.35.030 or 28.35.032 has been previously convicted. After commencement of
25 an administrative forfeiture action, the department shall provide notice as described
26 under (e) and (f) of this section and shall schedule a hearing on the matter. The
27 prevailing party in an administrative forfeiture action shall be awarded the same costs
28 and attorney fees that would be awarded under the Alaska Rules of Civil Procedure.
29 Upon request of the department or a claimant, a civil or administrative action seeking
30 forfeiture of a motor vehicle, aircraft, or watercraft shall be delayed until conclusion of
31 any pending criminal charges arising out of the incident giving rise to the forfeiture

1 proceedings.

2 (d) An administrative hearing required under (c) of this section shall be held
3 before a hearing officer designated by the commissioner. Upon the consent of the
4 administrative director of the state court system, the commissioner may designate a
5 district court judge or a magistrate to serve as the hearing officer. The hearing officer
6 has the authority to

7 (1) administer oaths and affirmations;

8 (2) examine witnesses and take testimony;

9 (3) receive relevant evidence;

10 (4) issue subpoenas, take depositions, or cause depositions or
11 interrogatories to be taken;

12 (5) regulate the course and conduct of the hearing;

13 (6) make a final ruling on the issue.

14 (e) Upon receiving notice from the court of the time and place set for a
15 forfeiture hearing under (b) of this section, or upon initiating a civil action or an
16 administrative forfeiture action under (c) of this section, the state shall provide to
17 every person who has, according to the records of the department, an ownership or
18 security interest in the motor vehicle, aircraft, or watercraft written notice that includes

19 (1) a description of the motor vehicle, aircraft, or watercraft;

20 (2) the time and place of the forfeiture hearing;

21 (3) the legal authority under which the motor vehicle, aircraft, or
22 watercraft may be forfeited;

23 (4) notice of the right to appear to protect the interest in the motor
24 vehicle, aircraft, or watercraft.

25 (f) If the registered owner of the motor vehicle, aircraft, or watercraft subject
26 to a forfeiture action cannot be determined from the records of the department, the
27 state shall publish a notice of the forfeiture action for two consecutive weeks in a
28 newspaper of general circulation in the judicial district in which the forfeiture action is
29 filed. The notice must include a description of the motor vehicle, aircraft, or
30 watercraft, the time and place of impoundment, and directions as to whom to contact
31 for more information.

1 (g) A person who fails to enter an appearance in an administrative forfeiture
2 action within 20 days after receiving written notice required under (e) of this section
3 or 20 days after completion of the notice required under (f) of this section, whichever
4 is later, waives the right to object to the forfeiture action. A party who requests a
5 hearing in a civil forfeiture action shall be deemed to have received notice of the civil
6 action as required by (f) of this section. A party who secures the release of a motor
7 vehicle, aircraft, or watercraft pending a hearing shall accept service of notice of the
8 civil action as a condition of release of the motor vehicle, aircraft, or watercraft. For a
9 regulated lienholder, the requirement of notice of claim and answer is met by filing the
10 information required under (s) of this section and including a statement of the original
11 amount of the loan giving rise to the lien and the current balance of that loan.

12 (h) At a forfeiture hearing required under (b) or (c) of this section, a person
13 other than the defendant who claims an ownership or security interest in the motor
14 vehicle, aircraft, or watercraft shall establish by a preponderance of the evidence that

15 (1) the person has an interest in the motor vehicle, aircraft, or
16 watercraft acquired in good faith;

17 (2) a person other than the claimant was convicted of the offense that
18 resulted in the forfeiture;

19 (3) before parting with possession of the motor vehicle, aircraft, or
20 watercraft the person did not know or have reasonable cause to believe that it would
21 be used in the commission of an offense; and

22 (4) the costs of impoundment have been paid as required under
23 AS 28.35.036.

24 (i) If the state is seeking forfeiture of a motor vehicle, aircraft, or watercraft in
25 a hearing required under (b) or (c) of this section and the person who was in
26 possession of the motor vehicle, aircraft, or watercraft during the commission of the
27 offense was driving with a suspended license in violation of AS 28.15.291 or was the
28 spouse, child, or sibling of a person with an ownership or security interest in the motor
29 vehicle, aircraft, or watercraft, it is rebuttably presumed that the person holding the
30 ownership or security interest did know or have reasonable cause to believe that the
31 motor vehicle, aircraft, or watercraft would be used in the commission of an offense.

1 (j) The state may enter into an agreement with the registered owner or
2 lienholder of a motor vehicle, aircraft, or watercraft to resolve a civil or administrative
3 impound or forfeiture action and permit release of the motor vehicle, aircraft, or
4 watercraft. Any agreement allowed under this subsection must include

5 (1) acceptance by the owner or lienholder of responsibility for meeting
6 the requirements of AS 12.30.020(k)(1);

7 (2) agreement that the owner or lienholder shall prevent the individual
8 arrested for or charged with a violation of AS 28.35.030 or 28.35.032 from operating
9 the motor vehicle, aircraft, or watercraft until properly licensed; and

10 (3) acknowledgment by the owner or lienholder that failure to fulfill an
11 obligation under the agreement may result in forfeiture of the motor vehicle, aircraft,
12 or watercraft at the option of the state; this paragraph does not apply to a regulated
13 lienholder.

14 (k) An acquittal or a conviction of a lesser offense in a criminal proceeding for
15 a violation of AS 28.35.030 or 28.35.032 provides a defense in a civil or
16 administrative proceeding seeking impoundment or forfeiture of the motor vehicle,
17 aircraft, or watercraft if that civil or administrative proceeding is based on the same
18 conduct that forms the basis for the criminal charge.

19 (l) A claimant who is not charged with a violation of AS 28.35.030 or
20 28.35.032 may petition for setting or revision of bail release of a motor vehicle,
21 aircraft, or watercraft before a civil or administrative action is filed. A petition
22 allowed under this subsection shall be made to a court of competent jurisdiction.

23 (m) If the state is seeking forfeiture of a motor vehicle, aircraft, or watercraft
24 under this section and a person meets the burden of proof required under (h) of this
25 section, the court or the department shall release the motor vehicle, aircraft, or
26 watercraft to the person together with title to the motor vehicle, aircraft, or watercraft
27 if

28 (1) the person is an owner or co-owner of the motor vehicle, aircraft,
29 or watercraft;

30 (2) the value of the person's interest exceeds the value of the motor
31 vehicle, aircraft, or watercraft; or

1 (3) the value of the interest is less than the value of the motor vehicle,
2 aircraft, or watercraft and the person agrees to sell the motor vehicle, aircraft, or
3 watercraft and pay the state the value of the offender's interest in the motor vehicle,
4 aircraft, or watercraft.

5 (n) Upon forfeiture of a motor vehicle, aircraft, or watercraft, the court or the
6 department shall require the surrender of the registration and certificate of title of that
7 motor vehicle, aircraft, or watercraft. The registration and certificate of title shall be
8 delivered to the department.

9 (o) A motor vehicle, aircraft, or watercraft forfeited under this section may be
10 disposed of by the department as provided under this subsection. Before disposing of
11 a motor vehicle, aircraft, or watercraft forfeited under this section, the department
12 shall make an inventory of the contents of any motor vehicle, aircraft, or watercraft
13 seized. Property forfeited under this section includes both the motor vehicle, aircraft,
14 or watercraft that is the subject of the forfeiture action and the contents of the motor
15 vehicle, aircraft, or watercraft if those contents have not been recovered before the
16 date of the disposal. A motor vehicle, aircraft, or watercraft forfeited under this
17 section may be disposed of at the discretion of the department including

18 (1) sale of the property at an auction conducted by an auctioneer not
19 employed by the impound contractor where the proceeds are used for payment of all
20 proper expenses of seizure, custody, the costs of the auction, court costs, and attorney
21 fees; if the sale is arranged for by the impound contractor, the department shall receive
22 at least 30 percent of the proceeds of any sale of forfeited motor vehicles, aircraft, or
23 watercraft following deduction for the costs charged by the auctioneer for the auction
24 of the motor vehicles, aircraft, or watercraft regardless of whether the costs of
25 impound and storage exceed the value of the motor vehicles, aircraft, or watercraft
26 sold;

27 (2) taking custody of the property and using it in the enforcement of
28 the municipal and state criminal codes; or

29 (3) destroying the property.

30 (p) Within 30 days after the issuance of the final determination of the
31 department under this section, a person aggrieved by the determination may file an

1 appeal in superior court for judicial review of the department's determination. The
2 judicial review shall be on the record, without taking additional testimony. The court
3 may reverse the department's determination if the court finds that the department
4 misinterpreted the law, acted in an arbitrary and capricious manner, or made a
5 determination unsupported by the evidence in the record.

6 (q) Forfeiture of a motor vehicle, aircraft, or watercraft under this section
7 extinguishes the rights of all claimants or creditors who do not appear at the forfeiture
8 hearing under (b) or (c) of this section.

9 (r) For purposes of this section, convictions both for driving while intoxicated
10 under AS 28.35.030 and for refusal to submit to a chemical test authorized under
11 AS 28.35.031(a) or (g), if arising out of a single transaction and a single arrest, are
12 considered one conviction.

13 (s) A claimant who is a regulated lienholder meets the burden of proof
14 required under (h) of this section by filing with the court a copy of the motor vehicle's,
15 aircraft's, or watercraft's certificate of title or other security instrument reflecting the
16 lien, together with an affidavit stating the amount of the lien and stating that the
17 claimant is a regulated lienholder and was not in possession of the motor vehicle,
18 aircraft, or watercraft at the time of the act that resulted in the seizure of the motor
19 vehicle, aircraft, or watercraft. The presumption provided in (i) of this section does
20 not apply to a regulated lienholder.

21 (t) Nothing in this section shall be construed to place upon a regulated
22 lienholder a duty to inquire into the driving record of any loan applicant or any
23 member of the loan applicant's family or household, and failure to do so may not be
24 used as evidence against the regulated lienholder in any forfeiture proceeding or other
25 civil action. Knowledge from other sources of the loan applicant's driving record is
26 usable only to the extent that it is relevant under (h) of this section.

27 (u) Property subject to the interest of a regulated lienholder whose interest has
28 not been forfeited may not be disposed of as provided in this section except with the
29 consent of the regulated lienholder. A regulated lienholder's interest in a motor
30 vehicle, aircraft, or watercraft may not be subject to forfeiture in any case where

31 (1) the individual who allegedly used the motor vehicle, aircraft, or

1 watercraft in violation of AS 28.35.030 or 28.35.032 is not the person whose dealings
2 with the lienholder gave rise to the lien; or

3 (2) the motor vehicle, aircraft, or watercraft that the individual was
4 driving, operating, or in actual physical control of at the time of the alleged violation
5 was not the motor vehicle, aircraft, or watercraft involved in the offense giving rise to
6 a conviction under AS 28.35.030 or 28.35.032.

7 (v) A claimant may petition the court for sale of a motor vehicle, aircraft, or
8 watercraft before final disposition of court proceedings. The court shall grant a
9 petition for sale upon a finding that the sale is in the best interest of the state.
10 Proceeds from the sale plus interest to the date of final disposition of the court
11 proceedings become the subject of the forfeiture action.

12 (w) Property forfeited and sold at auction under this section shall be sold by an
13 auctioneer approved before the auction by the department. Before the auction, the
14 department must approve in advance the auctioneer's costs or the method for
15 determining the auctioneer's costs. The impound contractor shall provide to the
16 department a notarized copy of the auctioneer's report of the auction signed by the
17 auctioneer. The department shall certify the proper disposal of property forfeited
18 under this section.

19 (x) In a contested forfeiture proceeding concerning a motor vehicle, aircraft,
20 or watercraft titled in the names of more than one owner on the certificate of title, if
21 one of the owners has an interest that is forfeited, the court (1) may, subject to (m) of
22 this section, order the forfeiture of the entire interest of all the owners in a motor
23 vehicle, aircraft, or watercraft that is titled in the names of more than one owner in the
24 disjunctive; (2) shall, subject to (m) of this section, order the forfeiture of the interest
25 of any owner in a motor vehicle, aircraft, or watercraft that is titled in the names of
26 more than one owner in the conjunctive; owners of a motor vehicle, aircraft, or
27 watercraft titled in the names of more than one owner in the conjunctive are rebuttably
28 presumed to own the motor vehicle, aircraft, or watercraft in equal shares. In
29 circumstances described in this subsection, the court shall order that the motor vehicle,
30 aircraft, or watercraft be sold at public auction and further order that the proceeds from
31 the sale of the motor vehicle, aircraft, or watercraft be held by the department; after

1 deduction of the reasonable costs of the auction, an amount of the proceeds of the
 2 auction for the sale of that motor vehicle, aircraft, or watercraft that is equal to the
 3 percentage interest of the owner whose interest has not been forfeited shall be returned
 4 if the owner whose interest has not been forfeited applies to the department within 60
 5 days of the auction; if the owner whose interest has not been forfeited does not apply
 6 within that period, those funds become the property of the state subject to the rights of
 7 any other claimant to those funds.

8 (y) A person who has secured the release of a motor vehicle, aircraft, or
 9 watercraft under a motor vehicle, aircraft, or watercraft return bond under
 10 AS 12.30.020(j) and who wilfully fails to return that motor vehicle, aircraft, or
 11 watercraft when ordered by a court or an administrative hearing officer, is guilty of a
 12 violation. Each day that a motor vehicle, aircraft, or watercraft is not returned
 13 constitutes a separate offense under this subsection.

14 (z) In this section,

15 (1) "legally unjustified" means there was no

16 (A) reasonable suspicion for the stop; or

17 (B) probable cause for the arrest;

18 (2) "previously convicted" has the meaning given in AS 28.35.030(o);

19 (3) "regulated lienholder" means an entity whose lien on the motor
 20 vehicle, aircraft, or watercraft is a result of lending activities that are subject to
 21 regulation by the National Credit Union Administration, the Comptroller of the
 22 Currency, federal banking regulators, the Federal Trade Commission, or the
 23 Department of Community and Economic Development.

24 * Sec. 55. AS 28.35.038 is amended to read: - *Amend # 11*

25 **Sec. 28.35.038. Municipal impoundment and forfeiture.** Notwithstanding
 26 other provisions in this title, a municipality may adopt an ordinance providing for the
 27 impoundment or forfeiture of a motor vehicle [,] or aircraft [,] involved in the
 28 commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with
 29 elements substantially similar to AS 28.35.030 or 28.35.032. An ordinance adopted
 30 under this section **may include a fee for the administrative costs incurred by the**
 31 **municipality and** is not required to be consistent with this title or regulations adopted

1 under this title."

2

3 Renumber the following bill sections accordingly.

4

5 Page 28, line 28:

6 Delete "Section 6"

7 Insert "Section 7"

8

9 Page 29, line 2:

10 Delete "Section 47"

11 Insert "Section 56"

12

13 Page 29, line 3:

14 Delete "Section 51"

15 Insert "Section 60"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 21, 2001

SUBJECT: Impoundment of a motor vehicle - (CSHB 4(TRA))

TO: Representative Norman Rokeberg
Attn: Janet

FROM: Michael F. Ford 
Legislative Counsel

The attached amendment S.8 revises the existing law on impoundment or forfeiture of a motor vehicle used during commission of a driving while intoxicated or failure to take a breath test offense. As you requested, I followed the Anchorage municipal ordinance regarding the impoundment and forfeiture process. The provision allowing impoundment before conviction raises constitutional concerns regarding due process of law. While the police can and should take possession of a vehicle for public safety reasons, the impoundment of a vehicle for up to two days seems to be punitive rather than a matter of public protection. The Alaska Supreme Court has not ruled on this issue, but other courts have criticized the practice of impoundment, except as necessary for public safety reasons. See City of Danville v. Dawson, 528 S.W.2d 687 (Ky. 1973).

Also, while this draft allows the state to proceed directly against the vehicle, aircraft, or watercraft in a civil action, you should note that the Alaska Supreme Court has ruled that the state cannot acquire property through a civil forfeiture action when the property is owned by an innocent third party. In Resek v. State, 706 P.2d 288 (Alaska 1985), the court found that constitutional due process requirements prohibited forfeiture if the third party owner did not commit the offense underlying the forfeiture action and did not consent to or have knowledge of the offense. See also, AS 17.30.110(4)(A). Accordingly, the draft attempts to protect innocent parties in AS 28.35.037(h) and (j).

If you have any further questions please contact me.

MFF:glc
01-254.glc

Attachment

Adopted

Conceptual Amendment

11e B

Sec 41 (Amend 11e) lines 17-19

pg 17 of bill - pg 11-13

Amend 11 pg. 2 lines 5-7

Court has the power to make this election.

~~CA~~

ADOPTED

AMENDMENT #17

OFFERED IN THE HOUSE
TO: CS HB 4 (TRA)

1 Page 20, line 8:

2 Restore deleted language [RESIDENTIAL TREATMENT FACILITY, HOSPITAL]

3

4 Page 20, lines 10-11:

5 Delete new language "appropriate place" does not mean a residential treatment facility

6 or a hospital.

7

requested by
Criminal Justice
Commission

ADOPTED

AMENDMENT #18

OFFERED IN THE HOUSE

TO: CS HB 4 (TRA)

1 Page 22, lines 21-23:

2 Delete new paragraph (q) and renumber the remaining paragraph accordingly.

3

4

5

6

7

8

9 (Suggested by the Department of Corrections because this is already covered by statute and
10 repeating it here would be confusing to the courts and counsel.)

11

MEMORANDUM

ALASKA PUBLIC DEFENDER AGENCY

900 West 6th Avenue, Suite 200
Anchorage, Alaska 99501

Tel: (907) 334-4400
Direct line: 334-4412
Fax: (907) 269-5476
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TO: Janet Seitz, Chief of Staff to Representative Rokeberg
cc: Dean Guaneli, Dept. of Law
Candace Brower, Department of Corrections
FROM: Blair McCune, Deputy Public Defender
RE: HB 4 – Sec. 33 – Loss of good time eligibility
DATE: March 21, 2001

=====

Janet, I was listening to the discussion on HB 4. There was one thing I thought I could clear up since I did some research on it a while ago.

This involves Sec. 33 of the bill on page 22 lines 21-23. This section would add a section (q) to AS 28.35.030 providing that a person who fails to complete treatment would lose his or her good time. "Good time" is time deducted for good behavior while in prison.

Actually, this is already covered by state law. It's hard to follow, so bear with me!

AS 12.55.015(a)(10) says a judge can order a defendant to participate in and comply with treatment programs while incarcerated. (Alcohol treatment is always ordered in DWI's – in my experience.)

AS 12.55.085(b)(3) says that a defendant's probation can be revoked for failure to comply with an order under AS 12.55.015(a)(10).

AS 12.55.100(a) says that a court can order a probationer who is released to participate in and comply with a condition of probation requiring treatment. (This does not apply to good time, but I thought I'd include it anyway.)

AS 33.16.220(a) says that a prisoner's parole can be revoked for failure to comply with an order under AS 12.55.015(a)(10).

AS 33.20.040 allows mandatory release parole to be revoked for violating an AS 33.16 condition. (This only applies to defendant's whose composite sentence is 2 years or more.)

22 AAC 05.400(c)(22), a Department of Corrections regulation, says that refusal or failure to participate in court-ordered treatment is a High-moderate infraction of the prison disciplinary rules. (This applies to any prisoner no matter how long the sentence.)

So, there is already a triple-whammy under state law. If a defendant does not comply with court-ordered treatment under AS 12.55.015(a)(10):

- 1) defendants can lose any probation time the judge gave them;
- 2) defendants can lose their mandatory release parole time; and
- 3) defendants can lose good time in a prison disciplinary proceeding.

Alaska law allows parole time (and most likely probation time) to be taken away in an "anticipatory revocation" even before a prisoner is actually released from jail. Gwalthney v. State, 964 P.2d 1285 (Alaska App. 1998).

These current provisions of state law already act as powerful incentives for prisoners to comply with court-ordered treatment while in custody.

Hope this helps.

MEMORANDUM

ALASKA PUBLIC DEFENDER AGENCY

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e-mail: blair_mccune@admin.state.ak.us

TO: Ms. Janet Seitz, Chief of Staff
Office of Representative Norm Rokeberg

FROM: Blair McCune, Deputy Public Defender

RE: Public Defender Agency's Comments on HB 4 - DUI Legislation.

DATE: March 23, 2001

=====
Introduction

First, we want to say that we appreciate the willingness of Rep. Rokeberg and his staff to give us an opportunity to comment and work on drafts of this bill.

While we do not disagree that Driving Under Influence (DUI) is a serious problem in this state, we do have some disagreements about the way to go about solving the problem.

Alaska was one of the first states to enact a Felony DUI statute. We traditionally have one of the highest rates of incarceration in the country. Alaska already has in place some of the toughest DUI laws in the nation. Although punishment certainly has its place, we feel that we ought to try more in the way of prevention and rehabilitation before increasing the level of Alaska's already high criminal sanctions.

An important part of the answer may lie in effective, court-ordered and supervised treatment for DUI offenders. We agree with other agencies that because the recidivism rate for first-time offenders is relatively low (75-80%); we should concentrate our more expensive, highly structured treatment efforts on offenders with prior DUI's. We're very gratified to learn that of the legislature's interest in Therapeutic Courts as a way of delivering this treatment. We've been cooperating with Rep. Porter and the other criminal justice agencies in his efforts to set up a pilot project for a Therapeutic court in Anchorage and in a rural location like Bethel. (HB 172)

We realize that the pressure is great at present to enact draconian laws with stiff sentences. We hope that you will look at creative alternatives like Therapeutic Courts that have proven success in other states and increasingly in Alaska, too.

What follows is a Section by Section analysis of comments and suggestions we have on the bill.

Sec. 1, page 2, lines 8-9 -- Findings

Although the number of traffic fatalities went up between 1998 and 1999, the overall trend has been down. Traffic fatalities decreased by 32% from 1975 to 1999. Alaska's population increased by 38% in the over the same period.

Sec. 4, page 3 – DUI-related Manslaughter presumptive 7 years

We believe that currently most sentences for most DUI-related manslaughter are seven years or more. However, judges should have the discretion to impose a five year sentence in an appropriate case.

Sec. 15, page 15, lines 19-21 – Ignition Interlock Required

We believe that some discretion should be allowed here. Ignition interlocks may be too expensive for some drivers who could otherwise safely be allowed a limited license. They may not be available in all areas of the state.

Sec. 17, page 10-11 – Reinstatement Fees

We believe that reinstatement fees should be kept at their current levels. HB 4 already includes significant cost increases in fines, forfeitures, and fees. It seems to us that the object of the reinstatement fees should be to cover DMV costs and get a licensed, and insured, driver on the road. Punishment can be imposed in connection with the criminal case.

At this point, you do not want people driving anyway. You want them to get the SR-22 insurance that is required for licensing.

There were over 4500 driving without valid license cases filed in the courts – this is a huge area. Palmer Mat-Su are especially hard hit. The Municipality of Anchorage prosecutor has a diversion program that gives assistance on the red tape of getting a license.

Sec. 18, pages 10-11 – Misdemeanor Offense for Allowing DUI offender to drive

Although we understand the reason for this law, we are concerned about the effect this will have on families. A spouse or family member may be severely co-dependent or abused. This offense may be charged in a situation where we cannot prove duress. A mandatory minimum fine of \$1,000 may create hardship.

Lines 9-11. Co-dependency or other types of treatment may be more useful that

an alcoholism program.

Sec. 27, page 16 and Other Sections -- Increased Fines

Sec. 27, page 16, line 11, and page 17, line 10 increases the mandatory minimum fine to \$500 for .08 first-time offenders and \$1,500 for .10 and over first-time offenders. Sec. 31, page 20, line 19 increases the mandatory minimum Felony DUI fine to \$10,000.

We believe that mandatory minimum fines this high are not appropriate. The judge should have some leeway if an offender needs money for restitution, costs of treatment, etc. Most of our clients will never have the money to pay fines this high.

Sec. 31 – Felony DUI -- Increased Imprisonment

As we said in the introduction above, we believe that Alaska already has among the harshest penalties in the nation. We think we would be better off emphasizing prevention and treatment.

Sec. 31 – Felony DUI – Permanent License Revocation

We do not believe that a permanent (or 10 year) license revocation is a good idea. We do not think that this will add significantly to deterrence. Many people can be trusted to drive if they demonstrate one or two years of continuous sobriety. The courts and DMV should have discretion in this area for people who sober up and turn their lives around.

Sec. 31 – 10 year Look Back

This is an expensive, tough provision. As we've said above, we think money better spent on treatment.

Sec. 31, page 21 (line 7) and Sec. 46, page 28 (line 5) -- Vehicle Forfeiture

These sections require the court to forfeit a vehicle on sentencing in a Felony DUI and require the state to seek forfeiture in every case at sentencing – apparently the judge doesn't have to order it in every case. Property forfeitures are very difficult cases. Motor vehicle forfeiture is a whole, new area for us. It involves property rights of lien holders, co-owners. It can have huge unintended consequences – taking a family's only means of transportation away.

Current law allows forfeiture. We feel it should be discretionary. We have not studied the Anchorage law, but we believe it is an in rem forfeiture that can happen right away – with greater deterrent effect – than weeks or months later.

Section 33, page 22, lines 21-23

We have sent in a memorandum on this section. Good time deductions are subject to forfeiture under existing law.

Sec. 37 Overrule Sosa case

This is not just a technical amendment. It involves policy. Courts often get it right. The Alaska Supreme Court got it right in the Sosa case this section would overrule.

A search warrant is a court order – a correctional or police officer has no choice but to comply. The Supreme Court in Sosa recognized the wisdom of the legislature in enacting the Refusal laws so that police would not have to strap down a highly intoxicated person and try to get a needle in his arm. This is an even more important policy now than it was when it was enacted -- given risk of blood-borne diseases. Instead, the legislature said to arrestees: either you do an Intoximeter test voluntarily or you get a refusal charge with same penalty as DUI.

We believe that the law should stay the way it is. The state can get a search warrant if there is a serious injury or death in the accident. Police stations would have to keep a working Intoximeter machine – but even if the machine is not working, the state can still get a conviction for DUI under “impaired” theory.

Thank you for the opportunity to provide these comments.

NOT OFFERED
replaced by
Mend #36

AMENDMENT #19

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

1 Page 4, following line 19:

2 Insert a new bill section to read:

3 **"* Sec. 7.** AS 28.10 is amended by adding a new section to read:

4 **Sec. 28.10.453. Seizure of registration plates resulting from chemical**
5 **sobriety tests and refusals to submit to tests.** (a) If a law enforcement officer seizes
6 a driver's license under AS 28.15.165, the officer shall also seize the registration plates
7 for the motor vehicle the person was operating and shall deliver the registration plates
8 to the department.

9 (b) The law enforcement officer who seizes registration plates under this
10 section shall

11 (1) issue a temporary permit under which the vehicle may be operated
12 that expires seven days after it is delivered to the person; and

13 (2) give the person written notice that, unless the person, within seven
14 days, requests an administrative review under AS 28.15.166, the department shall
15 suspend the registration for the motor vehicle and retain possession of the motor
16 vehicle registration plates as provided under (d) of this section.

17 (c) Unless the person has obtained a stay of a departmental action under
18 AS 28.15.166, if the chemical test administered under AS 28.33.031(a) or
19 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2) or the
20 person refused to submit to a chemical test authorized under AS 28.33.031(a) or
21 AS 28.35.031(a) or (g), the department shall revoke the registration for the motor
22 vehicle. The department's action takes effect seven days after delivery to the person of
23 the notice required under (b) of this section, and after receipt of a sworn report of a
24 law enforcement officer as described under AS 28.15.165(c).

1 (d) The period of revocation of a motor vehicle registration under this section
2 shall be for the appropriate minimum period for driver's license revocations under
3 AS 28.15.181(c) or court disqualifications under AS 28.33.140. A department hearing
4 officer may grant limited motor vehicle registration privileges to a person whose
5 motor vehicle registration was revoked under this section in accordance with the
6 standards set out in AS 28.15.201 for granting limited driver's license privileges."

7
8 Renumber the following bill sections accordingly.

9
10 Page 6, following line 8:

11 Insert new bill sections to read:

12 **** Sec. 11.** AS 28.15.166(a) is amended to read:

13 (a) A person who has received a notice under AS 28.10.453(b) or
14 AS 28.15.165(a) may make a written request for administrative review of the
15 department's action under AS 28.10.453(c) or AS 28.15.165(c) or for limited motor
16 vehicle registration privileges under AS 28.10.453(d) or for limited license
17 privileges under AS 28.15.165(d). If the person's driver's license has not been
18 previously surrendered to the department, it shall be surrendered to the department at
19 the time the request for review is made.

20 *** Sec. 12.** AS 28.15.166(b) is amended to read:

21 (b) A request for review of the department's action under AS 28.10.453 or
22 AS 28.15.165 shall be made within seven days after receipt of the notice under
23 AS 28.10.453 or AS 28.15.165, or the right to review is waived and the action of the
24 department under AS 28.10.453(c) or AS 28.15.165(c) is final. If a written request for
25 a review is made after expiration of the seven-day period, and if it is accompanied by
26 the applicant's verified statement explaining the failure to make a timely request for a
27 review, the department shall receive and consider the request. If the department finds
28 that the person was unable to make a timely request because of lack of actual notice of
29 the department's action or because of factors of physical incapacity such as
30 hospitalization or incarceration, the department shall waive the period of limitation,
31 reopen the matter, and grant the review request. An initial request for limited license

1 privileges may be made at any time. Subsequent requests for limited license
 2 privileges may not be made unless the applicant demonstrates a significant change in
 3 circumstances.

4 * Sec. 13. AS 28.15.166(c) is amended to read:

5 (c) Upon receipt of a request for review, if it appears that the person holds a
 6 valid driver's license or motor vehicle registration plates and that the driver's license
 7 or motor vehicle registration plates have [HAS] been surrendered, the department
 8 shall issue a temporary driver's permit or motor vehicle registration that is valid until
 9 the scheduled date for the review. A person who has requested a review under this
 10 section may request, and the department may grant for good cause, a delay in the date
 11 of the hearing. If necessary, the department may issue additional temporary permits to
 12 stay the effective date of its action under AS 28.15.165(c) until the final order after the
 13 review is issued."

14
 15 Renumber the following bill sections accordingly.

16
 17 Page 18, line 8, following "AS 28.35.036":

18 Insert ";

19 (4) if the person has been previously convicted, the court shall
 20 order the motor vehicle or aircraft used in the commission of the offense forfeited
 21 under AS 28.35.036 or shall order the vehicle taken to the owner's residence and
 22 immobilized for the period of time that the person's driver's license is revoked;
 23 the court shall also require the person to pay any administrative costs of keeping
 24 the motor vehicle or aircraft immobilized"

25
 26 Page 29, line 2:

27 Delete "Section 47"

28 Insert "Section 51"

29
 30 Page 29, line 3:

31 Delete "sec. 55"

1

Insert "sec. 54"

ADOPTED



AMENDMENT #20

OFFERED IN THE HOUSE
TO: CSHB 4(TRA)

BY REPRESENTATIVE ROKEBERG

- 1 Page 4, lines 16 - 18:
- 2 Delete
- 3 "(1) does not have a valid driver's license and the applicant's license or
- 4 privilege to obtain a license has been suspended or revoked; or
- 5 (2)"
- 6
- 7 Page 28, lines 7 - 12:
- 8 Delete all material.
- 9
- 10 Renumber the following bill sections accordingly.
- 11
- 12 Page 29, line 2:
- 13 Delete all material.
- 14
- 15 Renumber the following bill section accordingly.
- 16
- 17 Page 29, line 3:
- 18 Delete "except as provided in sec. 51 of this Act, this"
- 19 Insert "This"

ADOPTED

AMENDMENT #21

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 4(TRA)

1 Page 20, line 19:

2 Delete "\$10,000 [\$5,000] and"

3 Insert "\$10,000, of which the court may suspend up to \$5,000;

4 (2) shall impose [AND]"

5

6 Page 20, line 27:

7 Delete "(2)"

8 Insert "(3) [(2)]"

9

10 Page 20, line 29:

11 Delete "(1)"

12 Insert "(2) [(1)]"

13

14 Page 21, line 1:

15 Delete "(3)"

16 Insert "(4) [(3)]"

17

18 Page 21, line 4:

19 Delete "(4)"

20 Insert "(5) [(4)]"

21

22 Page 21, line 8:

23 Delete "(5)"

24 Insert "(6) [(5)]"

*changed
by
amend
37*