

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10471 HOUSE TRANSPORTATION

"You could see the whole side of his truck was smashed in," Mork recalled. "He's like, 'Huh, uh, I didn't do anything.'"

According to the criminal complaint, Schug wobbled from the pickup and told police "that he felt a bump, didn't see anything in his mirrors, so he continued."

Tammy Thorn, who was riding on her husband's motorcycle, suffered a torn artery in her chest. In the first days after the accident she was given a 10 percent chance of survival, according to the court document. Friends said she has since pulled through open-heart surgery and has resumed breathing on her own.

"She's able to whisper," friend Jody Doyle said. "Her mother-in-law said she wanted to hold her baby."

Tammy, 27, and Mark, 34, have three children, ages 10, 7 and 3 weeks. Tammy is expected to be hospitalized for a couple months with internal injuries and multiple broken bones. Mark could be in a wheelchair the same length of time. The driver of the second motorcycle, Terry Longoria, 35, suffered internal injuries and multiple fractures, and his passenger, Jerri Romazewski, 30, minor injuries.

To help the Thorns pay their bills and insurance deductible, friends opened two bank accounts in the family's name. Both are at the National Bank of Alaska, under account numbers 1102307084 and 1102284378.

Mork, meanwhile, had swollen knuckles from punching out the pickup's window. He said something long ago should have stopped Schug from driving.

Reporter Karen Aho can be reached at kaho@adn.com or 257-4450.

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Photo courtesy of Matthew Thorn

Tammy and Mark Thorn and their children Kristina, 10, and Cristopher, 7, pose for a family picture after the birth of daughter Sherry Lee three weeks ago. Tammy and Mark Thorn's motorcycle collided with a pickup Saturday that police say was driven by a man with five DWI convictions.



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Web posted Thursday, October 19, 2000

Woman arrested in connection with September death of Unalaska man

UNALASKA (AP) -- A 29-year-old woman is behind bars in connection with the hit-and-run death of an Unalaska man in September.

Alya S. Landt is charged with manslaughter, criminally negligent homicide, tampering with evidence and **drunk driving**. She was arrested Monday in Unalaska following a six-week investigation.

Police said Landt accidentally ran over Robert Shapsnikoff on Sept. 3 after a night of heavy drinking. Landt then allegedly concocted a story to cover up the incident.

According to charging documents, Landt, Shapsnikoff and Innocent "Ty" Dushkin were drinking together at an Unalaska bar. Afterward, Shapsnikoff reportedly walked away from the bar, and Landt and Dushkin left soon afterward in her rental truck.

Police said Landt and Dushkin initially told officers they found Shapsnikoff injured in the road. But Dushkin reportedly changed his story after an autopsy revealed the victim died of injuries consistent with a vehicle accident. Dushkin has not been charged.

Landt was being held Thursday on \$100,000 bond.

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Web posted Thursday, November 16, 2000

Attorney calls drunken driving sentence one of most severe ever

Two fatalities worth 22 years

By DOUG LOSHBAUGH

Peninsula Clarion

A Crown Point man drew 22 years in prison Tuesday for the drunken driving deaths of two prominent Juneau residents and the injury of a third.

Michael Glaser, 44, entered guilty pleas Tuesday in Kenai Superior Court on two counts of second-degree murder and one count of first-degree assault stemming from the April 19 accident that killed Martin John Richard, 50, and Ladd E. Macaulay, 57, and injured Steven Gregory McGee, 49, all of Juneau.

Judge Jonathan Link sentenced **Glaser** to 30 years in prison with 15 years suspended for each murder count and eight years in prison with three years suspended for the assault count. He ordered **Glaser** to serve 10 years for each murder count and three years for the assault count concurrently, and to serve five years for each murder count and two years for the assault count consecutively. That complicated formula amounts to a sentence of 22 years in prison.

However, it appears **Glaser** could be eligible for parole after 14 years, said his attorney, John M. Murtagh. Link also sentenced **Glaser** to 10 years probation.

Glaser originally pleaded not guilty to all three charges. On Tuesday, though, he felt changing his pleas was "the right thing to do," Murtagh said.

"He wanted to accept responsibility for his actions," Murtagh said.

According to court documents, **Glaser** told the victims' families he is "very sorry for what has happened," and he "will never drink again and put (him)self in this position."

Glaser reportedly had a .258 blood-alcohol level, two-and-one-half times the legal limit, at the time of the accident.

Richard, Macaulay and McGee, three state of Alaska employees, were returning to Anchorage in a rented Toyota Camry after visiting peninsula hatcheries. Glaser was southbound on the Seward Highway in an older model Chevrolet crew cab. The pickup crossed the center line at Mile 37.5 Seward Highway, struck the Camry head on, and rolled on its side, trapping Glaser.

The Camry was shoved against a mountainside, trapping the three occupants. Richard and Macaulay were pronounced dead at the scene.

Richard was director of the Division of Investments for the state Department of Community and Economic Development. Macaulay was a loan officer with the division.

McGee and Glaser were injured. Glaser underwent ankle reconstruction and was arrested May 1, following his release from Alaska Regional Hospital in Anchorage.

Murtagh said he argued during Tuesday's sentencing hearing that the mandatory 10-year sentence would be sufficient. Glaser already has been through residential treatment and offered to help Mothers Against Drunk Driving, the Seward Police and other groups teaching about the possible consequences of drunken driving.

"He doesn't need to be in prison because he is a danger to the public or for rehabilitation," Murtagh said. "The only reason to put him in prison is for punishment or to deter the public."

According to court documents, though, John Wolfe, assistant district attorney, said Glaser had a blood alcohol of .247 two hours after the accident, and suggested Glaser's efforts at rehabilitation should be low on the list of criteria considered for sentencing.

"The most important was community condemnation and reaffirmation of societal norms," Wolfe said Wednesday. "The public strongly condemns people who drink and drive, then injure or kill people."

Deterring others from drinking and driving is the next most important consideration, Wolfe said, and a longer sentence might better catch the public's attention. The Legislature recently changed the minimum sentence for second-degree murder from five years to 10. Wolfe argued that Glaser should be sentenced to seven years for the assault, since that involved a deadly weapon.

"My argument was that the sentences should all be consecutive," he said.

The two 10-year minimum sentences plus the seven years for assault would total 27 years.

Murtagh said the sentence **Glaser** did receive is the most severe he is aware of in Alaska for a drunken driving fatality.

"I don't believe Mr. **Glaser** is the most serious offender," he said. "The theory is that people who drink and drive will get the message. I think that is a very tough use of anyone's life."

He said he has not yet seen Link's written judgment, and **Glaser** has not yet decided whether to appeal the sentence.

"If the sentence leads people not to drink and drive, it might be appropriate, but that's always speculative," Murtagh said.

Wolfe said **Glaser** is among the first to be sentenced under the recent changes to the law. **Glaser** made a bad decision and was well aware of the potential consequences. **Glaser** took two lives and hurt several others, he said.

Peninsula Clarion staff and The Associated Press contributed to this story.

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Legislature on right road with drunken-driving laws

Without sounding preachy, it is important to acknowledge and endorse attempts in the Alaska Legislature to toughen the state's drunken driving laws.

Barely a generation ago, drinking and driving bore the imprimatur of social acceptance – as long as no one got hurt. The problem was, people kept getting hurt. With more people drinking and more people driving as the U.S. population surged after World War II, more were killed or injured because of those who followed socially acceptable practices with little consideration of the consequences.

How do we know that drunken driving was socially acceptable?

By the mild penalties imposed on offenders in general and repeat offenders in particular.

Far too often and for far too long, drunken driving was excused as a boys-will-be-boys exercise. Asking a man to give up his car keys even when he was falling-down drunk was considered an affront to his masculinity. If fewer women were drinking and driving in the years immediately after World War II, the feminist movement and increasing numbers of women in the workforce helped eliminate gender distinctions about alcohol consumption.

Everybody played; everybody lost.

Still, judges, jurors, prosecutors and defendants played a wink-wink game of pretending to impose penalties on people who pretended to have learned a lesson.

Inevitably, survivor-victims and the relatives and friends of those who did not survive demanded an end to wink-wink justice.

Like smoking or smoking in public places, getting drunk and driving drunk have had society's full attention for a while.

Tolerance has declined, but a segment of the Legislature believes there is more to be done in the name of involuntary social responsibility.

We favor the move to make it more difficult for offenders to become repeat offenders. Removing some of the spontaneous opportunities whereby offenders can purchase alcohol is a start. It is right that they should be required to produce distinctive identification that tips off a retail clerk to a drunken driving history.

Those who purchase alcohol for someone prohibited from buying it rightfully should be doing so at some legal risk to themselves.

And, just as citizens may lose driving, hunting, fishing and voting privileges based on criminal behavior, it is not unreasonable to prohibit convicted drunk drivers from consuming alcohol for a specified period of time. Tough to enforce, but not unreasonable.

Lowering the legal threshold for intoxication from 0.10 blood-alcohol content to 0.08 is a must. To refuse is stubborn folly that will cost Alaska a bushel of federal highway dollars.

Raising the cost of drinking has been proposed and also must be considered.

Consideration and dollars also should be given for alcohol-related education.

Alcohol remains a favorite mood modifier. It still slows reflexes. As with so much else in life, people don't always know when to quit.

Teens need to have access to information about alcohol's physical effects. The information needs to be presented in an unbiased manner – without sounding preachy, as we said from the top.

There is a need as well for educating those who may have

22 JAN 2001

DWI legislation

Jan. 18, 2001

To the editor:

Legislators wishing to toughen the stance against drunk drivers should tweak the existing laws before enacting new ones that will have little or no deterrent effect.

If I understand correctly three DWI's in five years qualifies you for a felony DWI. A dedicated drunk driver can space out his/her convictions every two years and rack up as many as 20 or so DWI's over a lifetime, with none of them being a felony.

Second DWI convictions average 15 days in jail and \$500-1,500 in fines. This plus a chunk of the lawyer's fee can be covered by a single year's dividend so how much of a deterrent can it be? The third conviction and every conviction after that should be a felony with the fine and mandatory minimum sentence doubled each time until a lesson has been learned or we never see the offender again.

Giving people who have demonstrated a total disregard for the consequences and penalties for drunk driving a break of any kind for avoiding detection for a set period of time is ridiculous. Toughen this portion of the law and give our local lawyers fewer repeat offenders to defend and fewer ambulances to chase.

Matt Kennebec
Fairbanks

Anchorage Daily News 23 Jan 2001

**Pick up your phones and pens a join
the battle against drunken driving**

Alaskans, our state Legislature is in Juneau for the 2001 session. If you are interested in getting drunken drivers off Alaska's roads and highways, please call your representatives and senators and demand a change in state laws concerning drunken driving. The present laws are not working. If we are going to stop drunken drivers, the punishment has to be severe enough to get their attention, severe enough that a person will think about it and not do it.

I am going to call my senator and representative and ask for zero tolerance, 18 months in jail, loss of license for five years, a \$3,000 fine and loss of vehicle. If a drunken driving accident results in death, the charge against the drunken driver should be second-degree murder. If you think this punishment is too severe, then you have not suffered the loss of a loved one because of drunken driving.

On July 12, a little after 5 p.m., I lost two grandsons, 11 and 15 years old, to a drunken driver on the new toll road between Whittier and Portage. As I lay in the hospital after the accident, going over and over it in my mind, the one thing that stood out so clearly was that every drunken driving accident is 100 percent preventable.

It is up to each person who drinks to decide whether to drive or not to drive. If he or she chooses to drive, he or she also chooses the consequences of the decision. Being drunk is no excuse!

— Dave Glasen
Tatitlek

Anchorage Police responded to a van rollover at Mile 9 of Eagle River Road on Monday afternoon. Nobody was injured. Police had to close the road for about an hour until the wreck was removed. The accident was one of at least 20 caused by icy roads this past week. More than 50 "vehicles in distress" were also reported. (See page 5.)

Local legislators get an earful

Citizens want attention given to schools, roads

By JODI STEPHENS
Alaska Star

The state exit exam, a new high school, drunk driving and local service districts were on the minds of 15 residents attending Saturday's town hall meeting with Chugiak-Eagle River legislators.

Sen. Randy Phillips and Reps. Peter Kott and Fred Dyson came in person, while Rep. Vic Kohring took part via speaker phone from Juneau. Sen. Rick Halford was in Washington, D.C., for the presidential inauguration.

On the topic of high school exit exams, Kott said he favors a delay in implementing the tests, now set to face all seniors in spring 2002. "I'm just not sure how long we should delay it. Four years? Or is two years enough?"

Dyson took an opposing view. "A lot of people who are lobbying for a delay have a dog in the fight. I'm not sure I'm going to learn a lot more hearing from the professional teachers lobby." He quoted

Commissioner of Education Shirley Holloway as stating, "There's 60 or 70 schools out there who know they haven't been doing the job, and they're embarrassed about the figures coming out in the light."

Audience member Gail Dial urged adults to take the sample exam on the Internet. Referring to the language sections, she said, "The writing section is not that complicated. If kids can't handle that, we're doing them a real disservice. I think you really shouldn't have a diploma if you can't pass that test." However, she added, "maybe the math part is too hard; not everyone is going to be able to do advanced geometry or advanced algebra."

Judith Fetherolf took a harder line. "Algebra should be a minimum for math standards," she said. "Without a certain level of skills, you're going to have a hard time finding a job to support yourself. There aren't alternatives to college anymore."

Fetherolf's daughter Jackie, a 1998 Chugiak High School graduate, spoke of her own experience. "It's really easy to graduate. You're encouraged not to take hard classes ... You shouldn't lower the standards so everyone can graduate."

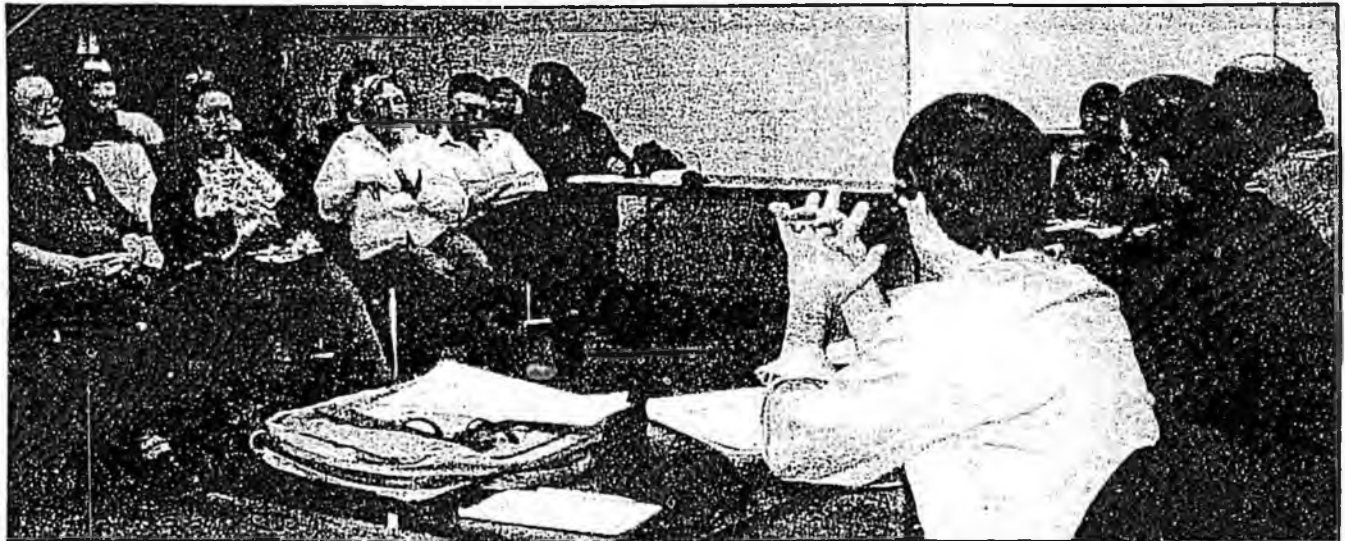
"Whether or not we continue the testing, we have to identify the weaknesses in our schools," Dyson said, adding that he'd like more comments from parents, especially on how to make the tests fair to disabled students.

The subject of drunk driving also brought lengthy discussion. "The number of people uninsured in this state is enormous," said Fetherolf, whose daughter's car was hit by a drunk driver last July and who now faces a \$60,000 lien to pay medical expenses for a badly injured passenger. "You're looking at the state cost but you're not looking at the overall costs to the people of this state," she told the legislators.

Kott said he's introduced legislation to reduce Alaska's legal blood alcohol limit from the present .1 to .08, explaining that the lower standard is a federal mandate without which Alaska stands to lose \$7.5 million in 2004. Kott said his House Bill 17 may be rolled into an omnibus bill by Rep. Norm Rokeberg (R-Anchorage), which is working its way through the House.

On the subject of road projects, Sen. Randy
See EARFUL, Page 17

Alaska Star 25 Jan 2001



STAR PHOTO BY JODI STEPHENS

Sen. Randy Phillips, Rep. Pete Kott and Rep. Fred Dyson listen as local road board member Gail Dial makes a point about service areas at the Saturday town hall meeting.

EARFUL:

Continued from Page 1

Phillips expressed frustration that Eagle River priorities are constantly losing funding to Anchorage projects that run over budget or that are deemed more important. "I'm coming up with some legislation to deal with that. If it says No. 1 or 2 (on the city's funding list), it's going to get done," Phillips said.

The need to protect local service districts, which provide road maintenance, parks programs and fire protection, also brought heated comments — all in favor of HB 13, a bill sponsored by Rep. Con Bunde (R-Anchorage). Similar to a measure passed last year but vetoed by the governor, the bill aims to prevent boroughs and municipalities from taking over limited service areas formed, and paid for, by local voters.

Bunde's substitute bill adds volunteer fire departments to the list of service districts that may not be abolished, amended or merged without a majority vote of the people affected.

Chugiak Volunteer Fire Department assistant chief Bruce Bartley said the bill would ensure that cities "can't do an end run around it, dissolve a service area and recreate it." Such moves typically mean higher rates and less service within the former district, he said. During his 18 years with CVFD, he said, the push to professionalize the Chugiak force "has come and gone," with the latest attempt being to take over emergency medical services.

Phillips asked interested audience members to keep

tabs on the legislation and "make very sure which draft of the bill you want. We went through this drill last year. If you have any objections, let us know what the pitfalls are."

The budgets for local parks and roads also came in for debate, with Gail Dial saying she and fellow road board members "are never allowed to see the whole (road) budget, just what our contractor's costs are. We have no idea how much money we've got or where it's going."

Anchorage Assembly member Anna Fairclough said she has asked municipal finance officer Kate Giard to research Chugiak-Eagle River property tax assessments and how much goes to parks and roads, and report to local board members in March.

As the discussion turned to the need for a new high school, Fairclough urged legislators to obtain a 70/30 match for the project, having the state pay 70 percent so voters would only have to approve a \$12 million bond this spring. "If we'd had 2,400 more votes, we could have passed it last year," Fairclough said, referring to a \$42 million bond that narrowly failed last April. "People realize that Chugiak-Eagle River has been shortchanged."

Phillips stopped short of promising state money for the project, but said, "The high school is going to be my No. 1 priority this session."

Future public meetings with local legislators are set for Feb. 17, March 3 and April 7.

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Taking away the keys

February 02, 2001

In May 1998 the city of Fairbanks began seizing vehicles from drunk drivers.

In addition to the fines and other drunk driving penalties mandated by state law, the city's ordinance provides for impounding vehicles used by offenders for a minimum of 30 days.

The most recent statistics available show 870 vehicles have been impounded as a result of individuals caught driving while intoxicated. If first-time offenders are involved, or 10 years has passed since the driver's last DWI conviction, those cars and trucks sit parked for a month, if not in an official impoundment yard than in private storage facilities approved by the city. If nothing else, these seizures idled the hundreds of vehicles used by drunk drivers for weeks at a time, hopefully giving drivers inconvenienced in this manner a sobering lesson.

The city ordinance takes a bigger bite from repeat offenders.

If the owner was operating the vehicle at the time of the repeat offense, if he or she was present in the vehicle when the violation occurred, or can be otherwise proven to have been aware that a drunk with a DWI conviction, anywhere in the country, in the last decade was at the wheel, Fairbanks tough policy directs the city to pursue forfeiture of the vehicle.

The local forfeiture ordinance has resulted in the forced auction of 72 vehicles to date, with another 12 "ready for sale," according to Connie Martin, the legal assistant employed on a part-time basis to run the city's program.

In cases where the vehicle involved in a DWI arrest is owned by someone other than the driver, Martin notes, the city gives the innocent party the option of reclaiming their vehicle following impoundment. The cost of such redemptions generally runs between \$200-\$260, depending upon the progress of the legal paperwork.

The state also has a similar law on the books providing for seizure and forfeiture of vehicles from repeat drunk drivers. There is one whopping difference: vehicle forfeiture is an option for state prosecutors, rather than a mandate.

House Bill 39, introduced at the opening of the session by Rep. Pete Kott, R-Eagle River, would have, among other things, changed that policy, replacing the word "may" in the state's vehicle forfeiture law with "shall."

In committee this week HB 39's forfeiture provision was dropped as too expensive.

Every lawmaker should prudently address the costs associated with proposed legislation. In this instance, however, Fairbanks' experience suggests the modest cost of pursuing vehicle forfeitures amounts to a solid investment against drunk driving.

That's the view you'll hear from Martin, the paralegal who handles, on a less-than-full-time basis, the vehicle seizure program in Alaska's second largest city.

"In some cases it might cost a little more than the vehicle is worth, but this program isn't about making money," she said. "It's about getting those drivers off the street."

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**Money is no object; Alaskans
are fed up with drunk drivers**

Wonderful! Rep. Pete Kott introduces a reasonable measure to address the absurd DWI problem in our state, then he finds out that it would actually cost money to implement, so he

*What price
can you put
on a dead
wife?*

waters it down ("Kott trims costly parts from drunken driving bill," Feb. 3). Amazing. I always thought this was one area that Republicans were good at ... you know, law and order stuff.

The state Legislature needs to address the carnage wrought by drunken drivers, no matter what the cost. What price can you put on a dead wife, husband or child? We need representatives who actually "represent" the will of the people, and I think the vast majority of citizens in Alaska are fed up with drunken drivers.

— Doug Brown
Anchorage

Anchorage Daily News
10 Feb 2001

State traffic accidents up 8.8 percent in 1999

■ *January, February are most dangerous months in Juneau*

By ANN CHANDONNET
THE JUNEAU EMPIRE

A report recently issued by the Alaska Department of Transportation and Public Facilities shows traffic accidents in the state increased significantly in 1999.

According to "1999 Alaska Traffic Accidents," there were 14,691 traffic accidents that calendar year, an increase of 8.8 percent over 1998. Twenty-eight percent of the accidents resulted in injuries; 0.5 percent resulted in fatal injuries (77 victims).

Thirty-four of those 77 died in accidents that were classified as alcohol- or drug-related. Twenty-nine of them might have survived had they been wearing seatbelts or using other safety equipment.

The percentage of accidents involving either injuries or fatalities increased in four of the eight largest boroughs in 1999: Juneau, Mat-Su, Kodiak and the Kenai Peninsula. The fatalities in Alaska are slightly below the fatalities per million licensed drivers in the entire United States.

The most prevalent type of collision in Alaska was the angle colli-

sion, a crash type associated with turning, passing and failure to yield situations. The second most prevalent was the rear end collision, typical of situations involving unsafe speed and driver inattention.

New Year's weekend was the most dangerous time to drive, followed closely by Thanksgiving. December, January and February were the most accident-prone months. Most fatalities occurred between 2 and 3:59 a.m. and between 8 and 9:59 p.m.

In the greater Juneau area in 1999, according to the report, 961 people were injured in vehicle accidents, 17 of them seriously. Two died.

Juneau had most of its accidents in the months of January and February; the least in April and August. Statewide, accidents happened less under rainy conditions than under cloudy and clear conditions.

Property-damage-only accidents were unchanged in Juneau, but total accidents increased for 1999 due to higher numbers of injury and fatal accidents.

Ann Chandonnet can be reached at achandonnet@juneauempire.com.

Juneau Empire 11 February 2001

12 Jan 2001
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The whole toolbox

Lowering the state's drunken driving standard from .1 blood-alcohol content to .08 won't do much to stop the most dangerous, habitual offenders whose intoxication at the scene of horrific accidents sadly registers two or three times the legal limit.

Suspensions, likewise, are insufficient to protect the law-abiding public from individuals with a history of ignoring such paper penalties.

Incarceration, confiscation of vehicles, and mandatory participation in alcohol treatment programs offer better means for protecting the law-abiding public from the careening path of repeat offenders.

On the other hand, individuals inclined to mix drinking with driving are likely to sip more cautiously if lawmakers lower the state's intoxication standard. The specter of a mandatory stay in jail, stiff financial penalties and the irritations of a significant period of license suspension might be the deciding factor in passing up that 'one for the road' that slows a generally responsible individual's reactions to a dangerous, potentially tragic degree.

All of the above-suggested approaches to curbing drunken driving and more are before lawmakers this session. At last count, there were nine House or Senate bills with provisions addressing the subject from various angles.

The point here is that no mandatory jail sentence or fine, no single adjustment of the state's intoxication standard, and no one approach to treatment can be expected to achieve the goal of protecting law-abiding Alaskans from the threats posed by drunken drivers.

The only long-term solution is in educating all Alaskans about the public dangers and personal risks that go with taking the wheel in a drunken or impaired state. That's the mission this society thrusts upon its law officers. It's up to lawmakers to give troopers, police and public safety officers all the necessary legal leverage, backed by sufficient funding, to rid our roads of drunken drivers.

Alcohol abuse is so pervasive in Alaska—the mission requires a full assortment of prosecutorial tools and treatment programs.



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OUR VIEW

When drivers are outlaws

Suspending a license isn't a strong enough deterrent

When cocaine user Scott Sunderland ran off a city road last year, rolling his truck and killing his wife, he was driving even though his license had been suspended.

When drunken driver William Rust crushed a 29-year-old mother of two with his Ford Bronco back in 1995, he was driving even though his license had been suspended.

When Daniel James Bushey, hopped up on cocaine and booze, sped through a downtown intersection in 1994 and killed a mother and her 10-year-old daughter, he was driving even though his license had been suspended.

When 18-year-old Morris King spent a night in 1992 guzzling beer and wine coolers and speeding through red lights for fun, killing two 22-year-old women, he was driving even though his license had been suspended.

There seems to be a pattern here.

Sometimes a suspended license is no stiffer a punishment than the paper it is written on.

Sometimes a suspended license is no stiffer a punishment than the paper it is written on. Last year, Anchorage police issued 4,266 citations for driving without a license. The vast majority of those were given to people driving with suspended licenses and the vast majority of those had lost their licenses for DWIs. As Messrs. Sunderland, Rust, Bushey and King

demonstrate, these outlaw drivers can inflict disaster on innocents.

Suspending driver's licenses does not do enough to protect innocent motorists from mayhem. People tempted to drive with suspended licenses need to face sterner consequences. Assemblyman Dick Traini has an excellent proposal to do just that. He wants people who drive with suspended licenses to forfeit their cars to the city, just as drunken drivers do. First offense, a 30-day impound. Second offense, bye-bye car.

In DWI cases last year, the city seized 1,600 cars. Impounding cars for driving with a suspended license will make it even more difficult for dangerous drivers to get back on the streets.

Seizing cars in such cases does raise legitimate questions about due process and the rights of innocent owners. Where a relative or bank owns an interest in the car, the city is willing to negotiate an appropriate settlement or the case can go to court. To get the car back in the meantime, owners can post a bond. The city's goal is to terminate the ownership of the violator while protecting the innocent owner's rights.

Processing all the new seizure cases may seem like an expensive proposition. But the current program basically pays for itself through fees the violator is charged for police time and work by the city attorney. And cracking down on drivers with suspended licenses is a good investment in public safety.

Mandatory sentences should go to drunk drivers who injure, kill

Are you really tired of drunk drivers? The answer is simple. Write or telephone your state legislators and ask them to enact minimum mandatory drunk driving laws. Many other states have in place laws that carry five-year minimum mandatory jail sentences for each person killed in drunk driving accidents. Alaska could go a step further to include a two-year minimum mandatory jail sentence for each person injured in a drunk driving accident. While we're at it, let's make this law include all the people using illegal drugs that impair driving as much or more than alcohol.

Minimum mandatory sentences mean the legislative command must be unequivocal since courts hesitate to find their judicial discretion curtailed. The Legislature normally provides explicitly for the mandatory sentence by stating a certain minimum sentence be imposed and that it may not be suspended nor may the defendant be released on probation or parole until that minimum term has been served. Write your legislator today.

— Gladys Wilson
Anchorage



ALASKA PUBLIC DEFENDER AGENCY

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MAR 8 REGO

February 28, 2001

Representative Vic Kohring, Chair
House Transportation Committee
State Capitol, Room 24
Juneau, Alaska 99801-1182

Dear Representative Kohring:

Pursuant to your request, here is a summary of my testimony at the House Transportation meeting on HB 4 on February 27, 2001. I realize that this bill has passed out of your committee into the House Judiciary Committee. However, as the entire state is grappling with this issue, I hope you will find these comments helpful.

The Public Defender Agency would like to express its appreciation for the willingness of Representative Rokeberg and his staff (especially Janet Seitz, chief of staff) in giving us an opportunity to comment and work on drafts of this bill from the beginning. This has allowed us time to gather the fiscal information and have input in less formal ways that was extremely helpful.

Certainly the Public Defender Agency agrees that driving while under the influence of alcohol is a serious problem in this state. However we do have some suggestions about other ways to go about solving this 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. And yet, as Section 1 of this bill recognizes, we continue to have among the highest rates of alcohol-related fatalities.

We feel that an important part of the answer may lie in effective court-ordered and supervised treatment for these driving while intoxicated 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 and highly structured treatment efforts on offenders with priors. We are gratified to learn of the legislature's interest in therapeutic courts as a way of delivering this treatment and have been cooperating with other members of the legislature and other criminal justice agencies to set up pilot projects.

I realize that the pressure is great on the legislature to do something. However, the Public Defender Agency believes that enacting draconian laws with even stiffer sentences and even higher fines and even more financial consequences has not proven to be successful in the past.

We hope the legislature will continue to look at creative alternatives that have proven successful in other states. In addition to these general comments I would like to say some very specific things about this bill.

1. Section 33, page 22, section (q). This section adds a mandatory six-month prison sentence to the mandatory minimum sentence already in place and also requires completion of a mandatory 30-day residential treatment if available in the community any time the offender's blood alcohol result is .16 or higher. We believe this punishment is too severe. We also believe that residential treatment isn't always the answer. There are cheaper, better alternatives. For example, there is intensive outpatient treatment provided by Providence Breakthrough Program that does an 8:00 a.m. to 5:00 p.m. session, has a break for dinner and then evening sessions. Their success rates have proven to be as successful as inpatient treatment. **[This section was eliminated by the (H) Transportation Committee.]**
2. Section 31, page 21, line 7 and Section 46, page 28, line 5 – Vehicle Forfeiture. These sections require court to order a vehicle be forfeited in a felony DUI and require the state to seek forfeiture in every case at sentencing. Property forfeitures are difficult cases. You also have to take into account the property rights of family members, lienholders and other co-owners. Mandatory forfeiture can have huge unintended consequences such as taking a family's only means of transportation away, impacting their ability to get the basic necessities of life. Current law allows for forfeiture. We feel it should remain discretionary with the power of the judge. Particularly in rural areas, the consequence of forfeiture could be a matter of basic survival.
3. Section 12, page 7; Section 17, page 10; Section 27, page 16 and 17; Section 29, page 18 and 19; Section 31, page 20-21. These sections increase fines, license revocation periods, jail time, reinstatement fees and imposed costs of incarceration. Section 17 doubles the license reinstatement fee for repeat DUI offenders. One unintended consequence will be that with these extremely high costs added onto what they already owe (victim restitution, Rule 39 costs for their attorney, felony and misdemeanor surcharges, costs of incarceration, costs of treatment), people will just give up on the idea of ever becoming validly licensed. Frankly, many of these people will have to resort to driving anyway. This bill will actually discourage people from getting the SR-22 insurance that is required for licensing as they become overwhelmed with their financial obligations. There were 4,500 driving without valid license cases filed in the courts last year. This is a huge area of criminal justice resources. The Palmer/Matanuska-Susitna Valley area is especially hit hard. Fortunately, in the Municipality of Anchorage, the prosecutor has a creative diversion program that actually provides assistance to people to get through the red tape and helps them get their licenses back instead of just putting them in jail and extracting large fees. The goal of getting people licensed and insured before they get on the road has been very successful, much more successful than the deterrent effect of imposing greater and greater suspensions, fines and fees. For the same reason a permanent or 10-year revocation for a felony DUI (Section 31, page 20-21) is not a good idea. There needs to be some sort of light at the end of the tunnel. The court should have the discretion in this area for people who are able to turn their lives around and successfully complete rehabilitation.

Section 31, page 20, line 17 raises the mandatory minimum fine to \$10,000 for a felony DUI. Judges already have the discretion to go higher than the \$5,000 minimum if the

circumstances are appropriate. However, once these people complete their jail time, complete their treatment, they could really benefit from the opportunity to get back on their feet financially and pay the restitution, child support, treatment costs, lawyer costs, surcharges, rent and other fees they already owe. And I know of no study that supports the idea that increasing jail time is an effective deterrent to chronic DWI offenders. It is a very costly proposition.

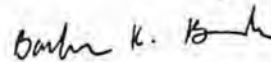
4. Section 18, pages 10-11. This section creates the new crime of knowingly allowing an unlicensed DUI offender to drive. I certainly understand the policy behind this. However, you may have a spouse or family member, one who is co-dependent or abused, who is persuaded to lend their vehicle in situations approaching duress or necessity. It might be a situation where we can't actually prove duress, which is a difficult legal standard to meet. The minimum fine here is \$1,000 which could create quite a hardship. While the fine and license revocation may be appropriate in some cases, we believe the court should have the discretion not to do so if these circumstances are present. Additionally the bill, line 6-8, requires that person to complete an alcohol program. That may not make sense for the person who is not driving while intoxicated.
5. Section 37, page 24. This is not just a technical amendment but is designed to overrule a recent case by the Alaska Supreme Court. We think the current state of the law, which discourages dangerous encounters with drunken individuals, is the better idea. Mr. Sosa was arrested in Bethel for DUI. The breath-testing machine in Bethel was not working that day and so the police officers asked Mr. Sosa if they could stick a needle in his arm and take some blood to test it. Mr. Sosa for whatever reason felt uncomfortable with that and declined to allow it. The police then got a warrant. However, Mr. Sosa, who admitted being intoxicated, still refused to let the police stick a needle in his arm and take blood. The state of Alaska decided to charge him with felony tampering with evidence for this conduct. Mr. Sosa was convicted of this at trial in addition to being convicted of DUI. The Supreme Court however reversed the tampering with evidence conviction, but upheld the DUI. The Court recognized the wisdom of the legislature in enacting the refusal laws. This current law is a balance between the need to prosecute crime, and the need to avoid potentially dangerous situations. Police are not to strap down a highly intoxicated person and try to get a needle in his arm to draw blood. Under the law, the person arrested has to either do a breath test voluntarily or get charged with a refusal. Only in the most serious cases can the state forcibly take blood from someone. It is unnecessary and inappropriate to allow such an extreme intrusion in the routine DWI. The solution to the problem raised in the Sosa case is to make sure the equipment is operable. The solution is not to change the law to allow forcible taking of bodily fluids, which is an extreme invasion of a person's privacy, not to mention a potentially dangerous practice. The police can get a search warrant if there is serious injury or death or if a person is unconscious and can't consent or not consent. This is adequate to cover those situations where a breath sample is not available. And it should be noted that Mr. Sosa was convicted of DUI, even without the blood sample.
6. Section 31, page 20 – A 10-year look back provision. This section increases the time we look back at prior convictions to count them towards a felony from five years to ten years. This is a very expensive provision. Felony cases are much more time intensive and resource-needy than misdemeanors. This section also increases the fine and doubles the amount of jail time

that currently exist as a mandatory minimums. Repeat offenders in Alaska are already getting harsh sentences. With presumptive sentencing, probation revocation time and aggravating factors under current law, multi-year sentences are not uncommon. Again, imposing more and more jail time upon this group of offenders has not seemed to result in breaking the cycle.

7. Section 30, page 20, line 8-9. This section specifically provides that any term of imprisonment cannot be served at a residential treatment facility or a hospital. This section will clearly discourage people from getting treatment outside of a jail setting. It seems to be headed in exactly 180 degree opposite direction from the current thought of the Criminal Justice Assessment Commission. This group was made up of representatives from every criminal justice agency as well as legislators, studying Alaskan criminal justice issues for three years with the assistance of a federal grant. The Commission specifically recommended increasing the number of substance abuse treatment beds, and maximizing the appropriate use of alternatives to incarceration due to their cost effectiveness and success. To receive what is called Nyeren credit, a facility must be supervised 24 hours a day. It appears counterproductive to allow people who are receiving treatment for addictions other than alcohol to receive credit at such residential treatment centers or hospitals and yet refuse that to those people who are addicted to alcohol. It also appears to be more costly to have the DOC be the **only** treatment provider, particularly for those who have insurance or can pay for their own residential treatment.

Thank you for this opportunity to comment on this bill which we all understand is a work in progress.

Sincerely,



Barbara K. Brink
Public Defender

BKB:sh

moved by Kapsner

Passed

AMENDMENT #2

OFFERED IN THE HOUSE

TO: CSHB 4 (), P version

Page 2, line 9: After "facilities" *fatalities* _____

INSERT: ;

(7) habitual offenders do most of the harm

*moved by
Rep Kapsner*

passed

AMENDMENT ¹

OFFERED IN THE HOUSE

TO: CSHB 4 (), P Version, 2/16/01, Lauterbach

Add new section to bill as follows:

***Sec. ____ AS 28.40.100(a) is amended by adding a new subsection to read:**

- (26) "controlled substance" includes a "hazardous volatile material or substances", as defined in AS 47.37.270(1), that has been knowingly smelled or inhaled.**

FISCAL NOTE

4

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. CSHB 4 (TRA)

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Omnibus DWI Bill BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Norman Rokeberg
 Requester House Judiciary Committee Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	352.1	362.0	362.0	362.0	362.0	362.0
Travel						
Contractual	20.7	33.1	47.6	60.0	72.4	72.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	372.8	395.1	409.6	422.0	434.4	434.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	372.8	395.1	409.6	422.0	434.4	434.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	372.8	395.1	409.6	422.0	434.4	434.4

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	4	4	4	4	4	4
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 CSHB 4 (TRA) makes several changes to the statutes relating to the offense of driving while intoxicated. Some of those changes will have a fiscal impact on the court system.
 The bill lowers the BAC necessary for a DWI violation under AS 28.35.030(a)(2) from .1 to .08. National studies show that this change typically results in a 10% increase in DWI filings. Based on that assumption, the court system would see an additional 500 misdemeanors and 28 felony filings a year.
 The bill also imposes a five-year phase-in of a new 10-year look-back for felony DWI offenses. The Department of Law estimates that the phase-in will result in 64 new felony filings in year one, 128 in year two, 192 in year three, 256 in year four, and 320 in year five. This fiscal note is based on those estimates and on a 10% felony trial rate.
 Finally, the bill calls for mandatory vehicle forfeiture for all second and subsequent DWI offenders. A court hearing is required for each forfeiture. The Department of Law estimates that this change will result in 800 forfeiture hearings. This note is based on that estimate and assumes that each hearing will last 15 minutes.

Prepared by: Douglas Wooliver Phone 463-4750
 Division Alaska Court System Date/Time 2/28/01 @ 10.00 A.M.
 Approved by: Stephanie Cole Date _____
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

Alaska Court System
Fiscal Note Calculations for CSHB 4 (TRA)
2/28/01

Increase in 64 - 320 New Felonies FY02 thru FY06:

	FY02	FY03	FY04	FY05	FY06
Superior Court:					
Jury Costs	14,476	26,884	41,360	53,768	66,176
Superior Court Judge	138,467	142,300	142,300	142,300	142,300
Law Clerk for Superior Court Judge	48,130	49,400	49,400	49,400	49,400
Secretary	41,997	43,050	43,050	43,050	43,050
In-Court Clerk	41,997	43,050	43,050	43,050	43,050
	<u>270,591</u>	<u>277,800</u>	<u>277,800</u>	<u>277,800</u>	<u>277,800</u>
Fiscal Note Total for 64 - 320 New Felonies	285,067	304,684	319,160	331,568	343,976

Vehicle Forfeitures:

800 new hearings, 287 of which would be handled in conjunction with a superior court case (felony)

513 hearings @ 15 minutes/hearing = 128.25 hours of hearing time (one month)

	FY02	FY03	FY04	FY05	FY06
District Court:					
District Court Judge Pro Tem (1 Month)	10,084	10,449	10,449	10,449	10,449
In-Court Clerk PPT (1 Month)	3,500	3,588	3,588	3,588	3,588
	<u>13,584</u>	<u>14,037</u>	<u>14,037</u>	<u>14,037</u>	<u>14,037</u>
Fiscal Note for Vehicle Forfeitures	13,584	14,037	14,037	14,037	14,037

500 New Misdemeanors and 3 Felony Trials at .08:

	FY02	FY03	FY04	FY05	FY06
Superior Court:					
Jury Costs	6,204	6,204	6,204	6,204	6,204
District Court Judge Pro Tem (5 Months)	50,419	52,245	52,245	52,245	52,245
In-Court Clerk PPT (5 Months)	17,499	17,940	17,940	17,940	17,940
	<u>67,918</u>	<u>70,185</u>	<u>70,185</u>	<u>70,185</u>	<u>70,185</u>
Fiscal Note for 500 Misdemeanors & 3 Felony Trials	74,122	76,389	76,389	76,389	76,389

Cumulative Fiscal Note:

Personal Services	352,092	362,022	362,022	362,022	362,022
Contractual	20,680	33,088	47,564	59,972	72,380
Cumulative Total	372,772	395,110	409,586	421,994	434,402
Funding Source:					
1004 GF	372,772	395,110	409,586	421,994	434,402
Positions:					
Full-time	4	4	4	4	4
Part-time	4	4	4	4	4

By Scott?

AMENDMENT

#2

OFFERED IN THE HOUSE

TO: CSHB 4 (), P version

Page 2, line 9: After "facilities"

INSERT: ;

(7) habitual offenders do most of the harm

INTERAGENCY COST SUMMARY

2/22/01
DRAFT

Reduce Blood Alcohol Threshold for DWI to .08

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Assumes the only change to current DWI statutes is to reduce the threshold for DWI from 1.0 % blood alcohol to .08 %, and a similar change for breath alcohol.
- * ACS projects 10% increase in DWI filings, both state and municipal.
- * DMV projects 10-15% increase in drivers' license revocation cases and attendant administrative hearings.
- * PDA projects 10% increase, and they will represent 75% of the defendants.
- * DOC projects 10% increase in DWI misdemeanor and felony convictions, both state and municipal.
- * Law, Criminal Division projects 10% increase in state DWI prosecutions.
- * Law, Civil Division projects 780 new DWI judgments will be subject to collection. (Cost of incarceration; court -appointed counsel; fines)
- * Both Law and PDA assume municipalities that prosecute misdemeanors in their jurisdictions will mirror the change in state law. If this does not occur, the estimated number of new misdemeanor cases is understated. The other agencies must respond to both state and local prosecutions.

AGENCY	GF COST	PFT	PPT	COMMENTS
Alaska Court System	\$74.1		2	0.4 district court judge and clerk; juror and personnel costs for felony trials
Department of Administration				
Division of Motor Vehicles	\$120.0		2	Hearing officer and administrative clerk
Public Defender Agency	\$140.6		1	1 FTE attorney, Palmer PDO
Department of Corrections	\$1,054.8			\$1,049.6 in FY03; \$1,083.5 in FY04; \$1,117.5 in FY05 and subsequent years.
Department of Health & Social Services				
ASAP	\$112.4			Assessments
Treatment	\$582.2			
Department of Law				
Criminal Division	\$148.3		1	1 FTE attorney, Anch DAO
Collections and Support	\$31.9		1	1/2 time Admin Clerk for collection of new judgments
TOTAL ESTIMATED COSTS	\$2,264.2		4 3	

INTERAGENCY COST SUMMARY

Reduce Blood Alcohol Threshold for DWI to .08 with HB 4 Diversion

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * ACS projects 10% increase in DWI filings, both state and municipal.
- * DMV projects 10-15% increase in drivers' license revocation cases and attendant administrative hearings.
- * PDA projects 20% increase, and they will represent 75% of the defendants.
- * DOC projects 10% increase in DWI misdemeanor and felony convictions, both state and municipal. Approx 33% will do diversion.
- * Law, Criminal Division projects 10% increase in state DWI prosecutions.
- * Law, Civil Division projects 690 new DWI judgments will be subject to collection.
- * Both Law and PDA assume municipalities that prosecute misdemeanors in their jurisdictions will mirror the change in state law. If this does not occur, the estimated number of new misdemeanor cases is understated. The other agencies must respond to both state and local prosecutions.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration				
Division of Motor Vehicles	\$120.0	2		Hearing officer and administrative clerk
Public Defender Agency	\$140.6	1		1 FTE attorney, Palmer PDO
Department of Corrections	\$1,027.9			\$1,022.7 in FY03; \$1,056.7 in FY04; \$1,090.6 in FY05 and subsequent years.
Department of Health & Social Services				
ASAP	\$112.4			Assessments
Treatment	\$582.2			
Department of Law				
Criminal Division	\$148.3	1		1 FTE attorney, Anch DAO
Collections and Support	\$31.9		1	1/2 time Admin Clerk for collection of new judgments
TOTAL ESTIMATED COSTS	\$2,163.3	4	1	

INTERAGENCY COST SUMMARY

Vehicle Forfeiture

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Law assumes 800 hearings per year, statewide: 100-150/year Kenai, Palmer, Fairbanks; 100/yr Anchorage; remainder around state.
- * DPS assumes 800 convictions per year resulting in 250 vehicle forfeitures.
- * PDA assumes will represent 75% of defendants, but will not need to do as much post-hearing work as Law.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration Division of Motor Vehicles Public Defender Agency	\$0.0 \$255.6	4		3 paralegals (Anch, Fairbanks, Palmer); 1 secretary (Anch)
Department of Corrections	\$0.0			
Department of Health & Social Services ASAP Treatment	\$0.0			
Department of Law	\$556.1	7		4 paraprofessionals (Anch, Kenai, Palmer); 1 atty (Fairbanks); 2 secy
Department of Public Safety	\$253.2	1		
TOTAL ESTIMATED COSTS	\$1,064.9	12	0	

INTERAGENCY COST SUMMARY

0.16 BAC Enhancement

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Law assumes 1,500 state cases will be subject to mandatory minimum. 2,655 of 3,837 defendants had .15 or greater BAC in FY00.
- * DOC assumes 2,590 state and municipal convictions will be subject to mandatory minimum.
- * PDA assumes 1,500 state cases will be subject to mandatory minimum, and will represent 75% of defendants.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration				
Division of Motor Vehicles	\$0.0			
Public Defender Agency	\$617.2	7		3 atty (Anch, Palmer, Fairbanks); 2 paraprofessionals (Palmer, Fbx); 2 secretaries
Department of Corrections	\$23,349.2			Same cost each year.
Department of Health & Social Services				
ASAP	\$0.0			
Treatment	\$0.0			
Juvenile Justice	\$20.0			Increased overtime costs at smaller youth facilities for longer stays.
Department of Law	\$803.6	8		4 atty (Anch, Kenai, Palmer, Fbx); 2 paraprofessional (Palmer, Fbx); 2 secy
Department of Public Safety	\$0.0			
TOTAL ESTIMATED COSTS	\$24,790.0	15	0	

INTERAGENCY COST SUMMARY

30 Days for 2nd DWI Offense

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * DOC assumes 412 second time offenders will serve 7 additional days. Remaining 50% will take community work service option.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration				
Division of Motor Vehicles	\$0.0			
Public Defender Agency	\$0.0			
Department of Corrections	\$184.6			Same cost each year.
Department of Health & Social Services				
ASAP	\$0.0			
Treatment	\$0.0			
Department of Law	\$0.0			
Department of Public Safety	\$0.0			
TOTAL ESTIMATED COSTS	\$184.6	0	0	

INTERAGENCY COST SUMMARY

HB 4 Increased Fines and Sentences

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Does not include look back provisions of HB 4, or 0.16 BAC Enhancement!
- * Expect an increase in driving with suspended license misdemeanors, but unable to quantify.
- * DOC assumes 50% of 240 felons will require intensive out-patient treatment, and 50% residential treatment.
- * DOC assumes of 240 felons receiving increased sentences, 80% will be 3rd time offenders, 15% 4th time, and 5% 5th time
- * DOC assumes 3% of 824 2nd time misdemeanants will have had their 1st conviction more than 10 yrs before.
- * Law, Civil Division cannot estimate cost of collection of treatment judgments without additional information.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration Division of Motor Vehicles Public Defender Agency	\$0.0			
Department of Corrections Treatment	\$945.6			Increases to \$1,024.4 in second and subsequent years.
Increased felony sentences	\$2,116.2			Increases to \$2,292.6 in second and subsequent years.
Remove 2nd time misdo look back	\$27.5			Same cost each year.
Department of Health & Social Services ASAP Treatment	\$0.0 \$0.0			
Department of Law	*****			Collections & Support costs to collect treatment judgments - GF/Program Rcpts
Department of Public Safety	\$0.0			
TOTAL ESTIMATED COSTS	\$3,089.3	0	0	

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

website: <http://www.akrepublicans.org/Rokeberg.htm>



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ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
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FAX: (907) 465-2040

Representative Norman Rokeberg

MEMORANDUM e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

TO: Rep. Vic Kohring, Chairman
House Transportation Committee

FROM: Rep. Norman Rokeberg *Norman/tp*

DATE: February 27, 2001

RE: HB 4
(Vehicle Forfeiture question)

During the hearing on HB 4 today, there were questions concerning vehicle forfeiture.

Attached are:

1. Appendix O - State Vehicle Forfeiture Requirements for Drunk Driving Offenses from the NCSL Transportation Series: Legislative Summary 2000.
2. Paragraph concerning vehicle forfeitures from NCSL Transportation Series: Legislative Summary: 1999.
3. Municipality of Anchorage Code regarding vehicle forfeiture
4. City of Fairbanks Code regarding vehicle forfeiture
5. City and Borough of Juneau information

*1 Coolish
again
prostate*

*per Bart Brink
- Increase fines & penalties
- might be changes
program for the
30-day residential
program (p. 22)*

*- Summary
(3/20/01)
for us.
covered.
Ms. Brink:
Provide Summary
of concerns
(E-mail on
for us)?*

*Erin's
"Diversion
Program"*

APPENDIX O. STATE VEHICLE FORFEITURE REQUIREMENTS FOR DRUNK DRIVING OFFENSES

State	Statute	Details
Alabama	None	
Alaska	§28.35.036	Vehicle forfeited for second or subsequent DUI offense (not mandatory)
Arizona	§28-697.01(A)	Vehicle forfeited for either third or subsequent DUI offense or for a DUI while license revoked/suspended for prior DUI or if committed while transporting child under 15 years old
Arkansas	§5-65-117	(a) vehicle forfeited for fourth offense within three years, at court's discretion
California	Veh. Code §23195 Veh. Code §23198 Veh. Code §22651	Vehicle impounded 1-30 days for first offense, and 1-90 days for second or subsequent offense within 7 years Vehicle subject to forfeiture for a DUI homicide, for two or more DUI offenses within seven years, or for a serious injury-related DUI with one or more DUI offenses within seven years Vehicle may be impounded temporarily if driver is taken into custody or for minor driving with a BAC of more than .01
Colorado	None	
Connecticut	§14-227h	Vehicle impounded for 48 hours if person's driving privilege was either suspended or revoked at the time of offense
Delaware	21 §2756(e)(1)	Impoundment of vehicle, plates or registration authorized for DUI while under license suspension/revocation for DUI or implied consent refusal, 1-90 days for first offense, one year for subsequent offenses
Florida	§316.193 (6)(d)	Vehicle used in DUI offense impounded or immobilized for 10 days for first offense, 30 days for second within three years, 90 days for third within 5 years
Georgia	§40-6-391.2 §40-6-391.2(i)	Vehicle forfeited for fourth DUI if offense committed in habitual offender status based on three or more prior DUI convictions Court may order transfer of title to family member for demonstrated hardship for employment or family needs
Hawaii	None	
Idaho	None	
Illinois	625 ILCS 5/4-203(c)	Vehicle impounded for 12 hours if law enforcement officers "reasonably believe" release will result in another DUI offense; 2 nd offense 24 hours; 3 rd offense 48 hours; however, vehicle may be released sooner if owner gives consent to competent driver
Indiana	IC9-30-4-6(b)(3), & (d)(1)	Registration revoked for six months for second felony; involving a motor vehicle (second DUI)
Iowa	321J.4B (2), (5)(d), (7)(a), (7)(b)	For subsequent offenses, vehicle, registration and plates for all vehicles owned by driver may be impounded for 180 days or the period of license revocation, whichever is longer
Kansas	8-1567(p)	Plate revoked for one year for fourth or subsequent offense
Kentucky	None	
Louisiana	§14:98 (D)	Vehicle forfeited for 3 rd offense or subsequent offenses, if vehicle used by offender is owned by him/her

**APPENDIX O. STATE VEHICLE FORFEITURE
REQUIREMENTS FOR DRUNK DRIVING OFFENSES
(CONTINUED)**

State	Statute	Details
Maine	29-A §2411 et seq	For subsequent offense within in 10 years, registration and plates are suspended for the same time period as their driver's license suspension
	29-A §2421	Vehicle must be forfeited for a subsequent DUI offense while already under license suspension for DUI; temporary impoundment for 8 hours upon arrest for drunk driving offense (29-A MRSA §2422)
Maryland	Trans. §16-303 §27-101 §27-111(d)	Registration suspended up to up to 120 days for driving on a suspended or revoked license for a previous DUI offense and/or vehicle can be impounded for up to 180 days
Massachusetts	None	
Michigan	1998 H.B. 4960	Provides for vehicle immobilization and forfeiture for 2 nd or subsequent offenses (discretionary)
Minnesota	168041(3)	Plates may be impounded for first or subsequent offense
	168.042(1)(20)	Plates and/or vehicle impounded for first or second offense within five years or for DUI child endangerment
	169.1217	Vehicle forfeited for third offense within five years, fourth offense within five years or for child endangerment and a second conviction or second revocation within five years or a third
Mississippi	63-11-30(2)(c)	Vehicle forfeited for third offense within five years
	63-11-49	Spouse may retain possession in case of hardship
Missouri	§82.1000	Permits some cities to enact vehicle impoundment or forfeiture laws
Montana	61-8-714 & 722	Vehicle must be forfeited for third or subsequent DUI offense within five years
Nebraska	None	
Nevada	§60-6, 197.01(1)(a) & (1)(b)(i)	If defendant convicted of 2 nd or subsequent offense, their vehicle must be immobilized 5 days to as much as 8 months; vehicle can be released to co-owner of vehicle due to hardship
New Hampshire	261:180 III	Registration suspended for same time period as license, on second or subsequent offense
New Jersey	§39:5-30(a)	Gives licensing agency discretionary authority to suspend/ revoke registration of person in violation of traffic laws or "other reasonable grounds"
New Mexico	None	Previous provisions repealed
New York	Civ Prac 1301 & 1311	Vehicle forfeited for a DUI felony (i.e. second DUI offense within ten years at the discretion of the court)
	V&T Law §1193 (2)(a) & (b)	Defendant's vehicle and registration may be suspended or revoked for same length of time as license revocation/suspension
North Carolina	20-28.2	Vehicle forfeited for DUI while on a revoked/suspended license
	§20-54.1	Registration for all vehicles owned by defendant can be revoked for time that license has been suspended/revoked

**APPENDIX O. STATE VEHICLE FORFEITURE
REQUIREMENTS FOR DRUNK DRIVING OFFENSES
(CONTINUED)**

State	Statute	Details
North Dakota	39-08-01(3)	Plate may be impounded for same period as license
	39-08-01.3	Vehicle may be forfeited for 2 nd or subsequent DUI within five years
Ohio	4507.164, 4511.195, 4511.99	Plates impounded for 90 days for second offense within six years and 180 days for third offense within six years; vehicle forfeited for subsequent offense within six years
Oklahoma	47 §11-902b	Subsequent DWI offender's vehicle subject to forfeiture
Oregon	§809.700 §809.2 of chapter 1100 Laws of 1999	Vehicle impounded for second or subsequent offense or for a DUI while on a suspended or revoked license; vehicle can be forfeited if offender had prior offense within 3 years of been convicted of murder, manslaughter, negligent homicide or assault related to operation of a vehicle
Pennsylvania	Case law	Vehicle may be forfeited for DUI offense: Commonwealth v. Crosby 568 A.2d 233 (PA Super. 1990)
Rhode Island	31-27- 2(d)(3)(ii);	Vehicle forfeited for third offense within five years
	§31-32-4(b)	If license suspended then defendant may have registration of any vehicle they own suspended; however, such registrations are not suspended if financial responsibility is provided
South Carolina	§56-5-6240	Vehicle forfeited for third or subsequent offense within 10 years; vehicle can either be owned and operated by offender or operated by offender who is resident of household of registered owner
South Dakota	§32-35-44	Registration suspended for all vehicles owned by driver for same time period license is revoked/suspended for DUI
Tennessee	55-10-403(k)(1)	Vehicle forfeited for second or subsequent offense
Texas	Tran Code §704.001	Vehicle may be forfeited after three or more DUI offenses
Utah	§41-6-44.30	Vehicle is impounded if driver arrested for DUI is the owner of the vehicle
Vermont	23 § 1213a, b	If second or subsequent offense vehicle can be immobilized for 18 months; if third offense the vehicle may be forfeited; if defendant is under 18 years old, vehicle is impounded for up to 60 days
Virginia	46.2-391.1	Registration suspended when license revoked/suspended for DUI conviction, or for driving on suspended/revoked license or for vehicular homicide
Washington	46.61.5058	Vehicle forfeited for second conviction within seven years, subject to possession by spouse in case of hardship
West Virginia	None	
Wisconsin	343.305(10m); 346.65(6)	Vehicle may be forfeited for third offense within ten years; vehicle shall be forfeited for fourth or subsequent offense within ten years
Wyoming	31-7-128(c)	Registration suspended for same period as license revocation/suspension, for subsequent DUI conviction within two years
American Samoa	None	

**APPENDIX O. STATE VEHICLE FORFEITURE
REQUIREMENTS FOR DRUNK DRIVING OFFENSES
(CONTINUED)**

State	Statute	Details
District of Columbia	§40-716(c-1)	Vehicle may be impounded for 24 hours for any DUI offense; if licensed registered owner of vehicle who is with offender at the time of offense, may take immediate possession of vehicle
Guam	Title 16 §9104(e)	Vehicle used in offense subject to forfeiture for third or subsequent offense, or driver's license suspended one to five years in lieu of vehicle forfeiture
Puerto Rico	None	
Virgin Islands	20 §544 (c)	Vehicle may be impounded at court's discretion if defendant fails to appear on a DUI charge

Source: *Digest of State Alcohol-Highway Safety Related Legislation*, 18th edition. 2000.

In the Virgin Islands, the department of education provides programs at all grade levels on the dangers of drinking and driving. New Mexico funds school-based alcohol abuse and drunk driving awareness programs, and additionally, provides enhanced server training requirements and stiffer penalties for selling alcohol to minors.

California has adopted the Youthful Drunk Driver Visitation Program, which requires underage drunk drivers to participate in supervised visits to hospital emergency rooms, trauma centers, or county morgue facilities. The program has an excellent history of discouraging repeat offenders and has been copied in Florida, Illinois and Iowa.

Both Connecticut and Vermont make it a crime for minors to misrepresent their age to buy alcohol and require violators to participate in alcohol treatment programs, in addition to significant fines and possible jail sentences. New Jersey not only sanctions minors attempting to purchase alcohol but also adults who buy liquor on their behalf. Both are subject to a fine of \$500 and a six-month license suspension. Minors convicted of drunk driving face additional penalties and must participate in alcohol treatment programs.

New Hampshire requires that first-time applicants for a driver's license be fully informed about the state's drunk driving laws, including standards, penalties and fines, administrative license revocation, implied consent requirements, and penalties for unlawful possession or transportation of alcoholic beverages by a minor.

Georgia provides for a lengthy license suspension and requires underage drunk drivers to complete a state-approved alcohol use reduction program. Tennessee has established a separate offense of Underage Driving While Drunk, punishable by a one-year license suspension and \$250 fine, while Texas punishes underage drunk drivers with fines up to \$2,000, 180 days in jail, or both.

Vehicle Forfeitures

Although asset forfeiture laws have long been used by states and cities to target drug dealing and a variety of other crimes, they are a relatively new mechanism for traffic safety. Thirty-five states, plus the District of Columbia, Guam and the Virgin Islands, have already enacted some sort of vehicle impoundment or forfeiture law for drunk drivers. Most of the laws provide for temporary impoundment of a convicted drunk driver's vehicle, license plates or vehicle registration; some states permit hardship exceptions where a spouse or family would be unduly harmed by the loss of their means of transportation. Permanent forfeiture of a vehicle is generally reserved for those convicted of multiple offenses. (See Appendix K for current state laws regarding vehicle impoundment and forfeiture.)

Concerns about the constitutionality of asset forfeiture laws in general have been set aside by state and federal courts, which have ruled that seizure of an "instrumentality of crime" is constitutional. In the case of drunk drivers, the instrumentality of the crime is the vehicle itself. As long as drunk driving cases receive the constitutional protections of due process, forfeiture of the vehicle is an acceptable sanction.

Permanent forfeiture of a vehicle generally is reserved for those convicted of multiple offenses.

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TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

9.28.020 Driving while intoxicated--Prohibited; sentencing.



A. It is unlawful for any person to commit the crime of *driving while intoxicated*.



B. A person commits the crime of *driving while intoxicated* if he operates, drives or is in actual physical control of a motor vehicle or operates an aircraft or a watercraft:

1. While under the influence of intoxicating liquor or depressant, hallucinogenic, stimulant or narcotic drugs as defined in AS 11.71.140--11.71.190;
2. When, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 gram or more of alcohol per 210 liters of the person's breath;
3. While the person is under the combined influence of intoxicating liquor and a drug, or intoxicating liquor and another substance that when introduced into the body acts as a central nervous system depressant or stimulant, to a degree which renders the person incapable of driving safely;
4. While the person is under the influence of a drug, or another substance that when introduced into the body acts as a central nervous system depressant or stimulant, to a degree which renders the person incapable of driving safely; or
5. In the case of an individual operating a commercial motor vehicle, when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.04 percent or more by weight of alcohol in the person's blood, or 40 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's breath.



C. Upon conviction for *driving while intoxicated* 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 \$250.00 if the person has not been previously convicted.
 - b. Not less than 20 days and a fine of not less than \$500.00 if the person has been previously convicted once.
 - c. Not less than 60 days and a fine of not less than \$1,000.00 if the person has been previously convicted twice.
 - d. Not less than 120 days and a fine of not less than \$2,000.00 if the person has been previously convicted three times.
 - e. Not less than 240 days and a fine of not less than \$3,000.00 if the person has been previously convicted four times.

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- f. Not less than 360 days and a fine of not less than \$4,000.00 if the person has been previously convicted more than four times.
 2. Except in mitigated circumstances, the court shall impose more than the mandatory minimum sentence. Mitigated circumstances do not exist if any of the following circumstances are present:
 - a. The defendant's driving conduct caused personal injury or property damage to another.
 - b. The defendant failed to stop for a red light or stop sign.
 - c. A container of alcoholic beverage was open in the passenger compartment of the defendant's vehicle.
 - d. The defendant was on release under AS 12.30.020 or AS 12.30.040 or on probation for another DWI or refusal charge or conviction.
 - e. The defendant has been previously convicted of reckless driving or leaving the scene of an accident.
 - f. The defendant had a breath test result of 0.15 gram or more of alcohol per 210 liters of the defendant's breath as determined by a chemical test within four hours after the alleged offense was committed.
 3. The court may not:
 - a. Suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under subsection 1 of this subsection.
 - b. Suspend imposition of sentence.
 4. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under subsection D of this section, finds appropriate.
 5. If the person has any interest in the vehicle used in the commission of the offense, the court shall order that:
 - a. The vehicle be impounded for 30 days if the person has not been previously convicted; and
 - b. The person's interest in the vehicle be forfeited to the municipality if the person has been previously convicted.


TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES


9.28.020 Driving while intoxicated--Prohibited: sentencing.


At sentencing, the court shall order that any vehicle return bond which has been posted to secure the release of the vehicle be forfeited to the municipality if the vehicle subject to the vehicle return bond is not returned to the custody of the municipality within five days after the sentencing. At sentencing, the court shall order that any vehicle return bond posted to secure the release of the vehicle be exonerated when the vehicle has been returned to the custody of the municipality. At sentencing, the court may also order that any proceeds of any sale, transfer, or encumbrance of the vehicle be forfeited to the municipality if the vehicle has been sold, transferred, or encumbered while the vehicle has been subject to a vehicle return bond. A vehicle ordered impounded pursuant to this subsection shall not be released until after the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the impound fees and the storage fees. Impound fees shall include the actual cost of impound plus an administrative fee of \$220.00 to offset the municipality's processing costs. Any order of impoundment or forfeiture entered under this subsection is subject to the rights of lienholders, owners, lessors, lessees, and co-owners who are not the person convicted of *driving while intoxicated* as those rights are adjudicated in civil proceedings under section 9.28.026. If the municipality has brought a civil action under section 9.28.026 seeking impoundment or forfeiture as against all those with an interest in the vehicle except the person charged with a violation of section 9.28.020, that civil action shall provide the sole forum in which lienholders, owners, lessors, lessees, and co-owners who claim an interest in the vehicle but are not the person charged with a violation of section 9.28.020 can seek relief.

 D. Except as provided by federal law or regulation, every provider of treatment programs to which persons are ordered under subsection C of this section shall supply the state 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 by a court in sentencing a person convicted under subsection C of 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 subsection C of this section.

 E. For purposes of this chapter, the following terms shall have the meaning given in this subsection:

1. *Interest in the vehicle* means a right, claim, or title to the vehicle or a legal share in the vehicle that the oral statement of a police officer, complaint, indictment, or information alleges was used in the commission of an offense.
2. *Operate a watercraft* means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inside the territorial limits of the municipality.
3. *Physical control* means to be behind the steering apparatus of a motor vehicle, whether asleep or awake, while the engine is running or any electrical or mechanical devices are turned on, or to be in a position to exercise exclusive control over the operation of the vehicle while possessing the apparent means to start the vehicle and the apparent ability to do so.
4. *Previously convicted* means having been convicted in this or another jurisdiction, within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft while intoxicated under this section or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or section 9.28.022 or another law or ordinance with substantially similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AMC 9.28.020.B.2.

 F. For purposes of this section, convictions for both *driving while intoxicated* and for refusal to submit to a chemical test of breath under section 9.28.021, if arising out of a single transaction and a single arrest, are considered one previous conviction.

 G. The court shall order a person convicted under this section to satisfy the screening, evaluation, referral and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment.



H. A program of inpatient treatment may be required by the authorized agency under subsection G of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.



I. If a person fails to satisfy the requirements of an authorized agency under subsection H of this section, the court:

1. May impose any portion of a suspended sentence.
2. May punish the failure as contempt of court under AS 9.50.010 or as a violation of a condition of probation.
3. Shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a license until the requirements are satisfied.



J. The magistrate or judge who sets the conditions of release for a person arrested for *driving while intoxicated* shall at the same time set a vehicle return bond for the vehicle alleged in an oral statement of a police officer to have been used in the commission of the offense if the records of the Alaska department of public safety, division of motor vehicles or the records of an agency with similar responsibilities in another state show that the person arrested for the offense has any interest in the vehicle. The purpose of setting a vehicle return bond is to secure the presence of the vehicle pending trial and to provide security to be forfeited along with the proceeds of a sale, transfer, or encumbrance if the defendant's interest in the vehicle is sold, transferred, or encumbered after the vehicle has been released pending trial. A person who secures the release of a vehicle pursuant to a vehicle return bond must return the vehicle to the custody of the municipality upon order of the court. If the vehicle's release has been obtained through the posting of a vehicle return bond and the vehicle is not returned pursuant to the court's order after a judgment of conviction, the municipality may, in addition to obtaining the forfeited bond funds, seize the vehicle to implement the impoundment or forfeiture ordered by the court. If the person has not been previously convicted, the magistrate or judge setting the vehicle return bond shall order that the requirement of the vehicle return bond shall automatically expire 30 days after the vehicle has been seized if the vehicle has not been released pursuant to a vehicle return bond. The vehicle return bond set under the authority of this subsection may only be posted by a person alleged to have used the vehicle in the commission of the offense of *driving while intoxicated* or by a person who agrees to return the vehicle upon order of the court upon penalty of forfeiture of the bond. The vehicle return bond set under the authority of this subsection may be posted at the municipality. A vehicle return bond may be posted in cash only. A vehicle return bond shall be set at a minimum of:




TITLE 9 VEHICLES AND TRAFFIC*


Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited: sentencing.

1. Two hundred fifty dollars if the person has not been previously convicted.
2. Five hundred dollars if the person has been previously convicted and the vehicle is 20 years old or older.
3. One thousand dollars if the person has been previously convicted and the vehicle is 15 years old or older but less than 20 years old.
4. One thousand five hundred dollars if the person has been previously convicted and the vehicle is ten years old or older but less than 15 years old.
5. Two thousand dollars if the person has been previously convicted and the vehicle is five years old or older but less than ten years old.
6. Two thousand five hundred dollars if the person has been previously convicted and the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the vehicle return bond and towing and storage fees, including the administrative fee of \$220.00 to offset the municipality's processing costs. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. Unless the following sentence applies, a vehicle that is or has been the subject of a vehicle return bond may only be released if the person seeking the release of the vehicle pays or provides proof of payment of the towing and storage costs, including the administrative fee of \$220.00 to offset the municipality's processing costs. A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

 K. The conditions of release established for a person charged with *driving while intoxicated* (DWI) shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of *driving while intoxicated*, including any release on the person's own recognizance.

 L. A vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section and has not been released pursuant to that order is subject to the provisions of AS 28.10.502 if no criminal complaint, information, or indictment is filed by the date and time of the scheduled arraignment alleging a violation of this section or if the count of the criminal complaint, information, or indictment alleging a violation of this section is amended upon motion of the prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the person alleged to have violated this section. The provisions of chapter 9.50 do not apply to a vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section. Any vehicle return bond set expires on the date and time of the scheduled arraignment if no criminal complaint, information, or indictment alleging a violation of this section is filed by the date and time of the scheduled arraignment.


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9.28.020 Driving while intoxicated--Prohibited; sentencing.

1. Two hundred fifty dollars if the person has not been previously convicted.
2. Five hundred dollars if the person has been previously convicted and the vehicle is 20 years old or older.
3. One thousand dollars if the person has been previously convicted and the vehicle is 15 years old or older but less than 20 years old.
4. One thousand five hundred dollars if the person has been previously convicted and the vehicle is ten years old or older but less than 15 years old.
5. Two thousand dollars if the person has been previously convicted and the vehicle is five years old or older but less than ten years old.
6. Two thousand five hundred dollars if the person has been previously convicted and the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the vehicle return bond and towing and storage fees, including the administrative fee of \$220.00 to offset the municipality's processing costs. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. Unless the following sentence applies, a vehicle that is or has been the subject of a vehicle return bond may only be released if the person seeking the release of the vehicle pays or provides proof of payment of the towing and storage costs, including the administrative fee of \$220.00 to offset the municipality's processing costs. A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

 K. The conditions of release established for a person charged with *driving while intoxicated* (DWI) shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of *driving while intoxicated*, including any release on the person's own recognizance.

 L. A vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section and has not been released pursuant to that order is subject to the provisions of AS 28.10.502 if no criminal complaint, information, or indictment is filed by the date and time of the scheduled arraignment alleging a violation of this section or if the count of the criminal complaint, information, or indictment alleging a violation of this section is amended upon motion of the prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the person alleged to have violated this section. The provisions of chapter 9.50 do not apply to a vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section. Any vehicle return bond set expires on the date and time of the scheduled arraignment if no criminal complaint, information, or indictment alleging a violation of this section is filed by the date and time of the scheduled arraignment.



M. Vehicles ordered impounded under section 9.28.020.C.5 which are not claimed at the end of the court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond under section 9.28.020.J and has not been released pursuant to that vehicle return bond can be recovered only by the owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.



N. A motor vehicle that is the subject of a vehicle return bond under section 9.28.020.J and has not been released pursuant to that vehicle return bond shall be held in the custody of the police department or a private corporation authorized by the chief of police to retain custody of the motor vehicle, subject only to the orders and decrees of any court having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is seized under this section, the chief of police or his or her authorized designee may:

1. Remove the motor vehicle and any contents of the motor vehicle to a place designated by the court; or
2. Take custody of the motor vehicle and any contents of the motor vehicle and remove it to an appropriate location for disposition in accordance with law.



O. Before disposing of any vehicle forfeited under this section, the chief of police or his or her designee shall make an inventory of the contents of any motor vehicle seized. Property forfeited under this section shall be disposed of by the chief of police or his or her designee in accordance with this subsection. Property forfeited under this section includes both the vehicle that is the subject of the forfeiture action and the contents of the vehicle if those contents have not been recovered before the date of the disposal. The chief of police or his or her designee may:

1. Sell the property at an auction conducted by an auctioneer not employed by the impound contractor and use the proceeds for payment of all proper expenses of seizure, custody, the costs of the auction, court costs, and municipal attorney fees, provided if such sale is arranged for by the impound contractor the municipality shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction of those vehicles regardless of whether the costs of impound and storage exceed the value of the vehicles sold;



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2. Take custody of the property and use it in the enforcement of the municipal and state criminal codes; or
3. Destroy the property.

(AO No. 267-76; AO No. 78-72; AO No. 78-230(S); AO No. 80-122; AO No. 81-75; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52; AO No. 91-56(S); AO No. 91-190; AO No. 94-68(S), § 11, 8-11-94; AO No. 95-84(S-1), §§ 1--9, 4-27-95; AO No. 95-163(S), §§ 1--5, 8-8-95; AO No. 97-72, § 1, 6-10-97; AO No. 97-87, § 1, 6-3-97)

Editor's note--AO No. 97-87 occasioned by 1996 Proposition 3 Initiative enacting Chapter XXI.

Cross reference(s)--Penal code, tit. 8; drinking alcoholic beverages while driving, § 9.36.200; alcoholic beverages, ch. 10.50.

9.28.021 *Driving while intoxicated--Implied consent to chemical test.*

A person who operates, drives or is in actual physical control of a motor vehicle within the municipality or who operates an aircraft as defined by section 9.28.020.E.1 or who operates a watercraft as defined by section 9.28.020.E.2 shall be considered to have given consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft in the municipality while intoxicated.

(AO No. 78-72; AO No. 79-194; AO No. 80-122; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52)

State law reference(s)--Implied consent, AS 28.35.031.

9.28.022 *Driving while intoxicated--Refusal to submit to chemical tests.*

- A. If a person under arrest refused the request of a law enforcement officer to submit to a chemical test under section 9.28.021, after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by section 9.28.025.
- B. The refusal of a person to submit to a chemical test of his or her breath under subsection A of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating, driving or in actual physical control of a motor vehicle or operating an aircraft or watercraft while intoxicated.
- C. Refusal to submit to the chemical test of breath authorized by section 9.28.021 is a misdemeanor.
- D. Upon conviction for refusal to submit to chemical tests under subsection C of this section:
 1. The court shall impose a minimum sentence of imprisonment of:

FAIRBANKS

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

***Cross reference(s)**--Disposal by the department of public safety of abandoned, stolen, forfeited, seized, and found property, § 62-31 et seq.

State law reference(s)--Forfeiture of vehicle, AS 28.35.036.

Sec. 78-961. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assessed or appraised value of a motor vehicle shall be based upon the Automobile Dealers Association Book (Blue Book) for the same or similar make and model and accessorized motor vehicle. Should there be no Blue Book value, the value shall be \$500.00.

Driver means a person who drives or is in actual physical control of a vehicle.

Motor vehicle means a vehicle which is self propelled except a vehicle moved by human or animal power.

Previously convicted means having been convicted in this or another jurisdiction within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or a refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

Registered owner refers to the owner of the vehicle at the time of the offense as shown in the vehicle ownership records of the state division of motor vehicles or another agency with similar responsibilities in another state, but may include subsequent good-faith purchases.

Regulated lienholder means an entity whose lien on the vehicle is a result of lending activities that are subject to regulation by any federal or state agency, commission or department.

Vehicle means a device in, upon or by which a person or property may be transported or driven upon immediately over a highway, road or other public right-of-way.

(Code 1960, § 7.22.117)

PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-962. Purpose; public nuisance.

A motor vehicle that is operated, driven or in actual physical control of an individual arrested for or charged with violation of AS 28.35.030, pertaining to *driving while intoxicated*, or a violation of AS 28.35.032, pertaining to refusal to submit to chemical tests, may be impounded and may be forfeited to the city in accordance with this article. The purpose of this article is to protect the public by removing public nuisances and deterring *driving while intoxicated*. A vehicle operated in violation of the aforesaid statutes is declared to be a public nuisance for which the registered owners shall be legally responsible subject only to defenses set forth by law.

(Code 1960, § 7.22.101)

Sec. 78-963. Presumptions; vehicle seizure.

- (a) It shall be presumed that a vehicle operated by or driven by or in the actual physical control of an individual arrested for or charged with a violation of either AS 28.35.030 or AS 28.35.032 has been so operated by the registered owner or has been operated by another person with the knowledge and consent of the registered owner.
- (b) A vehicle used in the alleged violation of AS 28.35.030 or AS 28.35.032 shall be impounded for 30 days if the person driving, operating or in the actual physical control of the vehicle has not been previously convicted, and shall be forfeited to the city if the person has been previously convicted.
- (c) Impoundment may occur through a seizure of the vehicle incident to an arrest at the discretion of the arresting officer or a court order.

(Code 1960, § 7.22.102)

Sec. 78-964. Jurisdiction; hearings; costs.

- (a) Civil impoundment or forfeiture cases may be heard and decided by either the district court, an administrative hearing officer, or the parking authority, which throughout this article may be referred to as "the court" or "a court." Hearings before an administrative hearing officer shall take place no less than seven days and no more than 30 days after the registered owner or lienholder requests a hearing. At the request of the city or a claimant, a civil proceeding under this section shall be postponed until the conclusion of any pending criminal charges arising out of the incident giving rise to the proceeding under AS 28.35.030 and AS 28.35.032.
- (b) The court shall award the prevailing party in an impoundment or forfeiture case its reasonable attorney's fees and costs. Costs shall include but are not limited to filing costs, advertising costs, police officer time required for testimony, prosecution costs, and other costs incurred in processing the case.

(Code 1960, § 7.22.103)

Sec. 78-965. Notice to lienholders and parties of record; service by publication; failure to appear.

- (a) A lienholder and any party having an interest in the vehicle as shown by the vehicle ownership records by the division of motor vehicles or any agency in any state where the vehicle is registered shall be served with notice of the civil action by certified mail sent to the address of record as shown in the ownership records. In a forfeiture action, the city may serve a party of record personally or by publication if mail service is unsuccessful.
- (b) Service by publication in a forfeiture proceeding shall describe the vehicle, the date and place of impoundment and a contact person, and shall be published once per week for two consecutive weeks in a newspaper of general circulation.



(c) Any party who fails to appear within 30 days of service of notice of an impoundment or forfeiture waives the right to object to impoundment or forfeiture. Any party who requests a hearing in a civil action shall be deemed served. For actions filed in district court, district court civil rules shall apply. Requests for release of a vehicle made by a person or entity not charged with a violation of AS 28.35.030 and AS 28.35.032 must be brought in the forum of the civil action.



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Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-965. Notice to lienholders and parties of record; service by publication; failure to appe.

(Code 1960, § 7.22.104)

Sec. 78-966. Avoidance of impoundment or forfeiture by owners and lienholders; defenses.



(a) An owner or lienholder of record may avoid impoundment or forfeiture of that person's interest if the claimant can establish by a preponderance of the evidence that:

- (1) The claimant had an interest in the motor vehicle at the time of the alleged violation or which was acquired in good faith after the violation and not to avoid impoundment or forfeiture;
- (2) A person other than the claimant was in possession of the vehicle and was responsible for the act which resulted in impoundment or forfeiture; and
- (3) Before permitting the operator to gain custody or control of the vehicle, the claimant did not know or have reasonable cause to believe that vehicle would be operated in violation of AS 28.35.030 or AS 28.35.032.



(b) A regulated lienholder may meet the requirements of this section by filing with the court a copy of the vehicle's certificate of title or other security instrument reflecting the lien, with an affidavit stating the amount of the lien and that the lienholder is a regulated lienholder and that the lienholder was not in possession of the vehicle at the time of the act which resulted in the seizure of the vehicle.



(c) A regulated lienholder shall have no duty to inquire into the driving record of any loan applicant or any member of the loan applicant's family or household, and failure to do so shall not be usable as evidence against the regulated lienholder in any forfeiture proceeding or other civil action.



(d) A regulated lienholder's interest in a vehicle shall not be subject to forfeiture in any case where:

- (1) The individual who allegedly used the vehicle in violation of AS 29.35.030 or AS 29.35.032 is not the person whose dealings with the lienholder gave rise to the lien; or
- (2) The vehicle which the individual was driving, operating or was in actual physical control of at the time of the violation was not the vehicle involved in a prior conviction.



(e) An acquittal in a criminal proceeding under AS 28.35.030 or AS 28.35.032 shall constitute a defense against impoundment or forfeiture of a vehicle if the civil proceeding is based on the same conduct that forms the basis for the criminal charge.

(Code 1960, § 7.22.105)

Sec. 78-967. Presumptions; knowledge of violation.




(a) When a person other than the claimant was in possession of the vehicle and was driving with a suspended, revoked or canceled license, or without a valid driver's license, or in violation of a limited license, it shall be presumed that the claimant had reasonable cause to believe that the vehicle would be used in violation of AS 28.35.030 or AS 28.35.032. This subsection shall not apply to regulated lienholders.

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Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-967. Presumptions: knowledge of violation.

-  (b) When the claimant and driver are not the same person and have a familial relationship, such as husband/wife, father/daughter, mother/stepson, etc., it shall be presumed that the claimant is responsible and that the vehicle was operated by the driver with the knowledge and consent of the claimant.

(Code 1960, § 7.22.106)


Sec. 78-968. Hearing notification.

Upon notification from the court of the time and place for a hearing in a civil action, the city shall provide to every person, unless notified by the court, who has an ascertainable ownership or security interest, written notice that includes:


- (1) A description of the motor vehicle;
- (2) The time and place of the forfeiture or impound hearing;
- (3) The legal authority under which the vehicle may be impounded or forfeited; and
- (4) Notice of the right to intervene to protect the interest in the motor vehicle.

(Code 1960, § 7.22.107)

Sec. 78-969. Seizure; evidence; burden of proof.

-  (a) A seizure is legally unjustified only if there was:

- (1) No reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the operation, driving or actual physical control of the vehicle; or
- (2) No probable cause for the arrest of an individual for *driving while intoxicated* based on the individual's operation, driving or actual physical control of the vehicle.

 (b) For purposes of proceedings in an administrative forum, the police report, which may include the narrative; accompanying documents; computer printouts from data bases operated by police agencies and/or government agencies regulating motor vehicles showing the ownership of the vehicle, the driver's license status, and the record of criminal convictions of the driver; and/or tape recordings is admissible evidence so long as it is signed with either the name, initials, badge number, or other identifying mark of an employee of the city in a statement made under oath.

-  (c) The burden of proof for an action under this article is preponderance of the evidence.

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Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-969. Seizure; evidence; burden of proof.

(1) No reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the operation, driving or actual physical control of the vehicle; or

(2) No probable cause for the arrest of an individual for *driving while intoxicated* based on the individual's operation, driving or actual physical control of the vehicle.



(b) For purposes of proceedings in an administrative forum, the police report, which may include the narrative; accompanying documents; computer printouts from data bases operated by police agencies and/or government agencies regulating motor vehicles showing the ownership of the vehicle, the driver's license status, and the record of criminal convictions of the driver; and/or tape recordings is admissible evidence so long as it is signed with either the name, initials, badge number, or other identifying mark of an employee of the city in a statement made under oath.



(c) The burden of proof for an action under this article is preponderance of the evidence.

(Code 1960, § 7.22.108)

Sec. 78-970. Resolution agreement between city and owner/lienholder.



(a) The city may enter into an agreement with the registered owner or lienholder of the vehicle to resolve a civil impound or forfeiture action and permit release of the vehicle. Any such agreement shall include:

(1) Acceptance by the owner or lienholder of responsibility for meeting the requirements of this section;

(2) Agreement that the owner or lienholder will take reasonable steps to prevent the person arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032 from operating the vehicle until properly licensed; and

(3) Agreement by the owner or lienholder that failure to fulfill the obligations under the agreement may result in forfeiture of the vehicle at the option of the city unless the lienholder is regulated and is required by law or the terms of the security agreement to relinquish possession of the vehicle upon payment of the lien or cure of any default.

(Code 1960, § 7.22.109)

Sec. 78-971. Release of motor vehicle.

A person seeking to redeem a vehicle must obtain an order authorizing release of the vehicle unless the release is made under an agreement with the city. A release shall not be granted unless the person can:

(1) Provide proof of ownership or, if a lienholder, a legal right to repossess the vehicle; and

(2) Pay or provide proof of payment of any costs imposed, including the impound fees, storage fees and any court costs imposed. The impound fee shall be the actual cost of impound plus an administrative charge to offset the city's processing costs. If the city agrees or the court finds that seizure of a vehicle was legally unjustified, the vehicle shall be released at no cost if the person seeking to reclaim the vehicle does so within five days after the court's finding. A vehicle not claimed within five days after the court's decision is subject to the provisions of AS 28.10.502, relating to towing and storage liens.

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ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-971. Release of motor vehicle.

(Code 1960, § 7.22.110)

Sec. 78-972. Bail release of motor vehicle; vehicle bond; amount of bond; costs.

(a) A person not charged with a violation of AS 28.35.030 or AS 28.35.032 may petition the court for a bail release of a motor vehicle before a civil action is filed.

(b) A vehicle return bond shall be set for each vehicle alleged in the complaint to have been used in an alleged violation of AS 28.35.030 or AS 28.35.032. The bond may be posted in cash only. The purpose of this bond is to secure the presence of the vehicle and to provide security to be forfeited if the vehicle is sold, transferred or encumbered after the vehicle has been released pending hearing. If a vehicle is not returned on a return bond, the city may forfeit the bond funds and seize the vehicle to implement the impoundment or forfeiture ordered by the court. The court may not modify the bond requirement or release a posted bond for a vehicle which has been impounded for a period less than the vehicle would have been impounded for if the person was convicted.

(c) If a person charged with a violation of AS 28.35.030 or AS 28.35.032 has no previous convictions for those statutes, the minimum vehicle return bond shall be \$400.00. Where the person charged has been previously convicted of either offense, the minimum vehicle bond shall be:

20 years or older . . . \$ 400.00

15--19 years . . . 1,000.00

10--14 years . . . 1,500.00

5--10 years . . . 2,000.00

0--4 years . . . 2,500.00

A vehicle return bond may be set above the minimum if the vehicle appears to have been unusually high value for its age but not to exceed twice the minimum amount.

(d) A vehicle under this section may be released pending hearing upon proof of ownership of the vehicle, payment of the vehicle return bond, and payment of towing and storage fees, including the administrative fee of \$200.00 to offset the city's processing costs.

(e) The court may order all or any part of the vehicle return bond to be forfeited to the city and may also order that the proceeds of any sale, transfer or encumbrance be forfeited if the vehicle has been sold, transferred or encumbered while subject to a vehicle return bond, if the vehicle is not returned in accordance with an order entered in the case requiring impoundment or forfeiture.

(Code 1960, § 7.22.111)

Sec. 78-973. Impoundment; seizure incident to arrest; impoundment period; abandoned vehicle disposal; personal property in vehicles.

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Sec. 78-973. Impoundment; seizure incident to arrest; impoundment period; abandoned vehicle

- (a) A motor vehicle that is operated, driven or in the actual physical control of a person arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032 may be ordered impounded either upon conviction of the person for the offense or upon the decision of the court in a separate civil proceeding. To obtain an order for the impoundment in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven or in the actual physical control of a person who was acting in violation of AS 28.35.030 or AS 28.35.032.
- (b) If the motor vehicle is seized incident to an arrest or otherwise prior to a conviction or court-ordered impoundment, the vehicle may not be held more than two days without a court order obtained to continue its detention. For purpose of computing the two-day period, Saturdays, Sundays and legal holidays are not to be included.
- (c) A vehicle which is ordered impounded under this section shall be held for a period of 30 days. An impoundment order may be made either upon conviction of the person of a violation of AS 28.35.030 or AS 28.35.032, or upon decision of a court in a separate civil proceeding.
- (d) Vehicles ordered impounded under this section, which are not claimed at the end of the 30-day court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond and has not been released can be removed from a vehicle only by the owner of the vehicle and only upon payment of a fee charged for monitoring such recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the city unless established by the parking authority. The owner may recover the fee if a court makes a specific finding that the seizure of the vehicle was legally unjustified.

(Code 1960, § 7.22.112)

Sec. 78-974. Forfeiture process.

- (a) A motor vehicle that is operated, driven or in the actual physical control of a person arrested or charged with a violation of AS 28.35.030 or AS 28.35.032 may be forfeited to the city either upon conviction of either offense or upon decision of a court in a separate civil proceeding. To obtain an order of forfeiture in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven or in the physical control of the person acting in violation of either offense and the individual has been previously convicted.
- (b) A motor vehicle may be seized and towed to a secure location by a police officer or a police officer's designee upon an order issued by a court having jurisdiction over the motor vehicle upon a showing of probable cause that the motor vehicle may be forfeited or impounded under this section. Seizure without a court order may be made if:
- (1) The impoundment is incident to an arrest;
 - (2) The motor vehicle has been ordered impounded or forfeited and that order has not yet been executed; or
 - (3) There is probable cause to believe that the motor vehicle was operated, driven or in the actual physical control of a person in violation of AS 28.35.030 or AS 28.35.032.
- (c) A court may order impoundment of a motor vehicle subject to forfeiture in a civil action for a minimum of 30 consecutive days.

(Code 1960, § 7.22.113)

Sec. 78-975. Custody of vehicle; department of public safety; private corporations; inventory.



(a) A motor vehicle seized for the purpose of forfeiture or impoundment should be held in the custody of the department of public safety or a private corporation authorized by the department to retain custody of the vehicle, subject only to the orders and decrees of the court having jurisdiction over any forfeiture or impoundment proceedings. When a motor vehicle is seized, the director of public safety or an authorized designee may:


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ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-975. Custody of vehicle; department of public safety; private corporations; inventory.

- (1) Remove the motor vehicle and any contents in the vehicle to a place designated by the court; or
- (2) Take custody of the motor vehicle and any contents of the vehicle and remove it to an appropriate location for disposition.


 (b) Following a forfeiture the department of public safety shall make an inventory of the contents of any motor vehicle seized. Personal property can be recovered from the vehicle in the same manner as set forth in section 78-973.

 (c) A person in a forfeiture action claiming an interest in the property shall file, within 30 days after service or completion of publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the city's allegations. If a claim and answer is not filed within the required time, the motor vehicle must be forfeited to the city without further proceedings. For a regulated lienholder, the notice of claim and answer is met by the filing of information required in section 78-966 and by adding to the affidavit a statement of the original amount of the loan giving rise to the lien and the current balance due on that loan.

 (d) A claimant may petition the court for sale of a motor vehicle before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interest of the city. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

(Code 1960, § 7.22.114)


Sec. 78-976. Disposition of forfeited property; return to claimant.

 (a) Property forfeited under this article shall be disposed of by the department of public safety in accordance with this section. Property forfeited includes both the vehicle and its contents if those contents have not been recovered before the date of disposal. The department of public safety may:

- (1) Sell the property at an auction and use the proceeds for payment of all expenses of seizure, custody, costs of auction, court costs and attorney's fees; and if such sale is arranged for by the impound contractor, the city shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction regardless of whether the costs of impound and storage exceed the value of the forfeited vehicles sold;

(2) Take custody of the property and use it in the enforcement of city and state criminal codes; or

(3) Destroy the property.

 (b) When a claimant to a motor vehicle is entitled to its possession, the court shall order that:

(1) The vehicle be delivered to the claimant immediately subject to costs as described in section 78-971; or

(2) If the claimant is entitled to some value less than the total value of the motor vehicle, the claimant is entitled to receive either the value of the claimant's interest after the sale of the vehicle at an auction following deduction of the costs of the auction or, upon request and payment of the difference in value by the claimant, the motor vehicle itself.

 (c) When a vehicle is sold and lienholder interest exceeds the sale price, the owner may be held responsible for the difference and the city's cost.

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Sec. 78-976. Disposition of forfeited property; return to claimant.

(Code 1960, § 7.22.115)

Sec. 78-977. Multiple ownership on certificate of title.

In a contested forfeiture proceeding concerning a vehicle titled in the names of more than one owner on the certificate of title, the court shall proceed as follows:

(1) If one owner does not avoid forfeiture, the court may order the forfeiture of the entire interest of all the owners in a vehicle which is titled in the names of more than one owner in the disjunctive which is signified by the word "or."

(2) If such owner does not avoid forfeiture, the court shall order the forfeiture of the interest of any owner in a vehicle which is titled in the names of more than one owner in the conjunctive which is signified by the word "and." Owners of a vehicle titled in the names of more than one owner in the conjunctive are presumed to own the vehicle in equal shares. Under this subsection, the court shall order that the vehicle be sold at public auction and further order that the proceeds from the sale of the vehicle be held by the city's department of finance. After deduction of the reasonable costs of the auction, the amount of the proceeds of the auction for the sale of that vehicle which is equal to the interests of the owners whose interests have not been forfeited shall be returned to those owners if those owners apply to the department of finance within 60 days of the auction. If the owners whose interests have not been forfeited do not apply within that period, those funds become the property of the city subject to the rights of any other claimant to those funds.

(Code 1960, § 7.22.116)

Chapters 79--81 RESERVED

Chapter 82 UTILITIES*

*Cross reference(s)--Administration, ch. 2; buildings and building regulations, ch. 10; uniform mechanical code, § 10-101 et seq.; uniform plumbing code, § 10-136 et seq.; uniform housing code, § 10-171 et seq.; National Electrical Code, § 10-276 et seq.; businesses, ch. 14; health, ch. 34; solid waste, ch. 66; streets, sidewalks and other public places, ch. 70.

ARTICLE I. IN GENERAL

Sec. 82 City water fluoridated.

A source of fluoride ion, approved by the state department of health, shall be added to the water supply of the city under the rules and regulations of the state department of health, such addition to be administered by Golden Heart Utilities, Inc. in a manner approved by the environmental coordinator of the city.

(Code 1960, § 10.301(a))

WELCOME TO THE CBJ CODE

This copy, including the CBJ Charter, is current as of January 18, 2001.

Navigating through the code is easier using the bookmarks accessible via Acrobat's "window" menu.

For update information call the CBJ Law Department. 907-586-5242

You can e-mail the City & Borough Attorney at

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- (2) Order participation in such program; or
- (3) Any combination of subsections (1) and (2) above. (Serial No. 85-56 § 68, 1985; Serial No. 84-80 § 3, 1984; Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.010).

72.22.045 TRAFFIC CITATION ON ILLEGALLY PARKED VEHICLE. Whenever a motor vehicle without driver is found parked, stopped or standing in violation of any of the restrictions imposed by this title the officer finding such vehicle shall take its registration number and may take any other information displayed upon or within the vehicle which may identify its user, and shall conspicuously affix to such vehicle a traffic citation on a form provided by the city and borough for the driver to answer to the charge against him in the municipal court at an appointed time within twenty days from such alleged violation specified in the citation. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.045).

72.22.055 VIOLATIONS RESPONSIBILITIES AND DEFENSES. (a) Every person in whose name a vehicle is registered shall be responsible for violations of any parking, standing, stopping or other nonmoving traffic violations of this title. It shall be no defense for the owner of a vehicle to such a charge that the vehicle was in the possession or control of another, unless it can be shown to the satisfaction of the court that at such time such vehicle was being used without the consent of the registered owner thereof.

(b) It shall be a defense for a vehicle owner to a charge of a failure to appear if it is shown to the court's satisfaction that the owner of such vehicle was not aware of the citation and that such vehicle was being used without the consent of the registered owner. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.055).

72.22.060 AUTHORITY TO IMPOUND VEHICLES – REDEMPTION OR SALE – PRESUMPTION OF ABANDONMENT. (a) Whenever any vehicle is located or is standing upon any street or alley or right-of-way in violation of the provisions of this title or any rule or regulation adopted thereto, or whenever any vehicle is found to be mechanically unsafe to operate upon any street or alley or right-of-way, or whenever the driver is arrested for an offense involving either driving under the influence of intoxicating liquor or hypnotic or narcotic drugs, reckless driving, negligent driving, or any felony, such vehicle may be removed from the city and borough streets or alleys and may be impounded at a place to be designated by the manager. The police shall, in the proper case and whenever any other provision of this title is violated, cause a complaint to be filed against the person committing such offense. When the owner or authorized representative of the owner of the vehicle claims the same, he shall be informed of the nature of the circumstances causing the impoundment of such vehicle and to obtain release thereof shall pay all towing, impoundment and storage charges. Such fees may be established, changed or abolished by the assembly by resolution. If the operator or owner of the vehicle, upon hearing before the municipal judge, is found not guilty of the violation of which he is charged, the impounded vehicle shall be released immediately to the owner without collection of fees or other charges, or if such person found not guilty has already paid impoundment towing or storage charges, the court may order the city and borough to refund part or all of such fees or charges. If the owner or operator of such vehicle is found guilty, any fine imposed under the provisions of the appropriate section of this title shall be in addition to the towing, impounding and storage charges herein prescribed.

(b) No person shall allow, permit or suffer any vehicle registered in his name to stand or park upon

or be operated upon any street in this city and borough in violation of this title or any rule or regulation adopted or issued pursuant thereto.

(c) Whenever an officer removes or has removed a vehicle from a street as authorized in this section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage.

(d) After a vehicle has been impounded for more than ten days, the chief of police shall cause to be sent by registered mail a notice to the owner and any lienholder thereof, if after the exercise of due diligence said owner's or lienholder's name can be ascertained. The notice shall accurately describe the vehicle, give the date the vehicle was impounded, and inform the owner that unless he reclaims the vehicle within ten days from the dispatch thereof, the vehicle shall be sold. Not less than fifteen days after the dispatch of the letter, if the letter can be sent, and in any event if such letter cannot be sent, the chief of police shall cause to be posted in three public places in the city and borough a description of the vehicle, the owner's name if known, and state the facts that the vehicle and other similar vehicles similarly described will be sold at public auction to the highest responsible bidder at a public sale under the direction of the chief of police at a specified time and place, not less than ten days after the publication of the notice of sale. The chief of police shall keep a permanent accurate record of all vehicles impounded containing date of impoundment, description of vehicle, cause for which impounded, date of redemption if redeemed, an amount paid upon redemption, date of letter to owner if owner known, notice of sale, record of sale and price paid at sale and name of purchaser.

(e) If the highest bid at public auction shall not be equal to or greater than the towing and storage charges, the city and borough may reject the bid and attempt to sell the vehicle at subsequent public auction or negotiate for private sale; provided, however, the price obtained at private sale must be equal to or greater than the highest bid at public auction.

(f) The proceeds of a sale of any impounded vehicle shall be applied first against any and all costs of the city and borough involved in towing, impounding and storing the vehicle, and in conducting any sale thereof, with any remaining proceeds paid first to the lienholder if known, to the extent of his interest if any, then to the owner if known, or if unknown into the operating fund of the police department.

(g) Notwithstanding any other provisions of this section, whenever any vehicle located or standing upon any street or alley or right-of-way is or has been involved in an accident resulting in personal injury, or property damage in an amount of five hundred dollars or more as judged by a police officer, such vehicle may be removed from the streets and impounded by the police department for a period not to exceed five days for the purpose of having the vehicle inspected by a competent mechanic to determine whether the vehicle is mechanically safe. The expense of this type of inspection impoundment shall be borne by the city and borough. (Serial No. 2000-20 § 5, 2000; Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.060).

72.22.063 VEHICLE IMMOBILIZATION. (a) The manager or his designee may, subject to the limitations contained in this section, authorize the immobilization of any motor vehicle by the use of a vehicle immobilization device which, when attached to the wheel or other part of a motor vehicle, prevents that vehicle from being driven.

(b) No vehicle may be immobilized pursuant to this section unless there has been affixed to that or

any other vehicle owned by the same person, or that person has otherwise been issued, at least two municipal parking citations and has, with respect to each such citation, failed, within the time permitted by law, to:

- (1) Post or forfeit the bail specified for that offense; or
 - (2) Appear and answer to the charge.
- (c) The owner or operator of a vehicle immobilized pursuant to this section may obtain its release by:
- (1) Posting bail for each of the parking citations outstanding against the owner; and
 - (2) Paying the release service fee established by the manager or his designee.
- (d) A vehicle immobilized pursuant to this section may not be the subject of further parking citations during the period of immobilization.
- (e) If a vehicle immobilized pursuant to this section is not released within twenty-four hours, it may be impounded and shall thereafter be released only upon the posting of bail and payment of the service fee required under subsection (c) of this section and compliance by the owner or operator with Section 72.22.060.

It is unlawful for a person to purposely or recklessly and without authority, tamper with, remove, attempt to remove, damage or deface any vehicle immobilization device attached to any vehicle. (Serial No. 81-13 § 2, 1981; Serial No. 80-13 § 2, 1980).

72.22.065 AUTHORITY TO EFFECT REGULATIONS. The chief of police is hereby empowered, with approval of the assembly to make all necessary regulations to effect all provisions of this title. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.065).

Chapter 72.24

SNOW EMERGENCY AND REMOVAL

Sections:

- | | |
|-----------|---|
| 72.24.010 | Parking prohibition – Snow emergency routes. |
| 72.24.015 | Snow emergency routes designated. |
| 72.24.020 | Parking prohibition – Other streets. |
| 72.24.025 | Parking prohibition – Notice. |
| 72.24.030 | Parking prohibition – Violation – Impounding and removing vehicles. |
| 72.24.035 | Parking prohibition – Termination. |
| 72.24.040 | Snow emergency route – Stalled vehicle prohibited when. |
| 72.24.045 | Snow emergency route – Stalled vehicle – Procedure. |
| 72.24.050 | Illegally parked vehicle – Citation. |
| 72.24.055 | Illegally parked vehicle – Evidence. |
| 72.24.060 | Chapter provisions – Precedence. |
| 72.24.065 | Advancement of quitting-time traffic regulations. |
| 72.24.070 | Requirement for chains or studded tires. |
| 72.24.075 | Placing snow in public ways prohibited. |

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
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SECTIONAL ANALYSIS

CSHB 4 (), P Version Work Draft, 2/16/01

An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to court records of a conviction involving a violation of the Alaska Uniform Vehicle Code or another law, regulation, or ordinance regulating the driving of vehicles; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumption arising from the amount of alcohol in a person's breath or blood; and providing for an effective date.

Prepared by Representative Norman Rokeberg

- Section 1: Finding and intent section.
- Section 2: Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 3: Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 4: Adds new subsection setting forth that the presumptive sentence for manslaughter as a result of driving while under the influence of an alcoholic beverage or controlled substance is seven years.
- Section 5: Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 6: Requires the department of administration to refuse to register a vehicle if the applicant does not have a valid driver's license due to suspension or revocation or fails to register the vehicle using the applicant's first, middle, and last name or a business name.

- Section 7:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 8:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 9:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 10:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 11:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 12:** Provides for minimum periods of driver's license revocation after a person has been convicted of D.U.I. or convicted of refusing to take a breath test after being arrested for D.U.I.
- Section 13:** Requires that the court shall furnish the Division of Motor Vehicles with information on a driving conviction by the end of the following business day.
- Section 14:** Technical amendment relating to the authority of the court to grant limited driver's license privileges following a conviction for D.U.I.
- Section 15:** Creates a provision that allows a person with a revoked driver's license to obtain limited driver's license privileges following a conviction for D.U.I. or refusal to take a breath test. Mandates that any such license shall require that the vehicle be equipped with an ignition interlock device during the period of such limited license.
- Section 16:** Requires a person who loses their driver's license for D.U.I. or refusal to take a breath test to meet the alcoholism screening, evaluation, referral, and program requirements under AS 28.35.030(h) imposed under AS 28.15.1819(a)(5) or (8) in order to have license reissued.

- Section 17:** Doubles driver's license reinstatement fees for those convicted of D.U.I.
- Section 18:** Creates a new crime relating to knowingly allowing a person who has been convicted of felony D.U.I. to drive a vehicle you own or control. Defines the crime as a class A misdemeanor and provides minimum penalties.
- Section 19:** Technical amendments relating to driving with a canceled, suspended, or revoked driver's license, or in violation of a license limitation.
- Section 20:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 21:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of the commercial motor vehicle implied consent law. Also changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance."
- Section 22:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of the commercial motor vehicle implied consent law.
- Section 23:** Changes a reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Also changes references to "intoxicating liquor" to "alcoholic beverage".
- Section 24:** Changes a reference to "intoxicating liquor" to "alcoholic beverage".
- Section 25:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 26:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Adds "an alcoholic beverage" to list of items that constitutes crime of driving while "under the influence of an alcoholic beverage or controlled substance". Reduces the legal limit for being intoxicated from 0.10 to 0.08 percent of alcohol in a person's blood.

- Section 27:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Changes the penalties for D.U.I.
- Section 28:** Changes law to establish that treatment providers must provide 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. Such information may only be used in connection with court proceedings involving the defendant or the defendant's treatment and is otherwise confidential.
- Section 29:** Amends law to provide that Department of Health and Social Services shall establish standard for clinically appropriate treatment programs required under AS 28.35.030(h). Increases the limit imposed on cost of imprisonment required to be paid by a person convicted of D.U.I. Specifies that, as much as possible, treatment shall occur while incarcerated. Establishes that "cost of treatment" does not include costs incurred as a result of treatment not required under this subsection.
- Section 30:** Increases the limit imposed on the cost of imprisonment required to be paid by a person convicted of D.U.I. Specifies that imprisonment for a person convicted of D.U.I. cannot be served at a residential treatment facility or a hospital.
- Section 31:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Phases in a 10-year look back period and establishes that a person is guilty of a class C felony if convicted a third time since January 1, 1996, and within 10 years preceding the date of the offense. Increases the penalties for a conviction under this section, including jail time, fine, loss of driver's license, and forfeiture of the vehicle, watercraft or aircraft used in the offense. Revokes vehicle registration for all vehicles owned by the person convicted. Permits a co-owner to register the vehicle in that person's name.
- Section 32:** Changes references to driving " while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."

- Section 33:** Adds provisions relating to restoration of a driver's license following a D.U.I conviction, relating to the penalty for D.U.I. when the offender has a blood alcohol level of 0.16 or more, and relating to failure to satisfy alcoholism treatment requirements. Establish procedure for surrender of registration plate for any vehicle registered or co-registered in convicted person's name.
- Section 34:** Makes technical amendments relating to implied consent law. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of the implied consent law.
- Section 35:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of administering a breath test under the implied consent law.
- Section 36:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of administering a breath or blood test under the implied consent law when there is a motor vehicle accident that causes death or serious physical injury.
- Section 37:** Adds new section providing that the implied consent statute was not intended to prevent the police search warrants.
- Section 38:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 39:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 40:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 41:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Also changes certain presumptions applicable to civil or criminal action involving a person alleged to have driven while under the influence of an alcoholic beverage or controlled substance.

- Section 42:** Requires the police to inform a person undergoing a chemical test for intoxication of their right to have an independent chemical test and requires the department to make reasonable and good-faith efforts to assist the person to obtain an independent test.
- Section 43:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 44:** Conforming amendment to Section 45.
- Section 45:** Adds new section authorizing the police to obtain a blood sample where exigent circumstances prevent the police from administering a breath test.
- Section 46:** Requires the state to seek forfeiture of motor vehicle used in committing a D.U.I. or breath test offense. Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 47:** Adds new provision requiring registration of felony repeat D.U.I. offenders.
- Section 48:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 49:** Applicability section.
- Section 50:** Section 47 effective date is July 1, 2002.
- Section 51:** With exception of Section 47, all other sections take effect July 1, 2001.

22-LS0046P
Ford
2/16/01

CS FOR HOUSE BILL NO. 4()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft
2 while under the influence of an alcoholic beverage or controlled substance; relating to
3 court records of a conviction involving a violation of the Alaska Uniform Vehicle Code
4 or another law, regulation, or ordinance regulating the driving of vehicles; relating to
5 implied consent to take a chemical test; relating to registration of motor vehicles;
6 relating to presumptions arising from the amount of alcohol in a person's breath or
7 blood; and providing for an effective date."

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

9 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
10 to read:

11 FINDINGS AND INTENT. (a) The legislature finds that

12 (1) driving on state highways is a privilege granted to citizens;

13 (2) in order to keep the privilege of driving on state highways, a citizen must

1 follow state laws regarding safe driving;

2 (3) in 1998, there were 71 vehicle-related deaths in the state, and 31 were
3 alcohol-related;

4 (4) in 1999, there were 76 vehicle-related deaths in the state, and 40 were
5 alcohol-related;

6 (5) from 1998 to 1999, the number of traffic fatalities in Alaska rose by nine
7 percent;

8 (6) Alaska ranks in the top 15 states in terms of alcohol-related traffic
9 fatalities.

10 (b) It is the intent of this Act to reduce the number of alcohol-related traffic accidents
11 and fatalities.

12 * Sec. 2. AS 09.60.070(c)(14) is amended to read:

13 (14) driving while under the influence of an alcoholic beverage or
14 controlled substance [INTOXICATED] or another crime resulting from the operation
15 of a motor vehicle, boat, or airplane when the offender is under the influence of an
16 alcoholic beverage or controlled substance [INTOXICATED];

17 * Sec. 3. AS 12.25.033 is amended to read:

18 Sec. 12.25.033. Arrest without warrant for operating vehicle while under
19 the influence of an alcoholic beverage or controlled substance [INTOXICATED].

20 A peace officer may arrest a person without a warrant, whether or not the offense is
21 committed in the presence of the officer, when the officer has probable cause to
22 believe that the person to be arrested has committed the crime of operating a motor
23 vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a similar city or
24 borough ordinance, if the violation is alleged to have occurred less than eight hours
25 before the time of arrest.

26 * Sec. 4. AS 12.55.125(c) is amended to read:

27 (c) A defendant convicted of a class A felony may be sentenced to a definite
28 term of imprisonment of not more than 20 years, and shall be sentenced to the
29 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
30 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

1 circumstances described in (2) of this subsection, five years;

2 (2) if the offense is a first felony conviction

3 (A) other than for manslaughter and the defendant possessed a
4 firearm, used a dangerous instrument, or caused serious physical injury during
5 the commission of the offense, or knowingly directed the conduct constituting
6 the offense at a uniformed or otherwise clearly identified peace officer, fire
7 fighter, correctional employee, emergency medical technician, paramedic,
8 ambulance attendant, or other emergency responder who was engaged in the
9 performance of official duties at the time of the offense, seven years;

10 (B) for manslaughter and the conduct resulting in the
11 conviction was knowingly directed towards a child under the age of 16, seven
12 years;

13 (C) for manslaughter and the conduct resulting in the
14 conviction involved driving while under the influence of an alcoholic
15 beverage or controlled substance. seven years;

16 (3) if the offense is a second felony conviction, 10 years;

17 (4) if the offense is a third felony conviction and the defendant is not
18 subject to sentencing under (1) of this section, 15 years.

19 * Sec. 5. AS 18.67.101 is amended to read:

20 Sec. 18.67.101. Incidents and offenses to which this chapter applies. The
21 board may order the payment of compensation in accordance with the provisions of
22 this chapter for personal injury or death that resulted from

23 (1) an attempt on the part of the applicant to prevent the commission of
24 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
25 officer to do so, or aiding a victim of crime; or

26 (2) the commission or attempt on the part of one other than the
27 applicant to commit any of the following offenses:

28 (A) murder in any degree;

29 (B) manslaughter;

30 (C) criminally negligent homicide;

31 (D) assault in any degree;

- 1 (E) kidnapping;
- 2 (F) sexual assault in any degree;
- 3 (G) sexual abuse of a minor;
- 4 (H) robbery in any degree;
- 5 (I) threats to do bodily harm; or
- 6 (J) driving while under the influence of an alcoholic
7 beverage or controlled substance [INTOXICATED] or another crime
8 resulting from the operation of a motor vehicle, boat, or airplane when the
9 offender is under the influence of an alcoholic beverage or controlled
10 substance [INTOXICATED].

11 * Sec. 6. AS 28.10.041 is amended by adding a new subsection to read:

12 (d) The department shall refuse to register a vehicle if the applicant

13 (1) does not have a valid driver's license and the applicant's license or
14 privilege to obtain a license has been suspended or revoked; or

15 (2) fails to register the vehicle using the applicant's first, middle, and
16 last name or a business name.

17 * Sec. 7. AS 28.15.046(d) is amended to read:

18 (d) The department may not issue a license to an applicant who has been
19 convicted of driving while under the influence of an alcoholic beverage or
20 controlled substance [INTOXICATED] under AS 28.35.030 within two years of the
21 time of application or to an applicant who has two or more convictions for driving
22 while under the influence of an alcoholic beverage or controlled substance
23 [INTOXICATED] within 10 years of the time of application.

24 * Sec. 8. AS 28.15.081(a) is amended to read:

25 (a) The department shall examine every applicant for a driver's license. The
26 examination must include a test of the applicant's (1) eyesight, (2) ability to read and
27 understand official traffic control devices, (3) knowledge of safe driving practices, (4)
28 knowledge of the effects of alcohol and drugs on drivers and the dangers of driving
29 under the influence of alcohol or drugs, (5) knowledge of the laws on driving while
30 under the influence of an alcoholic beverage or controlled substance
31 [INTOXICATED], (6) knowledge of the laws on financial responsibility and

1 mandatory motor vehicle liability insurance, and (7) knowledge of the traffic laws and
2 regulations of the state. The examination may include a demonstration of ability to
3 exercise ordinary and reasonable control in the driving of a motor vehicle of the type
4 and general class of vehicles for which the applicant seeks a license. However, an
5 applicant who has not been previously issued a driver's license by this or another
6 jurisdiction shall demonstrate ability and shall present medical information that the
7 department reasonably requires to determine fitness to safely drive a motor vehicle of
8 the type and general class of vehicles for which the applicant seeks a license.

9 * Sec. 9. AS 28.15.165(c) is amended to read:

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

22 (1) that a chemical test administered under AS 28.33.031(a) or
23 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
24 chemical test administered under AS 28.33.031(a) produced a result described in
25 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
26 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

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

28 (3) describing the

29 (A) circumstances surrounding the arrest and the grounds for
30 the officer's belief that the person operated a motor vehicle, commercial motor
31 vehicle, or aircraft while under the influence of an alcoholic beverage or

1 controlled substance [INTOXICATED] in violation of AS 28.33.030 or
2 AS 28.35.030; or

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

6 * Sec. 10. AS 28.15.166(g) is amended to read:

7 (g) The hearing for review of action by the department under AS 28.15.165
8 shall be limited to the issues of whether the law enforcement officer had probable
9 cause [REASONABLE GROUNDS] to believe that the person was operating a motor
10 vehicle or commercial motor vehicle that was involved in an accident causing death or
11 serious physical injury to another, or that the person was operating a motor vehicle,
12 commercial motor vehicle, or aircraft while under the influence of an alcoholic
13 beverage or controlled substance [INTOXICATED] in violation of AS 28.33.030 or
14 AS 28.35.030 and whether

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

20 (2) the chemical test administered under AS 28.33.031(a) or
21 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2); or

22 (3) the chemical test administered under AS 28.33.031(a) produced a
23 result described in AS 28.33.030(a)(2).

24 * Sec. 11. AS 28.15.181(a) is amended to read:

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

27 (1) manslaughter or negligent homicide resulting from driving a motor
28 vehicle;

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

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

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

3 (5) operating a motor vehicle or aircraft while under the influence of
4 an alcoholic beverage or controlled substance [INTOXICATED];

5 (6) reckless driving;

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

8 (8) refusal to submit to a chemical test authorized under
9 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
10 commercial motor vehicle, or aircraft while under the influence of an alcoholic
11 beverage or controlled substance [INTOXICATED], or authorized under
12 AS 28.35.031(g);

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

15 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
16 vehicle theft in the second degree in violation of AS 11.46.365.

17 * Sec. 12. AS 28.15.181(c) is amended to read:

18 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
19 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
20 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
21 obtain a license. The revocation may be concurrent with or consecutive to an
22 administrative revocation under AS 28.15.165. The court may not, except as provided
23 in AS 28.15.201, grant limited license privileges during the minimum period of
24 revocation. The minimum periods of revocation are [:]

25 (1) not less than 45 days if the person has not been previously
26 convicted and if the court has suspended the execution of the sentence of
27 imprisonment under AS 28.35.030(b)(1)(A)(i);

28 (2) not less than 90 days if the person has not been previously
29 convicted and if the court has not suspended the execution of the sentence of
30 imprisonment under AS 28.35.030(b)(1)(A)(i);

31 (3) [(2)] not less than one year if the person has been previously

1 convicted once;

2 (4) [(3)] not less than 3 years if the person has been previously
3 convicted twice;

4 (5) [(4)] not less than 5 years if the person has been previously
5 convicted more than twice.

6 * Sec. 13. AS 28.15.191(a) is amended to read:

7 (a) A court that convicts a person of an offense under this title or a regulation
8 adopted under this title, or another law or regulation of this state, or a municipal
9 ordinance that regulates the driving of vehicles, shall forward a record of the
10 conviction to the department by the end of the following business day. A conviction
11 of a standing or parking offense need not be reported.

12 * Sec. 14. AS 28.15.201(d) is amended to read:

13 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
14 a license under AS 28.15.181(c)(2), (3), (4), or (5) [AS 28.15.181(c)], or the
15 department when revoking a driver's license, privilege to drive, or privilege to obtain a
16 license under AS 28.15.165(c), may grant limited license privileges for the final 60
17 days during which the license is revoked if

18 (1) the revocation was for a violation of AS 28.15.181(a)(5) and not
19 for a violation of AS 28.15.181(a)(8);

20 (2) the person has not been previously convicted; in this paragraph,
21 "previously convicted" has the meaning given in AS 28.35.030 and also includes
22 convictions based on laws presuming that the person was under the influence of
23 intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the
24 person's blood;

25 (3) the court or the department determines that the person's ability to
26 earn a livelihood would be severely impaired without a limited license;

27 (4) the court or the department determines that a limitation under (a) of
28 this section can be placed on the license that will enable the person to earn a livelihood
29 without excessive danger to the public; and

30 (5) the court or the department determines that the person has met [IS
31 ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY

1 COMPLETED, AN] alcoholism screening, evaluation, referral, and [EDUCATION
2 AND REHABILITATION TREATMENT] program requirements of the
3 Department of Health and Social Services under AS 28.35.030(h).

4 * Sec. 15. AS 28.15.201 is amended by adding a new subsection to read:

5 (e) A court revoking a driver's license, privilege to drive, or privilege to obtain
6 a license under AS 28.15.181(c)(1), or the department when revoking a driver's
7 license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may
8 grant limited license privileges for the final 30 days during which the license is
9 revoked, if the person's driver's license is not revoked, suspended, denied, or canceled
10 under another provision of law. During the remainder of the probationary period
11 imposed under AS 28.35.030(b)(1)(A)(i) that follows the period of revocation
12 imposed under AS 28.15.181(c)(1), a person may only obtain limited license
13 privileges. The court revoking the license and privileges may grant limited license
14 privileges necessary to enable the person to earn a livelihood without excessive risk or
15 danger to the public. If the court grants limited license privileges, the court shall
16 require that the person only operate a vehicle that is equipped with a properly
17 functioning ignition interlock device and shall issue to the person a certificate valid for
18 the duration of the probation. The person who has received limited license privileges
19 under this subsection shall comply with AS 28.20 relating to proof of financial
20 responsibility. Upon successful completion of probation, the person may apply for a
21 new license under AS 28.15.211.

22 * Sec. 16. AS 28.15.211(d) is amended to read:

23 (d) At the end of a period of revocation or limitation following a revocation, a
24 person whose driver's license has been revoked may apply to the department for the
25 issuance of a new license, but shall submit to reexamination, pay all required fees
26 including a reinstatement fee, and, if the license was revoked under
27 AS 28.15.181(a)(5) or (8), submit proof to the court or the department that the
28 person has met the alcoholism screening, evaluation, referral, and program
29 requirements of the Department of Health and Social Services under
30 AS 28.35.030(h) [OF

31 (1) ENROLLMENT IN AND COMPLIANCE WITH OR

1 COMPLETION OF AN ALCOHOLISM EDUCATION AND REHABILITATION
2 TREATMENT PROGRAM APPROVED UNDER AS 47.37 IF THE PERSON WAS
3 SENTENCED UNDER AS 28.15.181(c)(1); OR

4 (2) COMPLETION OF AND PAYMENT FOR AN ALCOHOLISM
5 EDUCATION AND REHABILITATION TREATMENT PROGRAM APPROVED
6 UNDER AS 47.37 IF THE PERSON WAS CONVICTED UNDER
7 AS 28.15.181(c)(2) - (4)].

8 * Sec. 17. AS 28.15.271(b) is amended to read:

9 (b) In addition to the fees under (a) of this section,

10 (1) a person who renews a driver's license by mail shall pay a fee of
11 \$1;

12 (2) a person who applies for a limited driver's license under
13 AS 28.15.201 shall pay a fee of \$100; and

14 (3) a person who applies for reinstatement of a driver's license under
15 AS 28.15.211 shall pay a fee of

16 (A) \$100 if the person's driver's license has, within the 10 years
17 preceding the application, been suspended, revoked, or limited under the
18 provisions of this chapter, except as provided by (C) of this paragraph, only
19 once; [OR]

20 (B) \$250 if the person's driver's license has, within the 10 years
21 preceding the application, been suspended, revoked, or limited under the
22 provisions of this chapter, except as provided by (D) of this paragraph, two
23 or more times;

24 (C) \$200 if the person's driver's license has, within the 10
25 years preceding the application, been revoked under AS 28.35.030 only
26 once; or

27 (D) \$500 if the person's driver's license has, within the 10
28 years preceding the application, been revoked under AS 28.35.030 two or
29 more times.

30 * Sec. 18. AS 28.15.281 is amended by adding a new subsection to read:

31 (c) A person who violates (b) of this section by knowingly allowing a person

1 who is not validly licensed as a result of a conviction under AS 28.35.030(n) to drive a
2 motor vehicle is, upon conviction, guilty of a class A misdemeanor, and the court shall

3 (1) revoke the person's driver's license, privilege to drive, or privilege
4 to obtain a license for 30 days;

5 (2) impose a minimum fine of \$1,000; and

6 (3) if the person has been previously convicted under this section,
7 require the person to complete an alcoholism program required under
8 AS 28.35.030(h).

9 * Sec. 19. AS 28.15.291(b) is amended to read:

10 (b) Upon conviction under (a) of this section, the court

11 (1) shall impose a minimum sentence of imprisonment

12 (A) if the person has not been previously convicted, of not less
13 than 10 days with 10 days suspended, including a mandatory condition of
14 probation that the defendant complete not less than 80 hours of community
15 work service;

16 (B) if the person has been previously convicted, of not less than
17 10 days;

18 (C) if the person's driver's license, privilege to drive, or
19 privilege to obtain a license was revoked under circumstances described in
20 AS 28.15.181(c)(1) or (2) [AS 28.15.181(c)(1),] or if the person was driving in
21 violation of a limited license issued under AS 28.15.201(d) or (e) following
22 that revocation, of not less than 20 days with 10 days suspended, and a fine of
23 not less than \$500, including a mandatory condition of probation that the
24 defendant complete not less than 80 hours of community work service;

25 (D) if the person's driver's license, privilege to drive, or
26 privilege to obtain a license was revoked under circumstances described in
27 AS 28.15.181(c)(3), (4), or (5) [AS 28.15.181(c)(2), (3), OR (4)] or if the
28 person was driving in violation of a limited license issued under
29 AS 28.15.201(d) following that revocation, of not less than 30 days and a fine
30 of not less than \$1,000;

31 (2) may impose additional conditions of probation;

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(3) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in (1) of this subsection;

(B) suspend imposition of sentence; and

(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license or a limited license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges.

* Sec. 20. AS 28.33.030 is amended to read:

Sec. 28.33.030. Operating a commercial motor vehicle while under the influence of an alcoholic beverage or controlled substance [INTOXICATED]. (a)

A person commits the crime of operating a commercial motor vehicle while under the influence of an alcoholic beverage or controlled substance [INTOXICATED] if the person operates a commercial motor vehicle

(1) while under the influence of an alcoholic beverage [INTOXICATING LIQUOR] or any controlled substance;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.04 percent or more by weight of alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's breath; or

(3) while under the combined influence of an alcoholic beverage [INTOXICATING LIQUOR] and a controlled substance.

(b) Operating a commercial motor vehicle while under the influence of an alcoholic beverage or controlled substance [INTOXICATED] is a class A misdemeanor.

(c) The sentencing of a person convicted under this section shall be in accordance with the minimum periods of imprisonment, fines, rehabilitative treatment, and other provisions of AS 28.35.030, as if the person had been convicted of a

CORRECTION

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State of Alaska

1 (3) may not

2 (A) suspend execution of sentence or grant probation except on
3 condition that the person serve a minimum term of imprisonment and perform
4 required community work service as provided in (1) of this subsection;

5 (B) suspend imposition of sentence; and

6 (4) shall revoke the person's license, privilege to drive, or privilege to
7 obtain a license, and the person may not be issued a new license or a limited license
8 nor may the privilege to drive or obtain a license be restored for an additional period
9 of not less than 90 days after the date that the person would have been entitled to
10 restoration of driving privileges.

11 * Sec. 20. AS 28.33.030 is amended to read:

12 Sec. 28.33.030. Operating a commercial motor vehicle while under the
13 influence of an alcoholic beverage or controlled substance [INTOXICATED]. (a)

14 A person commits the crime of operating a commercial motor vehicle while under the
15 influence of an alcoholic beverage or controlled substance [INTOXICATED] if the
16 person operates a commercial motor vehicle

17 (1) while under the influence of an alcoholic beverage
18 [INTOXICATING LIQUOR] or any controlled substance;

19 (2) when, as determined by a chemical test taken within four hours
20 after the alleged offense was committed, there is 0.04 percent or more by weight of
21 alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of
22 blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's
23 breath; or

24 (3) while under the combined influence of an alcoholic beverage
25 [INTOXICATING LIQUOR] and a controlled substance.

26 (b) Operating a commercial motor vehicle while under the influence of an
27 alcoholic beverage or controlled substance [INTOXICATED] is a class A
28 misdemeanor.

29 (c) The sentencing of a person convicted under this section shall be in
30 accordance with the minimum periods of imprisonment, fines, rehabilitative treatment,
31 and other provisions of AS 28.35.030, as if the person had been convicted of a

1 violation of AS 28.35.030. For purposes of sentencing, convictions for operating a
2 commercial motor vehicle while under the influence of an alcoholic beverage or
3 controlled substance [INTOXICATED] under this section, and for refusal to submit
4 to a chemical test under AS 28.33.032, if arising out of a single transaction, are
5 considered one previous conviction.

6 * Sec. 21. AS 28.33.031(a) is amended to read:

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

9 (1) of the person's breath if lawfully arrested for an offense arising out
10 of acts alleged to have been committed when the person was operating the commercial
11 motor vehicle while under the influence of an alcoholic beverage or controlled
12 substance [INTOXICATED]; the test or tests may be administered at the direction of
13 a law enforcement officer who has probable cause [REASONABLE GROUNDS] to
14 believe that the person was operating a commercial motor vehicle while under the
15 influence of an alcoholic beverage or controlled substance [INTOXICATED] in
16 violation of AS 28.33.030 or AS 28.35.030;

17 (2) of the person's breath and blood for the purpose of determining the
18 alcoholic content of the person's breath and blood and is considered to have given
19 consent to a chemical test or tests of the person's blood and urine for the purpose of
20 determining the presence of controlled substances in the person's blood and urine if
21 the person is involved in a motor vehicle accident that causes death or serious physical
22 injury to another person; the test or tests may be administered at the direction of a law
23 enforcement officer who has probable cause [REASONABLE GROUNDS] to
24 believe that the person was operating a commercial motor vehicle that was involved in
25 an accident causing death or serious physical injury to another person.

26 * Sec. 22. AS 28.33.031(c) is amended to read:

27 (c) A person who operates a commercial motor vehicle is considered to have
28 given consent to a preliminary breath test, at the direction of a law enforcement
29 officer, for the purpose of determining the alcoholic content of the person's blood or
30 breath. A law enforcement officer may administer a preliminary breath test if the
31 officer has probable cause [REASONABLE GROUNDS] to believe that the person's

1 ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
2 beverages and that

3 (1) the commercial motor vehicle caused injury to person or property;

4 (2) the person violated the provisions of AS 28.33.130(a) or violated
5 the terms of an out-of-service order issued under AS 28.33.130; or

6 (3) the person unlawfully operated a commercial motor vehicle; in this
7 paragraph, "unlawfully" means in violation of any federal, state, or municipal statute,
8 regulation, or ordinance.

9 * Sec. 23. AS 28.33.033(a) is amended to read:

10 (a) Upon the trial of a civil or criminal action or proceedings arising out of
11 acts alleged to have been committed by a person operating a commercial motor
12 vehicle while under the influence of an alcoholic beverage [INTOXICATED] in
13 violation of AS 28.33.030, the following rules apply with regard to the amount of
14 alcohol in the person's blood or breath at the time alleged:

15 (1) if there was less than 0.04 percent by weight of alcohol in the
16 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
17 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact
18 does not give rise to a presumption that the person was or was not under the influence
19 of an alcoholic beverage [INTOXICATING LIQUOR], but that fact may be
20 considered with other competent evidence in determining whether the person was
21 under the influence of an alcoholic beverage [INTOXICATING LIQUOR];

22 (2) if there was 0.04 percent or more by weight of alcohol in the
23 person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's
24 blood, or 0.04 grams or more of alcohol per 210 liters of the person's breath, it is
25 presumed that the person was under the influence of an alcoholic beverage
26 [INTOXICATING LIQUOR].

27 * Sec. 24. AS 28.33.033(c) is amended to read:

28 (c) The provisions of (a) of this section may not be construed to limit the
29 introduction of any other competent evidence bearing upon the question of whether
30 the person was or was not under the influence of an alcoholic beverage
31 [INTOXICATING LIQUOR].

1 * Sec. 25. AS 28.33.140(a) is amended to read:

2 (a) In addition to the court action provided in AS 28.15.181, conviction of any
3 of the following offenses is grounds for immediate disqualification from driving a
4 commercial motor vehicle for the periods set out in this section:

5 (1) operating a commercial motor vehicle while under the influence
6 of an alcoholic beverage or controlled substance [INTOXICATED] in violation of
7 AS 28.33.030;

8 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

9 (3) operating a motor vehicle while under the influence of an
10 alcoholic beverage or controlled substance [INTOXICATED] in violation of
11 AS 28.35.030;

12 (4) leaving the scene of an accident in violation of AS 28.35.060, or
13 failing to file, or providing false information in, an accident report in violation of
14 AS 28.35.110;

15 (5) a felony under state or federal law, which was facilitated because
16 the person used a commercial motor vehicle;

17 (6) a serious traffic violation; or

18 (7) driving after being placed out of service in violation of regulations
19 adopted under AS 28.05.011.

20 * Sec. 26. AS 28.35.030(a) is amended to read:

21 (a) A person commits the crime of driving while under the influence of an
22 alcoholic beverage or controlled substance [INTOXICATED] if the person operates
23 or drives a motor vehicle or operates an aircraft or a watercraft

24 (1) while under the influence of an alcoholic beverage, intoxicating
25 liquor, or any controlled substance;

26 (2) when, as determined by a chemical test taken within four hours
27 after the alleged offense was committed, there is 0.08 [0.10] percent or more by
28 weight of alcohol in the person's blood or 80 [100] milligrams or more of alcohol per
29 100 milliliters of blood, or when there is 0.08 [0.10] grams or more of alcohol per 210
30 liters of the person's breath; or

31 (3) while the person is under the combined influence of an alcoholic