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scenes, for inclusion in the Combined DNA Index System. The cost: \$100,000,000 for each of fiscal years 2002 through 2006.

Given the current volume of DNA cases facing the nation's forensic labs and the current inability of the labs to keep pace with that volume, the Commission recommended that the Department of Justice should not pursue arrestee sampling unless the convicted offender database backlog is substantially eliminated, significant sources are allocated for the analysis of non-suspect cases, and sufficient funds are made available for the collection and analysis of arrestee samples. Until these conditions are met, the Commission concluded, the pursuit of arrestee sampling would seriously exacerbate the backlog and casework and prove more harmful than beneficial by diverting resources from non-suspect cases.

IV. Conclusion

The social development of DNA analysis is paralleling that of fingerprints: initial hesitancy followed by acceptance of police departments and courts, followed by a rush to implement the technology with an ever-expanding scope. According to Cole (2001), the history of fingerprinting should teach the difference between a biological marker and a code that informs about a person's abilities, weaknesses, or destinies. An emphasis on this distinction may aid the social acceptance of collecting DNA samples from arrestees, as long as there are sufficient assurances that DNA typing will only be used for identification. The cost of implementing such a biological sample collection is another matter. However, the U.S. public may be more inclined to foot the bill since the September 11 terrorist attacks.

References

- Boling v. Romer*, 101 F.3d 1336 (10th Cir. 1996).
- Cole, S.A. (2001). *Suspect Identities* (Harvard University Press).
- Davenport, P. (April 12, 2002). "Lawmakers moving to expand state's DNA testing of criminals," *The Associated Press State & Local Wire*.
- "DNA from suspects: Plan raises fears," *Seattle Times* (Final Edition) A6 (December 15, 1998).
- Fischer, E.A. and Jones, N.L. (2001). *DNA Identification and Evidence: Applications and Issues* (Novinka Books).
- Forensic Science Service (2002). "History of the Forensic Science Service," Available: <http://www.forensic.gov.uk/forensic/entry.htm>.
- Gugliotta, G. (July 7, 1999). "A rush to DNA sampling: Vital police tool? Affront to Liberty?" *The Washington Post*, A01.
- Halloran, L. (October 24, 1999). "DNA testing fuels debate over privacy some say justice wins, others fear losing rights," *Hartford Courant*, A1.
- In re Shaddie Clark Shabazz*, 2002 U.S. Dist. LEXIS 8078 (April 23, 2002).
- Kertscher, T. (May 4, 2001). "DNA tests raise privacy worries," *Milwaukee Journal Sentinel*, 03B.
- Morin, S.K. (Spring 2002). "The physician as gatekeeper to the use of genetic information in the criminal justice system," *The Journal of Law, Medicine, & Ethics* 30:88-94.
- National Institute of Justice. (January 16, 2000). "Recommendation of the National Commission on the Future of DNA Evidence to the Attorney General Regarding Arrestee DNA Sample Collection," Available: <http://www.ojp.usdoj.gov/nij/dna/arrestrc.html>.

"Proposal: DNA sample at arrest/Safir to speak today on controversial plan," *Newsday* (Combined Editions), A31 (December 14, '998).

Rein, L. (February 11, 2002). "Va. Senate Panel Backs DNA tests at time of arrest," *The Washington Post*, A1.

Rise v. State of Oregon, 59 F.3d 1556 (Ninth Cir. 1995).

Sankar, P. (2001). "DNA-Typing: Galton's Eugenic Dream Realized?," in *Documenting Individual Identity*, Caplan, J. and Torpey, J. (Eds.), pages 273-290 (Princeton University Press).

Schmerber v. California 384 U.S. 757 (1966).

Scott, G. (November 20, 2001). "Should Physicians help law enforcement authorities conduct 'DNA dragnets'?", *The New York Times* (Late Edition), F7.

Siegel, R. (February 18, 2002). All Things Considered National Public Radio.

The People v. James Edward King, 82 Cal. App. 4th 1363 (Ct Ap Cal 2000).

Willing, R. (2002a). "Some inmates say 'no' to DNA sample; Nation's database could be threatened," *USA Today* (Final Edition), A.03 (April 15, 2002).

Willing, R. (2002b). "Collection of prisoner DNA widens; Major crimes linked to non-violent offenders," *USA Today* (Final Edition), A.03 (May 2, 2002).

The Ethical Protocol for Collecting DNA Samples in the Criminal Justice System



Jennifer Graddy

States should collect DNA samples from convicted felons, arrestees, and suspects and should include these samples in a federally-mandated DNA database because the government's interests in solving and preventing crimes and seeking justice for victims far outweigh the minimal intrusion upon individuals by requiring submission to a DNA test.

I. Introduction and Background

Deoxyribonucleic acid ("DNA") databases are beneficial in many aspects. Police can use samples found in a DNA database to match samples found at crime scenes. Police also can match evidence and DNA samples found at different crime scenes to establish a link between different crimes.² States are authorized to collect DNA samples from their citizens under certain circumstances or with certain statutory limitations. Missouri's DNA profiling system and current Missouri law in this area will be discussed in the analysis section of this article. DNA databases are useful in solving past crimes that otherwise may remain unsolved.³ DNA databases also can be used in solving future crimes.⁴ For example, DNA samples taken from prisoners and entered into a DNA database proved useful in solving a Virginia case in which a woman was brutally attacked and raped in her home. Police had no physical description of the attacker, but the DNA sample in the database matched a sample of semen found at the scene of the crime. That sample helped police identify and convict a suspect who is now serving a life sentence in conjunction with an additional 30 years.⁵

DNA databases are also useful in exonerating suspects and those wrongly convicted.⁶ For example, in 1991 a North Carolina man was arrested for rape and sentenced to 35 years in prison.⁷ In 1997, however, DNA from the crime scene was matched to a Florida man who had served prison time on aggravated assault and drug convictions.⁸ The state of Florida required the man to provide a blood sample as a condition prior to his release from prison.⁹

Moreover, DNA databases can provide new leads and help solve "old and cold" cases when police have few leads and no real suspects.¹⁰ It is estimated that approximately 30% of sexual assault victims do not know and cannot identify their attackers.¹¹ In cases such as these, investigators are left without individual suspect profiles against which to compare DNA evidence collected from the victim or the crime scene.¹² However, "[m]iniscule amounts of DNA recovered from a crime scene can be used to link an otherwise [unidentified] suspect to the crime."¹³ A simple search of a DNA database can help police solve cases that remain open "in police files for years with few leads and no real suspects."¹⁴ For example, the state of Florida arrested a man in June 1999 for six sexual assaults in Jacksonville

between 1995 and 1998.¹⁵ Arrests made in old cases are both rewarding for the police who investigate these crimes and extremely important to the victims.¹⁶

DNA evidence is more reliable than eyewitness testimony and decreases the current dependence on eyewitness testimony.¹⁷ For example, the Department of Justice reviewed 28 cases of people wrongly convicted of sexual assault and later exonerated by DNA evidence. With the exception of six homicides included in the study, each case involved significant reliance on eyewitness testimony by the victim.¹⁸ Eyewitness memory or other circumstantial evidence is no longer as critical with the availability of DNA evidence.¹⁹ Even when the memory of a witness is no longer fresh or if the witness becomes inaccessible, DNA serves as the ultimate witness by conclusively identifying the perpetrator, tying him to the scene, or by exonerating the accused person.²⁰ In sum, DNA evidence is superior to any other type of evidence because of its accuracy and longevity, thereby rendering claims of "stale evidence" without merit.²¹

Prisoners' knowledge that their DNA samples are in a database, readily available to identify them, may deter them from re-offending after their release. A strong argument can be made that a universal DNA database would deter criminals, who are unlikely to commit crimes knowing that a simple search of a DNA database is nearly 100% accurate in conclusively identifying an offender.²²

The final benefit of DNA analysis is the increased likelihood that defendants will enter guilty pleas when confronted with DNA test results, given that the government will have a stronger case against the defendant with positive DNA results.²³ The increased guilty pleas by defendants may result in victims reporting rapes to the police more often.²⁴ One current deterrent to victims reporting a rape to the authorities is the additional trauma they suffer by testifying in court.²⁵ However, the increased probability of defendants entering guilty pleas when confronted with positive DNA results may encourage victims to report more crimes in the future, as well as save courts time and money.²⁶ The range of crimes included in the state DNA database statutes has expanded and continues to increase from the purposes of identifying and reducing sexually-related crimes.²⁷ Over time, DNA databases will likely include samples from a greater range of criminal convictions. Fingerprints are currently routinely taken from arrested suspects as well as convicts, and it is conceivable that the same will occur with regard to DNA samples in the future.²⁸

II. Analysis

A. States Are Authorized to Collect DNA Samples From Their Citizens

States are authorized to collect DNA samples from their citizens under certain circumstances or with certain statutory limitations. Virginia became the first state to employ a criminal DNA database in 1989.²⁹ Today, all 50 states have legislation requiring DNA testing for specific classes of convicted offenders.³⁰ Every state collects DNA samples from convicted sex offenders; beyond this, however, the states differ significantly.³¹ Most states require DNA samples from only a narrow group of felons, such as those convicted of homicide and sexual assault.³² Currently, four states — including Alabama, New Mexico, Virginia, and Wyoming — require DNA samples from all convicted felons.³³ A few states even require the collection of DNA samples for some classes of misdemeanors.³⁴ Idaho requires collection of DNA samples for offenses such as robbery, aggravated arson, and racketeering in addition to sexual abuse, rape, and murder.³⁵ North Carolina lists, among others, the burning of a mobile home and the malicious throwing of corrosive acid or alkali in its list of crimes included in the state DNA database law.³⁶ Louisiana has the most inclusive database and mandates the collection of DNA samples from any person arrested for felony sex offenses and other enumerated offenses.³⁷ In addition, Arizona, Kansas, and Oregon require juveniles to submit DNA samples if found delinquent for certain sex crimes, and these DNA samples then can be used in investigations once these juveniles reach the age of majority.³⁸

Most states require prisoners to give a blood sample for analysis as a condition of parole or release from prison.³⁹ Many statutes require retroactive application to an individual convicted in one state when parole or probation supervision is transferred to another state.⁴⁰ Even when an offender is not sentenced to prison, some state statutes mandate submission of a DNA sample as a condition of an offender's probation.⁴¹ In Illinois, deliberately delaying or impeding the collection of a DNA sample from a required offender is punishable as a Class A misdemeanor.⁴²

B. Courts Consistently Have Held That the Collection of DNA Samples is Reasonable Under the Fourth Amendment of the U.S. Constitution

In the first case to address the constitutionality of mandatory DNA sampling of non-violent offenders, the Fourth Circuit ruled in 1992, in *Jones v. Murray*, that the Fourth Amendment is not violated when blood samples are taken from convicted felons for inclusion in a state police database.⁴³ In *Jones*, six inmates in the custody of the Virginia Department of Corrections argued that DNA testing constituted an unreasonable search and seizure of their bodies without "individualized suspicion" that they had committed a crime and therefore violated the Fourth Amendment.⁴³ The Fourth Circuit found that convicted felons lose the right to privacy from routine bodily searches as well as searches of their jail cells.⁴⁵ Furthermore, the Fourth Circuit held that once a suspect has been arrested, the state develops a legitimate interest in his identity and connection to the crime at issue, as well as a means of solving future crimes.⁴⁶ In *Jones*, the court ultimately determined that the government interest in preventing future crimes through DNA analysis outweighs a prisoner's lessened expectation of personal privacy.⁴⁷ Thirteen years earlier, the United States Supreme Court held that prisoners have a much lower expectation of privacy than the general population.⁴⁸ The Supreme Court held that routine "shakedown" searches of prisoners are reasonable because prisoners have no reasonable expectation of privacy in their jail cells.⁴⁹ In the same case, the Supreme Court also held that routine, visual body cavity searches of prisoners are not unreasonable.⁵⁰ More recently, an Illinois state court held that the DNA collection procedure is a minimal intrusion of privacy and bodily integrity.⁵¹

"[T]he government has greater authority to conduct searches when there is a 'special need,'" such as a "governmental interest [is] at stake."⁵² In 1993, the Supreme Court of Washington applied the stricter standard for the special needs test.⁵³ In *State v. Olivas*, the court held that requiring involuntary DNA tests from felons for inclusion in a DNA database for the "future prosecution of recidivist acts does not violate the Fourth Amendment[']s] prohibition against unreasonable searches and seizures."⁵⁴ The seven defendants in *State v. Olivas* pleaded guilty to their respective charges and, as a result, each defendant was required to submit to a DNA test.⁵⁵ The defendants argued that DNA testing "constitutes an unconstitutional warrantless search and seizure without probable cause."⁵⁶ In response, the state acknowledged that, while a DNA test constitutes a "search," it "is a lawful exercise of police power" that is reasonably necessary and substantially related to preventing a future crime.⁵⁷ The Supreme Court relied on two Virginia studies wherein 62.5% of all felons are "arrested for [another] felony or serious misdemeanor within 3 years of a release" from prison, in addition to recoverable DNA being left at the scene of a violent crime 30% of the time.⁵⁸ The court concluded that the government interest in deterring recidivist crime by implementing a DNA database was a need "beyond normal law enforcement" and, therefore, qualified as a "special need."⁵⁹

In sum, after balancing the limited privacy rights of convicted felons to be free from unjustified government intrusion against the special needs that the government has for DNA samples, the *Olivas* court found no search violation under the Fourth Amendment.⁶⁰ Similarly, the Second Circuit held that Connecticut could require a man imprisoned for a sexual offense to provide a blood sample based upon the special needs exception.⁶¹ A Massachusetts court held that the special needs analysis extended to the collection of DNA samples from arrested suspects.⁶² That court compared the collection of DNA to "the taking and storing of fingerprints, photographs, and other criminal records."⁶³

C. The Collection of DNA Samples is Not Cruel and Unusual Punishment Under the Eighth Amendment

Courts reject the theory that forcing a prisoner to submit to DNA testing is cruel and unusual punishment.⁶⁴ In 1995, a Minnesota court held, in *Kruger v. Erickson*, that when the drawing of blood is conducted by "a trained technician . . . in accordance with the medically acceptable BCA procedures," "the use of a needle is hardly the cruel and unusual punishment contemplated by the Eighth Amendment."⁶⁵

D. Compelled DNA Testing Does Not Violate a Criminal Defendant's Constitutional Right Against Self-Incrimination

Requiring sex offenders to submit to DNA testing poses the question of whether compelled testing violates a criminal defendant's constitutional right against self-incrimination.⁶⁶ In *Schmerber v. California*, the United States Supreme Court held that a defendant's constitutional right had not been violated by a compulsory blood alcohol test and its admission into evidence.⁶⁷ The *Schmerber* Court ruled that, while the Fifth Amendment prohibits the state from compelling a suspect to give evidence of a testimonial or communicative nature, it does not prohibit the state from requiring a suspect to provide "real or physical evidence."⁶⁸ In *Schmerber*, the Court held that a compelled extraction of a blood sample and its chemical analysis for blood alcohol content did not amount to "testimonial or communicative" evidence and, therefore, was not prohibited by the Fifth Amendment.⁶⁹

Missouri's DNA profiling statute, § 650.055, RSMo, withstood a similar Fifth Amendment challenge.⁷⁰ In *In re Cooper v. Gammon*, the defendant argued "that § 650.055 [violated] the Fifth Amendment privilege against self-incrimination by compelling him to be a witness against himself [by] forcibly taking potentially incriminating evidence from his body."⁷¹ The Missouri court followed the reasoning in *Schmerber* and held that compelling an extraction of a blood sample for blood alcohol content is not "testimonial or communicative evidence" protected by the Fifth Amendment.⁷² The defendant also raised the *ex post facto* clause, arguing that the drawing of a blood sample makes the punishment for the defendant's crime more burdensome and takes away substantial rights.⁷³ The Missouri court also held that although § 650.055 created the possibility of prisoners being punished for refusing to submit to a DNA test, any penalty would result from the prisoner's "refusal to comply with valid prison regulations rather than the commission of the crime for which [the prisoner] was sentenced."⁷⁴

E. DNA Samples Collected From Felons or Arrested Suspects May Be Used in Evidentiary, Investigatory, and Profiling Functions

DNA evidence enables prosecutors to show the defendant's presence at a crime scene through direct evidence — the presence of the defendant's DNA at the scene.⁷⁵ As a result, DNA databases are used in "overcoming problems of false testimony" in court in that DNA samples are far more reliable than eyewitness testimony.⁷⁶ In sexual assault cases in which the physical description of the attacker or the offender's identity is unknown, DNA evidence is the unbiased witness that provides the conclusive link between the crime and the criminal.⁷⁷

The Federal Bureau of Investigation ("FBI") has created a national DNA database in addition to the individual state databases.⁷⁸ In 1994, Congress passed the DNA Identification Act, which authorized the FBI to create the Combined DNA Index System ("CODIS").⁷⁹ CODIS is a three-tiered system of information.⁸⁰ Level one, the Local DNA Index System ("LDIS"), contains information entered by local police and sheriff's department laboratories.⁸¹ The second level, State DNA Index System ("SDIS"), permits local laboratories to trade information within the state.⁸² The third level, the National DNA Index System ("NDIS"), gives states the option to exchange data with other states.⁸³

CODIS is used to assist the police in identifying suspects in crimes where the attacker is not known.⁸⁴ For example, investigators using CODIS can compare DNA samples from the crime scene with DNA profiles in local and national databases in an effort to locate a match or a "cold hit."⁸⁵ Investigators can then use these DNA matches to identify and arrest potential suspects.⁸⁶ A study conducted by the Commonwealth of Virginia found that 62.5% of all people released from prisons in 11 states during 1983 were arrested for an additional felony or serious misdemeanor within three years.⁸⁷ The same study found that 22.7% of all prisoners were re-arrested for a violent offense within three years of release from prison.⁸⁸

The cold hits resulting from the matching in CODIS identifies approximately one offender for every 1,000 samples contained in CODIS.⁸⁹ Despite the backlog of current DNA samples awaiting analysis, Virginia and Florida are both experiencing more than one cold hit each week.⁹⁰ Virginia reports that the offender's original DNA sample was taken in conjunction with a property crime arrest in 60% of the matches achieved from the state's database. In Florida, the estimate is fifty-two percent.⁹¹

F. DNA Profiling Has a Significant Impact in Prosecuting Sexual Assault Cases With Relation to the Statute of Limitations

Sexual assault crimes are subject to statutes of limitations in many states.⁹² Statutes of limitations serve society's needs to punish criminal behavior and protect defendants from the prejudice created by the passage of time.⁹³ DNA technology raises questions about limiting the time in which the state can prosecute defendants for sexual assault crimes.⁹⁴ Opponents argue that DNA indictments vitiate the exact purpose for which statutes of limitations were created: "to preclude defendants from . . . stale charges" that presumptively prevent a defendant from gathering "potentially exculpatory evidence."⁹⁵ Proponents argue that rape survivors' interests should take precedence over statutes of limitations because the accuracy of DNA outweighs any potentially exculpatory evidence that the defendant might bring for his defense.⁹⁶

In Missouri, prosecutors traditionally had assumed they could file charges of sexual assault regardless of how much time had elapsed since the alleged offense.⁹⁷ In December 2000, the Missouri Court of Appeals for the Western District issued a decision interpreting state law as imposing a three-year statute of limitations on sexual assault crimes.⁹⁸ The court ruled that lawmakers in 1990 had inadvertently changed the limit to three years.⁹⁹ The Missouri Court of Appeals for the Eastern District, meanwhile, upheld rulings that prosecution of a sexual assault case could begin at any time, regardless of the statute of limitations.¹⁰⁰ To address the different standards in the Eastern and Western districts, the Missouri General Assembly acted rapidly and drafted House Bill 1037/ Senate Bill 650. In a nearly unanimous vote, legislators passed the measure as an emergency bill on March 6, 2002. The new statute reads, in pertinent part, that a prosecution for a sexual assault may be commenced at any time.¹⁰¹ The importance of the measure led Missouri Governor Bob Holden to sign the legislation in mid-session on March 6, 2002.¹⁰²

G. Missouri's DNA Profiling System

Section 650.050, RSMo, authorizes the Missouri Department of Public Safety to "develop and establish a 'DNA Profiling System.'"¹⁰³ The profiling system is "referred to in sections 650.050 to 650.057 . . . to support criminal justice services in local communities [statewide] in DNA identification."¹⁰⁴ The DNA profiling system is compatible with the FBI system such that the state and federal agencies may exchange DNA records and the quality of samples remains secured.¹⁰⁵

H. Missouri DNA Sample Collection

Section 650.055, RSMo, requires that prisons collect a blood sample from every individual convicted of a felony in a Missouri circuit court for purposes of DNA profiling.¹⁰⁶ The Department of Corrections will collect the sample upon an offender's entry into the Department of Corrections system, or "[b]efore release from a county jail or detention facility."¹⁰⁷ The DNA profiling statute applies to offenders in prison, on probation, and on parole.¹⁰⁸ The Missouri State Highway Patrol and the Department of Corrections enforce and oversee the DNA sample collection and storage process.¹⁰⁹ The DNA collection statute indemnifies employees who collect the samples from civil and criminal liability when the collection act is performed in a reasonable manner.¹¹⁰ The statute authorizes the collection of DNA samples by force if necessary.¹¹¹

I. The DNA Backlog

Although all 50 states require that convicted offenders submit to DNA samples, increased funding should be allotted to DNA analysis to decrease the backlog of DNA samples awaiting analysis so that authorities may solve past crimes and future crimes more efficiently.¹¹² Many samples are not tested for years due to the overwhelming demands placed on state laboratories because of the large volume of DNA evidence.¹¹³ Analyzing the backlog of CODIS samples is estimated to take six years, and many samples may remain untested after statutes of limitations run.¹¹⁴ Nearly 500,000 blood samples from felons nationwide await analysis, in addition to the samples not yet collected from one million convicted murderers and rapists.¹¹⁵ The National Commission on the Future of DNA Evidence counsels against testing newly-arrested suspects because of this enormous backlog, and voices concerns about the continued lack of laboratory funding by state legislatures.¹¹⁶

III. Conclusion

States should collect DNA samples from convicted felons, arrestees, and suspects, and should include these samples in a federally-mandated DNA database because the government's interests in solving and preventing crimes and seeking justice for victims far outweigh the minimal intrusion upon individuals by requiring submission to a DNA test. DNA databases are useful in solving past and future crimes, as well as in exonerating suspects and those wrongfully accused and/or convicted. DNA evidence has proven effective in the courtroom setting and is more reliable than eyewitness testimony. DNA databases could deter repeat offenders from committing future crimes.

DNA evidence provides the prosecution with a stronger case when defendants are confronted with positive DNA test results linking them to the crime scene and crime charged; the result is more guilty pleas. These guilty pleas save the state and federal court systems time and money. In the last 10 years, the use of DNA evidence has gained widespread recognition in courts across the country. In 1992, the Fourth Circuit ruled that the collection of blood samples from convicted felons does not violate the Fourth Amendment with regard to its search and seizure protections. In 1995, a Minnesota district court found that collection of DNA samples was not cruel and unusual punishment under the Eighth Amendment. In 1997, the Missouri Court of Appeals found that compelled DNA testing does not violate a criminal defendant's constitutional right against self-incrimination. In sum, DNA evidence contained in a federally-mandated database is an invaluable tool to law enforcement and prosecutors who enforce criminal laws and attempt to protect society from future crimes committed by repeat offenders.

Footnotes

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² Martha L. Lawson, *Personal Does Not Always Equal "Private": The Constitutionality of Requiring DNA Samples from Convicted Felons and Arrestees*, 9 Wm. & Mary Bill Rts. J. 645, 645 (2001).

³ Edward Connors et al., U.S. Department of Justice, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, at xxvi (1996) ("DNA analysis is a powerful and often necessary tool for establishing the presence or absence of someone at a crime scene.").

⁴ *Id.*

⁵ Kenneth Bredemeier, *In Virginia, Freedom From Fear for Crime Victims, Relief for Families*, Wash. Post, July 7, 1999, at A14.

⁶ Yale H. Yee, *Criminal DNA Data Banks: Revolution for Law Enforcement or Threat to Individual Privacy?*, 22 Am. J. Crim. L. 461, 476 (1995).

⁷ Associated Press, *Inmate Released After DNA Analysis, A North Carolina Man Was Cleared of Rape as a Florida Man Was Charged*, Orlando Sentinel, July 8, 1997, at C6.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Lawson, note 2 at 658.

¹¹ Callie Marie Rennison, *Criminal Victimization, 1999*, Bureau of Justice Statistics National Crime Victimization Survey, at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv99.pdf> (Aug. 2000).

¹² National Research Council, Committee on DNA Forensic Science: *The Evaluation of Forensic DNA Evidence*, National Academy Press, at <http://www.nap.edu/readingroom/books/DNA> (1996).

¹³ Rebecca Sasser Peterson, *DNA Databases: When Fear Goes Too Far*, 37 Am. Crim. L. Rev. 1219, 1238 (2000).

¹⁴ See Lawson, note 2 at 658.

¹⁵ Erin Hallissy & Charley Goodyear, *How DNA Fights Crime*, S.F. Chron., Oct. 20, 1999, at A1.

¹⁶ *Id.* (quoting David Coffman, the director of Florida's DNA database lab, as stating: "I really have the greatest job in the world. I actually break the cases open.").

¹⁷ Chris Roberts, *Panel Studies Use of DNA in Inmate Appeals*, San Diego Union-Trib., May 8, 1999, at A10 (noting that DNA evidence has disproved eyewitness accounts on occasion).

¹⁸ See Connors, note 3 at xiv.

¹⁹ See Walter F. Rowe, Commentary site to Edward Connors et al., *Convicted by Juries, Exonerated by the Use of DNA Evidence to Establish Innocence After Trial*, at xv (1996) (noting that DNA molecules are "more stable than the polymorphic proteins" formerly used to link biological evidence to suspected offenders).

²⁰ Sally E. Renskers, *Trial by Certainty: Implications of Genetic "DNA Fingerprints."* 39 Emory L.J. 309, 313-14 (1990).

²¹ Amy Dunn, *Criminal Law—Statutes of Limitation on Sexual Assault Crimes: Has the Availability of DNA Evidence Rendered Them Obsolete?*, 23 U. Ark. Little Rock L. Rev. 839, 860 (2001).

²² Mark Schoofs, *Genetic Justice*, Village Voice, November 18, 1997, at 44 (quoting Carlos Rebren, the director of Alabama's forensic science department, who said that maintaining an individual's DNA profile might "discourage [him] from criminal misconduct").

²³ Stephanie A. Parks, *Compelled DNA Testing in Rape Cases: Illustrating the Necessity of an Exception to the Self-Incrimination Clause*, 7 Wm. & Mary J. Women & L. 499, 510 (2001).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Ian McEwen & Phillip R. Reilly, *A Review of State Legislation on DNA Forensic Data Banking*, 54 Am. J. Hum. Genetics, 941, 944-45 (1994).

²⁸ See *Yee*, note 6 at 477.

²⁹ Michelle Hibbert, *DNA Databanks: Law Enforcement's Greatest Surveillance Tool?*, 34 Wake Forest L. Rev. 767, 774 (1999).

³⁰ See *Lawson*, note 2 at 650.

³¹ See *Hibbert*, note 29 at 775-78.

³² Peter Donnelly & Richard D. Friedman, *DNA Database Searches and the Legal Consumption of Scientific Evidence*, 97 Mich. L. Rev. 931, 939, (1999).

³³ See Ala. Code § 36-18-24 (2001); N.M. Stat. Ann. §§ 29-16-1-29-16-13 (Michie 2003); Va Code Ann. § 19.2-310.2 (Cum. Supp. 2002); Wyo. Stat. Ann. §§ 7-19-401-7-19-405 (Michie 20003).

³⁴ See Ariz. Rev. Stat. Ann. § 31-281 (A) (West 2002); Ark. Code Ann. § 12-12-1109 (Supp. 2003); Del. Code ann. tit. 29 § 4713 (1997).

³⁵ See Idaho Code § 19-5506 (Michie Cum. Supp. 2003).

³⁶ See N.C. Gen. Stat. § 15A-266.4 (1997).

³⁷ La. Rev. Stat. Ann. § 15: 609 (West Cum. Supp. 2003).

³⁸ See Ariz. Rev. Stat. Ann. §§ 13-4438, 31-282 (West 2002); Kan. Stat. Ann. § 21-2511 (a) (Cum. Supp. 2002); Or. Rev. Stat. § 419C.473(1) (1999) (These statutes are an expansion of the standard statutes authorizing samples from convicted offenders because a juvenile is technically not convicted, but rather is adjudicated.).

³⁹ Nicholas Wade, *FBI Set to Open Its DNA Database for Fighting Crime*, N.Y. Times, Oct. 12, 1998 at A1 (quoting M. Dawn Herkenham, chief of the FBI's Forensic Science Systems Unit: "I think the trend is that ten years from now all the felonies will be covered. . . . We recommend that all violent felonies, burglaries, juveniles, and retroactivity for people on parole to be included.")

⁴⁰ See, e.g., Ala. Code § 36-18-24 (2001); Ariz. Rev. Stat. Ann. § 13-4438 (West 2002); 730 Ill. Comp. Stat. 5/5-4-3 (West Cum. Supp. 2003).

⁴¹ See, e.g., Ala. Code § 36-18-24 (2001); 730 Ill. Comp. Stat. Ann. 5/5-4-3 (Cum. Supp. 2003).

⁴² 730 Ill. Comp. Stat. Ann. 5/5-4-3 (Cum. Supp. 2003).

⁴³ *Jones v. Murray*, 962 F.2d 302 (4th Cir. 1992).

⁴⁴ *Id.* at 305.

⁴⁵ *Id.* at 306.

⁴⁶ *Id.*

⁴⁷ *Id.* at 308.

⁴⁸ *Hudson v. Palmer*, 468 U.S. 517, 523-24 (1984); see also *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

⁴⁹ *Id.*

⁵⁰ See *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

⁵¹ *People v. Wealer*, 636 N.E.2d 1129, 1136 (Ill. App. Ct. 1994).

⁵² See *Lawson*, note 2 at 654-55.

⁵³ *State v. Olivas*, 856 P.2d 1076, 1086 (Wash. 1993) (noting the special needs approach is well-suited to meet the goal of balancing government needs and privacy rights of convicted persons).

⁵⁴ *Id.*

⁵⁵ *Id.* at 1077.

⁵⁶ *Id.* at 1080.

⁵⁷ *Id.* at 1081-82.

⁵⁸ *Id.* at 1085 (citing Virginia Dept. of Criminal Justice Services, *Violent Crime in Virginia (1998)* and Bureau of Justice Statistics, *Special Report: Recidivism in Prisoner Released in 1983 (1989)*).

⁵⁹ *Id.* at 1086; *see also Roe v. Marcotte*, 193 F.3d 72 (2d Cir. 1999) (using the "special needs" approach to uphold the DNA database statute because of the high rate of recidivism among sexual offenders and the usefulness of DNA in solving sex crimes).

⁶⁰ *Id.*

⁶¹ *Roe v. Marcotte*, 193 F.3d 72 (2d Cir. 1999).

⁶² *Landry v. Attorney General*, 709 N.E.2d 1085, 1092 (Mass. 1999).

⁶³ *Id.*

⁶⁴ *Kruger v. Erickson*, 875 F. Supp. 583 (D. Minn. 1995).

⁶⁵ *Id.* at 588.

⁶⁶ David Dolinko, *Is There a Rationale for the Privilege Against Self-Incrimination?*, 33 UCLA L. Rev. 1063, 1095 (1986) (noting that a rule requiring factually guilty persons to provide evidence of their crimes is "so contrary to the basic human instinct of self-preservation that very few of us could conform to it.")

⁶⁷ *Schmerber v. California*, 384 U.S. 757, 767 (1966).

⁶⁸ *Id.* at 763-64.

⁶⁹ *Id.* at 765.

⁷⁰ *In re Cooper v. Gammon*, 943 S.W. 2d 699, 705 (Mo. App. W.D. 1997).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 706.

⁷⁴ *Id.*

⁷⁵ Harlan Levy, *And the Blood Cried Out: A Prosecutor's Spellbinding Account of the Power of DNA* 190 (Basic Books 1996) ("I firmly believe now, that DNA analysis can promote a more just society, both by making punishment of the guilty more likely and by assuring exoneration of the innocent.").

⁷⁶ See *Lawson*, note 2 at 660.

⁷⁷ See *Dunn*, note 21 at 867.

⁷⁸ Robert W. Schumacher II, *Article, Expanding New York's DNA Database: The Future of Law Enforcement*, 26 *Fordham Urb. L.J.* 1635, 1646 (1999).

⁷⁹ *Id.*, see also 42 U.S.C. §§ 3751, 3753, 3793, 3797 (1994).

⁸⁰ *Id.*

⁸¹ *Id.* at 1646, n.88.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Christopher H. Asplen, *From Crime Scene to Courtroom: Integrating DNA Technology into the Criminal Justice System*, 83 *Judicature* 144, 147 (1999).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See *Yee*, note 6 at 476.

⁸⁸ *Id.*

⁸⁹ See *Asplen*, note 84 at 147.

⁹⁰ Eric Slater, *Rape Case DNA Tests the Limits; Milwaukee Uses Genetic Evidence to File Warrants in Unsolved Crimes, National Databank is Overwhelmed by Samples, Underfunded and Undercoordinated*, *L.A. Times*, Feb. 11, 2000, at A1 (noting Virginia state crime lab director Paul Ferrara's belief that at least one murder of a 22 year-old woman would have been prevented had the backlog of unanalyzed DNA samples not led to the release of a suspected murderer/rapist before he could be linked to a prior murder and rape).

⁹¹ Mark Hansen, *Banking on DNA: Prosecutors Hail Broadening Collections; Others See Privacy Violations*, *ABA Journal*, Aug. 1999, at 26.

⁹² Ian L. Adlestein, *Conflict of the Criminal Statute of Limitations with Lesser Offenses at Trial*, 37 *Wm. & Mary L. Rev.* 199, 251-52 (1995).

⁹³ J. Anthony Chavez, *Statutes of Limitations and the Right to a Fair Trial: When is a Crime Complete?*, *Crim. Just.*, Summer 1995, at 2.

⁹⁴ Steve Chapman, *Rapists Shouldn't Be Able to Run Out the Clock*, *Chi. Trib.*, Mar. 12, 2000, at 19.

⁹⁵ Andrew C. Bernasconi, *Beyond Fingerprinting: Indicting DNA Threatens Criminal Defendants' Constitutional and Statutory Rights*, 50 *Am. U. L. Rev.* 979, 999 (2001).

⁹⁶ Jonathan, W. Diehl, *Drafting a Fair DNA Exception to the Statute of Limitations in Sexual Assault Cases*, 39 *Jurimetrics J.* 431, 436 (1999).

⁹⁷ Tim Hoover, *Missouri Lawmakers Pass Bill Lifting Statute of Limitations on Rape*, *Kansas City Star*, Mar. 5, 2002.

⁹⁸ *State v. Hyman*, 37 S.W.3d 384, 388 (Mo. App. W.D. 2001).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ H.B. 1037, 91st Gen. Assem., 2d Reg. Sess. (Mo. 2002).

¹⁰² *See Hoover.*

¹⁰³ Section 650.050, RSMo 2000.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Section 650.055, RSMo 2000.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *See Dunn*, at 856.

¹¹³ *See Hibbert*, at 799.

¹¹⁴ See *Asplen*, at 147.

See *Hallissy*, at A1.

¹¹⁶ Michael Higgins, *Acid Test*, *ABA Journal*, Oct. 1999, at 64, 66.

JOURNAL OF THE MISSOURI BAR
Volume 59 - No. 5 - September-October 2003

HB

131

SENATE COMMITTEE REPORT

DATE: 4/14/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

HOUSE BILL NO. 131

HB 131 ACCESS DEVICE & I.D. DOCUMENT CRIMES

"An Act increasing the criminal classification of theft of an access device and of obtaining an access device or identification documents by fraudulent means; increasing the criminal classification for certain cases of fraudulent use of an access device; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


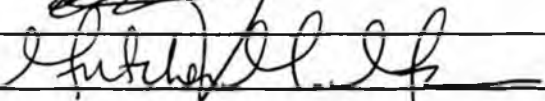
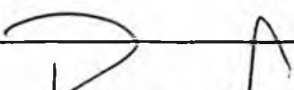
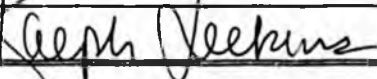
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
	X		X	
				
CHAIR: 	✓			

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Address:
PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 131

Access Device & I.D. Document Crimes

"An Act increasing the criminal classification of theft of an access device and of obtaining an access device or identification documents by fraudulent means; increasing the criminal classification for certain cases of fraudulent use of an access device; and providing for an effective date."

Identity theft is on the increase in Alaska and our country as a whole. The Federal Trade Commission (FTC) reported that identity theft was up 33 percent in 2003. The State of Alaska ranks second in the number of complaints per 100,000 people.

These types of theft average \$500; however, this does not take into consideration the countless hours a victim may spend tracking down and stopping the imposter, as well as time and legal costs to repair credit ratings and fight collection efforts. These changes would bring the penalties for such crimes closer in line with federal criminal laws, which provide for as much as 15 years in prison for similar crimes.

The provisions of HB 131:

- Increase the penalty from a class A misdemeanor to a class C felony for:
 1. Theft of an access device, such as a credit card or bank account number.
 2. The crime of fraudulent use of an access device if the value of the property or services obtained is \$500 or more.
 3. The crime of obtaining an access device or identification document by fraudulent means.

I ask for your consideration and support of HB 131 to take a step towards meaningful deterrence and punishment for such crimes, which can impact all Alaskans.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

Commercial and Fair Business Section
P.O. BOX 110300
123 4TH ST., DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2539

March 1, 2005

Sectional Analysis of HB 131 (ID Theft)

(Prepared by the Department of Law, March 1, 2005)

HB 131 would increase the criminal classification of theft of an access device, of fraudulent use of an access device, and for fraudulently obtaining an access device or identification document.

Section 1 classifies theft of an access device as theft in the second degree, a class C felony.

Section 2 is a conforming amendment that deletes a statutory reference to the provision repealed in sec. 5 of the bill.

Section 3 raises fraudulent use of an access device to a class C felony from a class A misdemeanor when the value of the property or services obtained is between \$50 and \$25,000; it raises fraudulent use of an access device to a class A misdemeanor when the value of property or services obtained is less than \$50.

Section 4 raises fraudulently obtaining an access device or identification document to a class C felony from a class A misdemeanor.

Section 5 repeals the statutory provision classifying theft of an access device as theft in the third degree.

Section 6 would make the bill applicable to offenses occurring on or after the effective date.

Section 7 sets out an effective date of July 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 131
 (H) Publish Date: 3/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: "An act increasing the criminal classification of RDU: Institutional Facilities
theft of an access device and of obtaining an access device..." Component: Institution Director's Office
 Sponsor: Representatives Stoltze, McGuire
 Requester: Judiciary, Finance Component No.: 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Due to the estimated small number of successful prosecutions that may occur as a result of the changes contained in the legislation, the department does not anticipate a significant fiscal impact to the Department of Corrections.

Prepared by: Sharleen Griffin, Acting Director
 Division: Administrative Services
 Approved by: Portia C.K. Parker, Deputy Commissioner
 Agency: Department of Corrections

Phone 465-4641
 Date/Time 2/25/05 10:26 AM
 Date 2/25/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 131
 (H) Publish Date: 3/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act increasing the criminal classification
of theft of an access device and of obtaining an access.. RDU: CRIMINAL
 Sponsor: Representative Stolze Component: CDCO
 Requester: House Judiciary Component No.: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends sections of AS 11.46. and would protect citizens, businesses, and financial institutions by increasing the penalty for certain types of identity theft and fraud crimes. The bill would increase the penalty from a class A misdemeanor to a class C felony for (1) theft of an access device, such as a credit card or bank account number, (2) the crime of fraudulent use of an access device if the value of the property or services obtained is \$50 or more, and (3) the crime of obtaining an access device or identification document by fraudulent means. The Department of Law does not anticipate a fiscal impact from passage of this legislation.

Prepared by: Kathryn Daughhete, Director Phone 465-5427
 Division: Administrative Services Date/Time 2/22/05 4:21 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 2/22/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 131
 (H) Publish Date: 3/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act increasing classification of theft of an access RDU Alaska State Troopers
device & obtaining an access device or identification... Component AST Detachments
 Sponsor Representatives Stoltze, McGuire
 Requester _____ Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 11.46.130 and adds an "access device" [defined in AS 11.81.900(b)(1)] to the crime of theft in the second degree which will increase the criminal classification for theft of an "access device" from a Class A Misdemeanor to a Class C Felony. The bill also increases the criminal classification for fraudulent use of an access device in AS 11.46.285. It will increase the penalty to a Class C Felony if the theft of property or services obtained is \$50 or more, but less than \$25,000. The present value for a Class C Felony is \$500 or more, but less than \$25,000.

 No fiscal impact on the Department of Public Safety is anticipated.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
 Division Alaska State Troopers Date/Time 2/22/05 5:37 PM
 Approved by: Commissioner William Tandeske Date 2/22/2005
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 131
 (H) Publish Date: 3/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act increasing criminal class. for RDU Legal and Advocacy Services
access device crimes... Component Public Defender Agency
 Sponsor Reps. Stoltze, McGuire
 Requester House Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill seeks to amend several offenses related to access devices, like credit cards and bank account numbers, and ID documents to raise the penalty from a misdemeanor to a felony for the theft of, fraudulent use of, and for fraudulently obtaining an access device or ID document. This increase in penalties will increase the workload of the Agency. It is far more costly to defend a person charged with a felony than a misdemeanor. Some of these offenses are currently prosecutable by municipalities as misdemeanors, and if they become felonies, they will be prosecuted by the state resulting in more public defender appointments. It is not possible to predict how many current PD-appointed cases will be affected or new cases appointed, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division Public Defender Agency Date/Time 2/22/05 9:54 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/22/2005
 Agency Department of Administration

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Tony Wilson, Member
Juneau
Pres. Capital City Chapter

John Jepson, Member
Ketchikan
Pres. First City Chapter

Matt Betzen, Member
Unalaska
Pres. Aleutian Islands Chapter

Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

March 18, 2005

Representative Bill Stoltze
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Stoltze:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill 131, relating to access devices and identity theft.

The APOA Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

This legislation increases the penalties for fraudulent use of an access device and identity theft. These crimes are only increasing with expanded use of the Internet as a tool of commerce. The damage done to victims of these types of crimes can take months and even years to recover from and, in some cases, is irreparable. This bill is a step in the right direction in addressing these types of crimes.

Thank you for addressing this issue. Please contact the APOA office in Anchorage at (907) 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

AARP Alaska

April 20, 2005

The Honorable Ralph Seekins, Chair
Senate Judiciary Committee
Alaska State Capitol, Room 125
Juneau, Alaska 99801-1182

RE: HB 131 (Stoltze)--Support

Dear Chair Seekins:

On behalf of the AARP members in Alaska, we ask that you and your colleagues on the Senate Judiciary Committee support HB 131, authored by Representative Bill Stoltze and co-sponsored by Representatives McGuire, Kelly, Meyer and Foster.

The intent of HB 131 is to increase the penalties for some crimes associated with identity theft, including credit cards and bank accounts fraudulently accessed. Although violent crime receives the most media attention, fraud and identity theft are becoming increasingly more serious and more prevalent and older people are often the targets. The loss of even modest amounts of money may be devastating to a retired victim living on a low, fixed income.

In surveys of AARP members, they report that identity theft is one of their major concerns. As with any crime, we cannot completely control being victimized. However, HB 131 does increase the penalties for criminals who commit these crimes.

AARP urges an "AYE" vote on HB 131.

Should you have any questions about our position, please feel free to contact me or Patrick Luby (907-762-3314), AARP Alaska Advocacy Director.

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Charlie Huggins
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess
Representative Bill Stoltze

HB

132

SENATE COMMITTEE REPORT

DATE: 4/13/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 132(JUD)

HB 132 CRIMES AGAINST ELDERLY

"An Act relating to certain crimes committed against the elderly; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

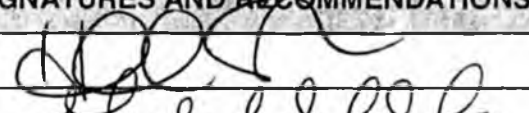
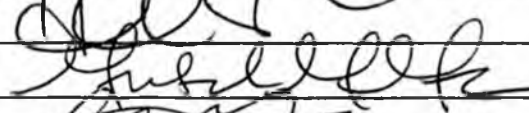

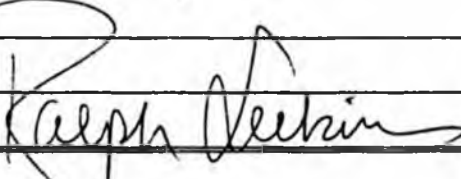
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
	X			
			X	
	X			
CHAIR: 	✓			

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1142
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PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 132

Crimes Against Elderly

"An Act relating to sentencing for certain crimes committed against the elderly; and providing for an effective date."

The population of older citizens in Alaska is growing rapidly, as are the crimes that affect them. The physical, emotional, and financial impact of crimes against the person, and theft and related crimes, on the elderly can be devastating. House Bill 132 would increase the penalty one level for certain crimes against a person and for theft and related crimes, if the perpetrator acted with reckless disregard that the victim was an older citizen.

The provisions of HB 132:

- Increase the penalties for crimes against the elderly one level. For example, assault in the fourth degree, a class A misdemeanor, would be a class C felony if the assault was committed to a person 65 years of age or older.

I ask for your consideration and support of HB 132 to better protect the older citizens of our state.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 132(JUD)
 (H) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to sentencing for certain crimes
committed against the elderly..." RDU CRIMINAL
 Sponsor Representative Stolze Component CDCO
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would enhance penalties for persons convicted of committing certain crimes against the person, or a theft or related financial crime, against a person 65 years of age or older. The bill raises the level of these offenses if the defendant was reckless in regard to the victim being 65 years of age or older. The Department of Law does not anticipate a fiscal impact from passage of this legislation.

Prepared by: Kathryn Daughettee, Director Phone 465-5427
 Division Administrative Services Date/Time 2/22/05 4:10 PM
 Approved by: K. Daughettee for Scott Nordstrand, Acting Attorney General Date 2/22/2005
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 132(JUD)
 (H) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act relating to sentencing for certain crimes RDU Alaska State Troopers
committed against the elderly Component AST Detachments
 Sponsor Representatives Stoltze, McGuire
 Requester _____ Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds a new penalty section for crimes committed against the elderly. The new section outlines an increase in criminal classifications (B misdemeanor is a class A misdemeanor, etc.) which apply to a number of specific Title 11 offenses listed in the bill when the victim was 65 years of age or older at the time of the crime.

No fiscal impact on the Department of Public Safety is anticipated.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
 Division: Alaska State Troopers Date/Time 2/22/05 5:34 PM
 Approved by: Commissioner William Tandeske Date 2/22/2005
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 132(JUD)
 (H) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An act relating to sentencing for certain crimes
committed against the elderly; and providing" RDU Institutional Facilities
 Sponsor Representatives Stoltze, McGuire Component Institution Director's Office
 Requester Judiciary, Finance Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
Miscellaneous
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The legislation raises criminal penalties for crimes committed in violation of AS 11.41 and AS 11.46 when the victim was 65 years of age or older at the time of the crime. There is no statewide data readily available to indicate the number of victims in Alaska who were 65 years of age or older at the time the crime was committed in the offense categories covered by the legislation. It is presumed that because the legislation does increase the penalties for crimes committed in violation of AS 11.41 and AS 11.46, the passage of the legislation will have some fiscal impact on the department, but due to the lack of available statistical information, the department is unable to determine whether the impact will be significant or insignificant. Therefore, the fiscal impact to the Department of Corrections is indeterminate.

Prepared by: Sharleen Griffin, Acting Director Phone 465-4641
 Division: Administrative Services Date/Time 2/22/05 9:53 AM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 2/22/2005
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 132(JUD)
(H) Publish Date: 3/3/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to sentencing for RDU Legal and Advocacy Services
certain crimes against elderly... Component Public Defender Agency
Sponsor Reps. Stoltze, McGuire
Requester House Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	140.9	140.9	140.9	140.9	140.9	140.9
Travel	4.8	4.8	4.8	4.8	4.8	4.8
Contractual	35.9	35.9	35.9	35.9	35.9	35.9
Supplies	2.7	2.7	2.7	2.7	2.7	2.7
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	191.0	185.0	185.0	185.0	185.0	185.0

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	191.0	185.0	185.0	185.0	185.0	185.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	191.0	185.0	185.0	185.0	185.0	185.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill seeks to enhance penalties for numerous crimes against a person 65 years or older. From the 2002 census, it indicates people over 65 comprise 6% of Alaska's population. There are more than 25 crimes listed for enhancement if a victim is 65 or older. The Agency was appointed in over 6600 (6% of 6606 = 396 crimes against elderly) of these crimes in 2004, with over 73% (4851) of them involving misdemeanor crimes that would become felonies. Felonies are much more costly to defend than misdemeanors. American Bar Association national standards provide that an attorney should not handle more than 400 misdemeanor cases a year, or 150 felonies a year. This shift from misdemeanor to felony will increase the Agency workload by one full-time position, factoring in support staff. The additional operating costs to address this increased workload are based on a full-time attorney and support staff in Bethel, where the highest number of these cases exist.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
Division Public Defender Agency Date/Time 2/22/05 9:58 AM
Approved by: Michael Tibbles, Deputy Commissioner Date 2/22/2005
Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 132(JUD)
 (H) Publish Date: 4/5/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act relating to sentencing for RDU: Legal and Advocacy Services
certain crimes against elderly... Component: Public Defender Agency
 Sponsor: Reps. Stoltze, McGuire
 Requester: House Judiciary Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	94.0	94.0	94.0	94.0	94.0	94.0
Travel	3.2	3.2	3.2	3.2	3.2	3.2
Contractual	23.9	23.9	23.9	23.9	23.9	23.9
Supplies	1.8	1.8	1.8	1.8	1.8	1.8
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	129.6	123.6	123.6	123.6	123.6	123.6

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	129.6	123.6	123.6	123.6	123.6	123.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	129.6	123.6	123.6	123.6	123.6	123.6

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill seeks to enhance penalties for numerous crimes against a person 65 years or older. From the 2002 census, it indicates people over 65 comprise 6% of Alaska's population. There are more than 25 crimes listed for enhancement if a victim is 65 or older. The Agency was appointed in over 6600 of these crimes in 2004 (6% of 6606 = 396 crimes against elderly, but some reduction in this number would be appropriate for crimes where the state would not be able to prove that the defendant was reckless with regard to the victim being 65 or older), with over 73% (4851) of them involving misdemeanor crimes that would become felonies. Felonies are much more costly to defend than misdemeanors. American Bar Association national standards provide that an attorney should not handle more than 400 misdemeanor cases a year, or 150 felonies a year. This shift from misdemeanor to felony will increase the Agency workload by one 2/3 attorney position, factoring in support staff.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division: Public Defender Agency Date/Time 2/25/05 2:26 PM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/25/2005
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 132(JUD)
 (H) Publish Date: 4/5/05

Revision: Date/Time (Note if correction): _____ Dept. Affected: _____
 Title: Crimes Against the Elderly BRU: Alaska Court System
 Component: Trial Courts
 Sponsor: Representative Stoltz
 Requester: _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	29.5	29.5	29.5	29.5	29.5	29.5
Travel	1.1	1.1	1.1	1.1	1.1	1.1
Contractual	23.6	23.6	23.6	23.6	23.6	23.6
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	54.2	54.2	54.2	54.2	54.2	54.2

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	54.2	54.2	54.2	54.2	54.2	54.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	54.2	54.2	54.2	54.2	54.2	54.2

Estimate of any current year (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 House Bill 132 increases the penalties for certain crimes if the victim is a person 65 years of age or older. Although the bill raises the offense levels for many crimes against the elderly, the ones likely to impact the court system are those that will raise an offense from a class A misdemeanor to a class C felony. Felony crimes are more resource intensive for the court system because there are grand jury costs, they have a higher trial rate than misdemeanors and, because defendants are subject to supervised probation by the Department of Corrections, they are more likely to be back before the court for petitions to revoke probation. According to the Public Defender Agency, they were appointed in 4851 misdemeanor cases in 2004 that would be felonies under HB 132 in those cases where the victim was 65 years old or older. The Public Defender also notes that census data shows that roughly 6% of Alaska's population is 65 years of age or older. Assuming that crime victims

Prepared by: Doug Wooliver, Administrative Attorney Phone 907-463-4750
 Division: Alaska Court System Date/Time: 3/8/05 11:54 AM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date: 3/8/2005
 Agency: Alaska Court System

FISCAL NOTE #6

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSHB 132(JUD)

ANALYSIS CONTINUATION

are represented proportionally across age categories, the Public Defender numbers suggest that roughly 291 (6% of 4851) crimes against the elderly would rise from misdemeanors to felonies under this bill. Because the Public Defender Agency represents slightly over 60% of felony defendants, the number of new felony offenses filed in the court system is likely to be roughly 450 cases a year.

However, notwithstanding the fact that those 65 years of age or older represent 6% of the state's population, it is not clear what percentage of crime victims actually fall into that category. Because of that uncertainty and because of proof problems associated with the defendant having to act with reckless disregard for the age of the victim, this note will conservatively assume that the passage of HB 132 will result in 200 (rather than 450) new felony cases filed with the court each year. Because roughly 4% of felony cases go to trial, this note reflects the trial costs associated with 8 new felony trials a year. This note does not reflect the additional grand jury time that will be required for these new felonies nor does it include extra costs associated with petitions to revoke probation.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

Commercial and Fair Business Section
P.O. BOX 110300
123 4TH ST., DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2539

March 1, 2005

Sectional Analysis of HB 132 (Crimes Against Seniors)

(Prepared by the Department of Law, March 1, 2005)

HB 132 would increase the penalties for certain offenses committed against persons 65 or older.

Sec. 1: Intent and findings. Section 1 sets out the intent and findings.

Sec. 2: Increase in penalty for certain crimes against seniors. Section 2 adds a new section to the chapter that provides that for certain listed crimes, the seriousness of the offense is raised one level if the offender committed the offense with reckless disregard that the victim was a person 65 years of age or older. For example, assault in the fourth degree, normally a class A misdemeanor, would be a class C felony if the offender acted with reckless disregard that the victim was 65 years of age or older.

Sec. 3: Applicability. Section 3 makes the changes set out in sec. 2 applicable to offenses committed on or after July 1, 2005.

Sec. 4: Effective date. Section 4 sets out an effective date of July 1, 2005.



February 23, 2005

The Honorable Lesil McGuire, Chair
House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801-1182

RE: HB 132 (Stoltze)--Support

Dear Chair McGuire:

On behalf of the AARP members in Alaska, we ask that you and your colleagues on the House Judiciary Committee support HB 132, authored by Representative Bill Stoltze and co-sponsored by you.

The intent of HB 132 is to increase the penalties for some crimes committed against a victim over 65 years of age. This includes crimes like burglary as well as fraud and identity theft. Crime can have more severe consequences for older people than for younger persons, including injuries that may need medical attention. Although violent crime receives the most media attention, fraud and identity theft are becoming increasingly more serious and more prevalent and older people are often the targets. The loss of even modest amounts of money may be devastating to a retired victim living on a low, fixed income.

Older people experience the lowest rates of violent crime among all age groups. However, the fear of crime adversely affects the behavior of many older people, and national surveys show that older people protect themselves by leaving their homes less often than younger persons. According to AARP's research, one-third of people age 50 and older avoid going out at night because they are concerned about crime.

We believe HB 132 may have some impact to deter those who prey on older victims, whether through violent crime, property crime, or fraud and identify theft. Any lessening of crime among older persons will help restore their freedom and help prevent them from becoming prisoners in their own homes.

Should you have any questions about our position, please feel free to contact me or Patrick Luby (907-762-3314), AARP Alaska Advocacy Director.

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Representative Tom Anderson
Representative Nancy Dahlstrom
Representative John Coghill
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg
Representative Bill Stoltze

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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March 18, 2005

Representative Bill Stoltze
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Stoltze:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill 132, relating to crimes against the elderly.

The APOA Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

This bill increases the penalties for certain crimes committed against the elderly. The number of elderly is on the rise in Alaska and with that the number of elderly victims is increasing. This legislation acknowledges the growing crime against the elderly, and the serious effects the elderly suffer as a result of those crimes.

Thank you for addressing this issue. Please contact the APOA office in Anchorage at (907) 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President



April 20, 2005

The Honorable Ralph Seekins, Chair
Senate Judiciary Committee
Alaska State Capitol, Room 125
Juneau, Alaska 99801-1182

RE: HB 132 (Stoltze)--Support

Dear Chair Seekins:

On behalf of the AARP members in Alaska, we ask that you and your colleagues on the Senate Judiciary Committee support HB 132, authored by Representative Bill Stoltze and co-sponsored by twelve of his colleagues, Republicans and Democrats alike.

The intent of HB 132 is to increase the penalties for some crimes committed against a victim over 65 years of age. This includes crimes like burglary as well as fraud and identity theft. Crime can have more severe consequences for older people than for younger persons, including injuries that may need medical attention. Although violent crime receives the most media attention, fraud and identity theft are becoming increasingly more serious and more prevalent and older people are often the targets. The loss of even modest amounts of money may be devastating to a retired victim living on a low, fixed income.

Older people experience the lowest rates of violent crime among all age groups. However, the fear of crime adversely affects the behavior of many older people, and national surveys show that older people protect themselves by leaving their homes less often than younger persons. According to AARP's research, one-third of people age 50 and older avoid going out at night because they are concerned about crime.

We believe HB 132 may have some impact to deter those who prey on older victims, whether through violent crime, property crime, or fraud and identify theft. Any lessening of crime among older persons will help restore their freedom and help prevent them from becoming prisoners in their own homes.

Should you have any questions about our position, please feel free to contact me or Patrick Luby (907-762-3314), AARP Alaska Advocacy Director.

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Charlie Huggins
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess
Representative Bill Stoltze

HB

136

SENATE COMMITTEE REPORT

DATE: 4/13/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

HOUSE BILL NO. 136

HB 136 DRUNK DRIVING TREATMENT PROGRAM

"An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

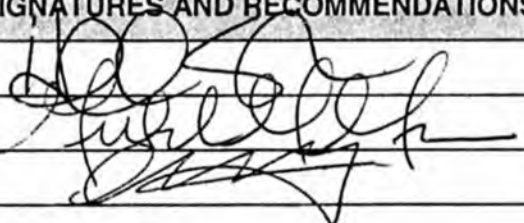
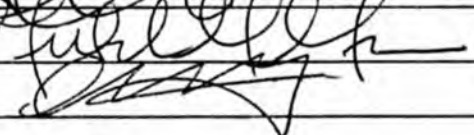
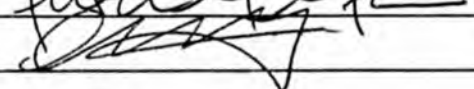
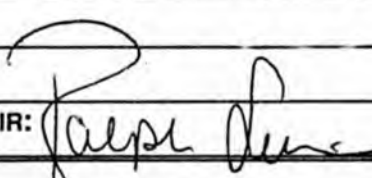
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
	X			
	X			
	X			
CHAIR: 	✓			

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.aklegis.state.ak.us/rokeberg/index.php>



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PHONE (907) 260-0117
FAX: (907) 260-0110

SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-4068
FAX: (907) 465-2040

Representative Norman Rokeberg

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

SPONSOR STATEMENT FOR HB 136

By: Representative Norman Rokeberg

Title: An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

The Legislature believes in the effectiveness of therapeutic courts. Anchorage and Bethel have active therapeutic courts, and various other Alaska communities - Ketchikan, Juneau and Fairbanks - are currently working to establish these courts at the misdemeanor, and in some cases felony, level. I introduced HB 136 in order to provide additional statutory assistance to the operations of therapeutic courts around the state.

Specifically, HB 136 expands the court-ordered treatment programs, i.e. "Wellness Courts," to felony DUI defendants. The statutory authority for these courts can be found under AS 28.35.030 and AS 28.35.032. There are several reasons for doing this:

1. Opening therapeutic courts to felons would increase public protection from DUI crimes. The success of the 18-month "court-ordered treatment" system created by the Legislature is demonstrated by data that shows that over a three-year period, only 25% of graduates have had any repeat offenses. This is in stark contrast to the 75% of DUI offenders who repeat after serving their time in jail.
2. It creates economies of scale if the newly established DUI Wellness Courts are open to both felony and misdemeanor DUI cases.
3. This is an opportune time to extend the DUI/Wellness Court model. The National Highway Traffic Safety Administration (NHTSA) has made funding of this type of court a priority.

In addition to expanding the therapeutic court provisions to felony DUI offenders, HB 136 gives a judge the ability to reward a graduating DUI offender by suspending 75% of the mandatory fine. This amount is increased from the present 50%. Currently, Wellness Court participants pay for most of their own treatment. This is a very costly requirement over the course of the required 18-month program. Allowing the judge to reduce mandatory fines will increase the incentive for defendants to enter a Wellness Court.

Lastly, HB 136 requires that misdemeanant and felony DUI offenders, who are not participants in a court-ordered treatment program, must pay the minimum fines provided in statute. It has been brought to my attention that judges, under the authority of a 1992 Alaska Court of Appeals decision (*Curtis v. State*), are often suspending the fines that the Legislature has specifically set out in statute. HB 136 overrides this decision and makes it absolutely clear to the courts that these defendants must pay the minimum fines.

I urge your support of this legislation.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 136
(H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
Title "An act restricting the authority of a court to RDU Institutional Facilities
suspend execution of a sentence or grant probation ..driving under Component Institution Director's Office
Sponsor Representative Rokeberg
Requester Judiciary, Finance Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections does not anticipate a significant fiscal impact with the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director
Division: Administrative Services
Approved by: Portia C.K. Parker, Deputy Commissioner
Agency: Department of Corrections

Phone 465-4641
Date/Time 3/21/05 7:01 AM
Date 3/21/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 136
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Drunk Driving Treatment Program BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Rokeberg
 Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 136.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 3/17/05 2:52 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/17/2005
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 136
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title: "An Act restricting the authority of a court to suspend execution of a sentence or grant probation in..." RDU: Alaska State Troopers
 Component: AST Detachments
 Sponsor: Representative Rokeberg
 Requester: House Judiciary Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill will have no fiscal impact on the Alaska State Troopers.

The bill does amends sections of Title 28 and suspends up to 75 percent of the minimum fines for driving while under the influence and refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

Prepared by: Lieutenant Todd Sharp Phone 907-269-4532
 Division: Alaska State Troopers Date/Time 3/18/05 3:39 PM
 Approved by: Commissioner William Tandeske Date 3/18/2005
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 136
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act restricting authority of court RDU Legal and Advocacy Services
to suspend execution of sentence... Component Public Defender Agency
 Sponsor Rep. Rokeburg
 Requester House Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill restricts the court's ability to suspend a minimum fine imposed for DUI or Refusal convictions. It also opens therapeutic courts to felony DUI offenders. Opening therapeutic courts to felony DUI will increase the workload of the Agency. Currently the Agency closes a case after sentencing. The therapeutic court model and "court-ordered treatment" requires a lengthy time in treatment, intensive supervision and monitoring, and frequent court review hearings, often once a week, which significantly extends the life of a case. Requiring attorneys to attend additional hearings in cases, that currently would be closed, will increase the workload of the Agency. It is unknown how many felony DUI offenders would participate in court-ordered treatment programs like "Wellness Court" in Anchorage, if offered, or whether the special court would be a newly established one in superior court, the jurisdiction for felony cases. This bill, if enacted, will have a fiscal impact on the operations of the Agency, but it is not possible to predict with any certainty what that impact would be. Therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division: Public Defender Agency Date/Time 3/21/05 8:44 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/21/2005
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: HB 136
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act restricting the authority of a court to RDU CIVIL
suspend execution of a sentence or grant probation..." Component Collections and Support
 Sponsor Representative Rokeberg
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 28.35.030 (Driving under the influence) and 28.35.032 (Refusal to take a breath test) by making it a requirement that a convicted person pay the minimum fine required as a condition of a suspended sentence or probation. The bill also allows the court to forgive 75% of the minimum fine in cases of felony DUI or Refusal if the person has successfully completed an 18-month court-ordered treatment program. The Department of Law believed the provision requiring mandatory fines that could not be suspended was part of HB4 passed three years ago, but an overlooked court of appeals opinion made it possible to suspend the fines. Passage of this legislation could result in additional revenues collected by the Collections Unit, but the amount is difficult to determine.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/20/05 12:19 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/20/2005
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: HB 136
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act restricting the authority of a court to RDU CRIMINAL
suspend execution of a sentence or grant probation..." Component Criminal Justice Litigation
 Sponsor: Representative Rokeberg
 Requester: House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*****	*****	*****	*****	*****	*****
Travel	*****	*****	*****	*****	*****	*****
Contractual	*****	*****	*****	*****	*****	*****
Supplies	*****	*****	*****	*****	*****	*****
Equipment	*****	*****	*****	*****	*****	*****
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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	*****	*****	*****	*****	*****	*****
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 28.35.030 (Driving under the influence) and 28.35.032 (Refusal to take a breath test) by making it a requirement that a convicted person pay the minimum fine required as a condition of a suspended sentence or probation. The bill also allows the court to forgive 75% of the minimum fine in cases of felony DUI or Refusal if the person has successfully completed an 18-month court-ordered treatment program. The Department of Law believed the provision requiring mandatory fines that could not be suspended was part of HB4 passed three years ago, but an overlooked court of appeals opinion made it possible to suspend the fines. A fiscal note to HB4 provided by this agency was reduced to half of the requested amount, thus we are underfunded for work arising from changes the legislature has made in passing stricter DUI laws in HB4. The change created by this bill will have a fiscal impact on the Department of Law because more trials will likely be required for those who can't afford the

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 3/20/05 12:21 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/20/2005
 Agency: Department of Law

FISCAL NOTE #6

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB 136

ANALYSIS CONTINUATION

minimum fines, or more probation revocations or collection efforts will be required for those who do not pay the fines. However, the exact fiscal impact is difficult to determine.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

PULPS COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akrepublicans.org/rokeberg/index.php>



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718 WEST 4TH AVENUE, SUITE 600
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 485-4988
FAX: (907) 485-2040

Representative Norman Rokeberg

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

SECTIONAL ANALYSIS FOR HB 136

By: Representative Norman Rokeberg

Title: An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

- Section 1:** Requires the courts to impose the minimum fines for a misdemeanor DUI offense.
- Section 2:** Requires the courts to impose the minimum fines for a felony DUI offense.
- Section 3:** Expands the provisions for "court-ordered treatment programs" to felony DUI offenses. Allows the court to suspend 75% (up from 50%) of the minimum fines for successful participants.
- Section 4:** Requires the courts to impose the minimum fines for a misdemeanor offense of refusal to submit to a chemical test.
- Section 5:** Requires the courts to impose the minimum fines for a felony offense of refusal to submit to a chemical test.
- Section 6:** Mirrors the provisions of Section 3 in the refusal to submit to a chemical test statutes.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Nancy Dahlstrom
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee Letter of Intent HB 136

It is the intent of the Legislature that the Court System and Department of Law continue their practice with regard to the collection of unpaid fines for driving under the influence of alcohol. That practice is to pursue the payment of unpaid fines through a civil action by the Department of Law and not through revoking probation. It is also the intent of the Legislature to encourage the use of fines, wellness courts and interlock devices, when appropriate, as tools for addressing these crimes and those who commit them.

A handwritten signature in cursive script, appearing to read "Lesil McGuire".

Representative Lesil McGuire
Chair

Adopted by the House
April 12, 2005

COMMITTEE COPY



MADD

Activism | Victim Services | Education

Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

May 1, 2003

Representative Norman Rokeberg
State Capitol
Juneau, Alaska 99801

RE: Dismissal of DUI fines

Dear Representative Rokeberg:

I am providing the enclosed information for your interest. As you well know, your House Bill 4 raised the minimum and maximum level of fines for offenders sentenced with driving while under the influence (DUI).

Historically judges have not dismissed DUI fines because of the theory that this served as an encouragement for compliance of the law. The fine also provided sufficient reason to seek a job for those DUI offenders arrested while unemployed. This theory has proven effective for many DUI offenders and most Alaska judges continue to hand down sentences which include fines.

In the case of Jack Curtis v. State of Alaska, the Court of Appeals have ruled that "while courts do not have the inherent power to suspend execution of a sentence, the Alaska legislature has given the power to the trial courts." This is possible when the minimum prison sentence has been served.

They point out in Dunham v. Juneau that while the law states no portion of the mandated minimum fine can be suspended; the Appellate court is "convinced that this conclusion was hasty. The parties in Dunham did not distinguish between the mandated imprisonment and the mandated fine..." Therefore a fine may be dismissed regardless of prison time.

Defending attorneys have become aggressive in searching for judges and magistrates who consider this option in DUI cases. Defending attorneys are pushing for a dismissal of fines by pointing out the DUI offender does not have job and therefore cannot afford to pay the fine. Unfortunately some judges and magistrates are beginning to listen to this appeal.

One such example is across the street from your Juneau office. On occasion, Magistrate Sivertsen will consider such an option, and in doing so creates a dangerous precedent for prosecuting attorneys.



MADD

Activism | Victim Services | Education™

Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

One public defender is taking all his DUI cases assigned to Judge Froehlich and having them bumped to Magistrate Sivertsen or to Ketchikan Judge Miller.

This action has several negative effects:

- Creates a negative public impression the Legislature is allowing DUI offenders to not pay for their actions.
- Public Defending Agency costs the state and therefore the taxpayers of Alaska additional and unnecessary costs as DUI cases move from one town to another.
- Allows DUI offenders to walk away without paying a penny for the crime committed based on the fact they did not, while arrested for DUI, have a job.
- Has a negative impact on Judge Froehlich's grade as district court judge.

As the enclosed documents show, MADD encouraged the Public Defending Agency to reconsider this decision but was unsuccessful.

Please let me know if you have any questions on this matter. MADD hopes this situation may be worked out so all DUI offenders are obligated to fines for the dangerous crimes they choose to commit.

Sincerely,

Cindy Cashen
Executive Director

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)463-3600
FAX: (907)463-2075

December 9, 2003

The Honorable Norman Rokeberg
Alaska State Legislature
716 W 4th Suite 300
Anchorage, AK 99501-2133

Dear Rep. Rokeberg:

This is in response to your letter of August 20, in which you expressed your concern that the statutory minimum fines in drunk driving cases are sometimes being suspended, despite your intent in introducing and supporting House Bill 4 in the 2001 and 2002 sessions. Based on case law from the court of appeals, and given the language of the statute, we believe that additional legislation will be needed if such fines are to be fully imposed.

As you know, your bill greatly increased the financial costs of being convicted of drunk driving. Minimum fines for first and second offenders increased six-fold, from \$250 to \$1500 and from \$500 to \$3000, respectively. Fines for subsequent misdemeanor convictions increased by \$3000. Fines for felony drunk driving doubled to \$10,000. In addition, HB 4 increased the maximum amount that offenders must pay to the state as reimbursement for the costs of incarceration from \$1000 to \$2000. Your bill also doubled the fees that convicted repeat offenders would have to pay to reinstate their driver licenses. Finally, your bill required vehicle forfeiture for offenders convicted of felony drunk driving.

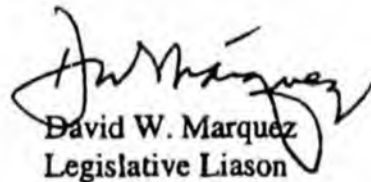
The opinion of the Alaska Court of Appeals in *Curtis v. State*, 831 P.2d 359 (Alaska App. 1992) was, up until recently, an obscure two-page decision more than a decade old. With fines for first and second offenders set at \$250 and \$500, judges rarely, if ever, invoked the *Curtis* decision to suspend a portion of the fines. In any event, with the large increase in fines enacted in HB 4, the *Curtis* opinion has, in essence, been rediscovered by lawyers and judges. In fact, it came as a surprise to state prosecutors, who had long forgotten about it. Ultimately, *Curtis* leaves the decision to impose or suspend a fine in a drunk driving case to the discretion of the sentencing judge. The

minimum period of incarceration, however, cannot be suspended, unless the person completes a "therapeutic court" program.

It certainly can be argued, as mentioned in your letter, that the legislature's intent was that the only way fines could be reduced is by completing a "therapeutic court" program described in AS 28.35.030(q) or in the special legislation setting up the Anchorage and Bethel therapeutic courts. However, the therapeutic court program allows both fines and imprisonment to be suspended. The decision in *Curtis*, which is based on the specific statutory language in AS 28.35.030(b)(2)(A), only applies to suspending fines. Because the language of the statute in issue in *Curtis* remains unchanged, in our opinion that holding is still valid and would not be successfully challenged on appeal. The relationship between *Curtis* and HB 4 was raised by state prosecutors during the Murkowski administration transition process as an item for possible legislative action. If the legislature's desire is to reverse the *Curtis* opinion, that would require a relatively simple amendment to AS 28.35.030(b)(2)(A) and the similar provision governing felony driving under the influence and refusal to take a breath test.

If you have further questions, please contact me.

Sincerely,


David W. Marquez
Legislative Liason

LEXSEE 831 P2D 359

JACK CURTIS, Appellant, v. STATE OF ALASKA, Appellee.

No. 1222, Court of Appeals No. A-4035

COURT OF APPEALS OF ALASKA

831 P.2d 359; 1992 Alas. App. LEXIS 33

May 15, 1992, Decided

PRIOR HISTORY: [1]**

Appeal from the District Court, Third Judicial District, Anchorage, Martha Beckwith, Judge. Trial Court No. 3AN-90-3132 Cr

DISPOSITION:

REMANDED

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant sought review of an order of the District Court, Third Judicial District, Anchorage (Alaska), which modified a sentence imposed on him for driving while intoxicated (DWI). The trial court originally believed he was a first offender and his sentence included a \$ 250 fine. Upon the State's motion after it was discovered defendant had a prior offense, the court modified the fine to \$ 500, in accordance with *Alaska Stat. § 28.35.030(c)*.

OVERVIEW: Defendant contended that the trial court was authorized to modify his sentence only to the extent necessary to correct its illegality, and that although the minimum fine was \$ 500 for a second offense, the trial court was able to suspend all or part of this minimum fine, and was required to suspend it to the amount of the original fine. On appeal, the court held that (1) under *Alaska Stat. § 28.35.030(c)*, the only limitation on the trial court's authority to suspend a DWI offender's sentence was the condition that he serve the mandated 20 days' imprisonment; (2) although a prior case held that no portion of the mandated minimum fine was subject to suspension, the conclusion made in that case was hasty and the parties therein did not distinguish between the

mandated imprisonment and the mandated fine; (3) although courts did not have an inherent power to suspend execution of a sentence, § 28.35.030(c) limited a sentencing court's authority to suspend a term of imprisonment but did not limit the sentencing court's authority to suspend a fine; and (4) because defendant's original sentence included a \$ 250 fine, the trial court was required to suspend one-half of the \$ 500 fine.

OUTCOME: The court remanded the case to the trial court with directions to amend the judgement.

LexisNexis(R) Headnotes

*Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence
Criminal Law & Procedure > Sentencing > Sentencing Ranges*

Criminal Law & Procedure > Sentencing > Fines
[HN1] *Alaska Stat. § 28.35.030(c)* provides that, when a person is convicted of a second driving while intoxicated offense within 10 years, a sentencing court is required to impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$ 500. The statute also provides that execution of sentence can not be suspended nor probation be granted except on condition that the minimum imprisonment provided in this section is served.

*Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence
Criminal Law & Procedure > Sentencing > Suspension of Sentence*

Criminal Law & Procedure > Sentencing > Fines
[HN2] Under *Alaska Stat. § 28.35.030(c)*, the only limitation on a district court's authority to suspend a

driving while intoxicated offender's sentence is the condition that the offender serve the mandated 20 days' imprisonment. The statute imposes no condition on the court's authority to suspend the mandated \$ 500 fine.

*Governments > Legislation > Interpretation
Criminal Law & Procedure > Sentencing > Suspension
of Sentence*

[HN3] While courts do not have the inherent power to suspend execution of a sentence, the Alaska legislature has given this power to trial courts. *Alaska Stat. § 12.55.080; Alaska Stat. § 12.55.015(a)(7)*. When a statute of general application grants sentencing courts the power to suspend all or part of a sentence, that statute will govern unless the legislature specifically provides otherwise.

COUNSEL:

Appearances: David R. Weber, Assistant Public Defender, and John B. Salemi, Public Defender, Anchorage, for Appellant.

Susan Wibker, Assistant District Attorney, Edward E. McNally, District Attorney, Anchorage, and Charles E. Cole, Attorney General, Juneau, for Appellee.

JUDGES: Before: Bryner, Chief Judge, and Coats and Mannheimer, Judges.

OPINIONBY: MANNHEIMER

OPINION:

[*360] OPINION

MANNHEIMER, Judge.

On August 9, 1990, Jack Curtis was sentenced for driving while intoxicated (DWI), *AS 28.35.030(a)*. Believing that Curtis was a first DWI offender, the district court sentenced him to 60 days' imprisonment with 57 days suspended, plus a \$ 250 fine. The 3 days to serve and the \$ 250 fine were the specified minimum penalties for a first offender. *AS 28.35.030(c)*.

Two months later, the State moved to modify Curtis's sentence after discovering that Curtis had a prior DWI conviction from 1987. The district court granted the motion and modified Curtis's sentence to 60 days' imprisonment with 40 days suspended, plus a \$ 500 fine.

Curtis does not challenge the district court's authority to [**2] modify his sentence after learning that it was less than the statutory minimum. Curtis points out, however, that under *Love v. State*, 799 P.2d 1343, 1346 (*Alaska App.* 1990), and *Dunham v. Juneau*, 790 P.2d 239, 241 (*Alaska App.* 1990), the district court was

authorized to modify the sentence only to the extent necessary to correct the illegality. Curtis contends that, although the minimum fine is \$ 500 for a second offense, the district court is empowered to suspend all or part of this minimum fine. Therefore, Curtis argues, to correct the portion of the original judgement that sentenced him to pay a fine of \$ 250, the district court should have sentenced Curtis to a \$ 500 fine with \$ 250 suspended. We agree.

The 1990 version of *AS 28.35.030(c)* (the version that governs the sentencing in Curtis's case) [HN1] provided that, when a person was convicted of a second DWI offense within 10 years, the sentencing court was required to "impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$ 500". The statute also provided that "execution of sentence [could] not be suspended nor . . . probation be granted except [**3] on condition that the minimum imprisonment provided in this section [was] served." (emphasis added)

Curtis points out that, [HN2] under *AS 28.35.030(c)*, the only limitation on the district court's authority to suspend a DWI offender's sentence was the condition that the offender serve the mandated 20 days' imprisonment. The statute imposed no condition on the court's authority to suspend the mandated \$ 500 fine. Thus, Curtis argues, the district court retained the authority to suspend all or part of the minimum fine, and therefore the least amount of judicial intervention necessary to correct the illegality of his original fine - \$ 250 to pay - was to change it to a fine of \$ 500 with \$ 250 suspended.

The State counters that this Court has already held, in *Dunham v. Juneau*, that no portion of the mandated minimum fine can be suspended. 790 P.2d at 240-41. The *Dunham* decision does in fact say this, but we are convinced that this conclusion was hasty. The parties in *Dunham* did not [*361] distinguish between the mandated imprisonment and the mandated fine; the defendant simply argued that his sentence could not be altered.

[HN3] While courts do not have the inherent power [**4] to suspend execution of a sentence. *Pete v. State*, 379 P.2d 625, 626 (*Alaska* 1963), the Alaska legislature has given this power to the trial courts. *AS 12.55.080; AS 12.55.015(a) (7)*. When a statute of general application grants sentencing courts the power to suspend all or part of a sentence, that statute will govern unless the legislature specifically provides otherwise. *Speas v. State*, 511 P.2d 130 (*Alaska* 1973). Curtis is correct that *AS 28.35.030(c)* limits a sentencing court's authority to suspend the term of imprisonment but does not limit the court's authority to suspend the fine. Thus,

because AS 28.35.030(c) does not restrict a sentencing court from suspending all or part of the mandatory minimum fine, the court retains this power.

The district court originally ordered Curtis to pay a \$ 250 fine. The mandatory minimum fine for a second DWI offender was \$ 500. To correct the illegality, the

district court needed to increase Curtis's fine to \$ 500 with \$ 250 suspended.

This case is therefore REMANDED to the district court with [**5] directions to amend the judgement in this manner.

Misdemeanor and Felony DUI Sentences and Fines

Misdemeanor DUI	Prison	Fine	License Revocation	Look Back
class A misdemeanor				
1 st offense	72 hours	\$1500	90 day suspension	
2 nd offense	20 days	\$3000	1 year suspension	within 15 years
3 rd offense	60 days	\$4000	3 year suspension	within 15 years
4 th offense	120 days	\$5000	5 year suspension	within 15 years
5 th offense	240 days	\$6000	5 year suspension	within 15 years
6 th offense	360 days	\$7000	5 year suspension	within 15 years
Felony DUI				
class C felony				
3 rd offense	120 days	\$10,000	3 year suspension	2+ times since 1996 and within 10 years
4 th offense	240 days	\$10,000	5 year suspension	
5 th offense	360 days	\$10,000	5 year suspension	

By: Representative Norman Rokeberg

DRIVING WHILE INTOXICATED SENTENCES - JUNEAU

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
1/2/04	Whiting	Felony (third, seventh drunk driving)	Weeks	5 years	2 years suspended		\$10,000	Permanently Revoked	
10/08/04	Patterson	.134	Froehlich	75 days	35 days suspended	\$1,500		90 days	2 years
10/15/04	Schmidt	Misdemeanor	Froehlich	63 days	30 suspended	\$1,500		90 days revocation	2 years
10/22/04	Bugbee		Sivertsen	63 days	30 suspended	\$3,000	\$1,500	90 days	18 months
10/29/04	Johnson	2 nd degree assault & misdemeanor DWI	Weeks	6 months on DWI	All but 3 days suspended on DWI	\$1,500	\$1,500	90 days	10 years
10/29/04	Thomas		Weeks	32 months	14 months suspended	\$10,000	\$10,000	Permanently suspended	3 years
10/29/04	Smith		Weeks	84 months	28 months	\$10,000	\$5,000	Permanently Revoked	3 years
11/12/04	Andrews		Froehlich	63 days	30 suspended	\$1,500		90 days	2 years
11/19/04	Morris	.210	Froehlich	45 days	40 days suspended	\$1,500	\$1,500	90 days	2 years

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
11/26/04	Roche-Carlton	Felony	Weeks	18 months	14 suspended	\$10,000	\$7,500	Permanently Revoked	2 years
12/03/04	Quick	.147	Sivertsen	90 days	65 days suspended	\$3,000	\$2,500	1 year	2 years
12/17/04	Willis	Felony	Weeks	3 years	1 year 225 days suspended	\$10,000	\$10,000	Permanently Revoked	3 years
1/7/05	Claffin	Felony	Collins	240 days	120 suspended	\$10,000	\$7,500		5 years
1/7/05	Moy	Misdemeanor	Sivertsen	240 days	80 suspended	\$4,000	\$3,250	Three years revocation	4 years
1/7/05	Wiseman	Misdemeanor	Sivertsen	70 days	45 suspended	\$3,000	\$2,500	One year revocation	2 years
1/7/05	Crowley	Misdemeanor	Sivertsen	34 days	30 suspended	\$1,500	\$750	90 days revocation	18 months
1/14/05	Rose	Felony	Weeks	18 months	14 suspended	\$10,000	\$10,000	Lifetime revocation	2 years
1/14/05	Williams, Jr.	Felony	Collins	16 months	12 suspended	\$10,000	\$9,000	Permanently revoked	2 years
1/14/05	Lott	Felony	Collins	20 months	16 months	\$10,000	\$9,000	Permanently revoked	4 years
1/28/05	Lofaso	.191	Sivertsen	40 days	34 suspended	\$3,000	\$1,500	90 days revocation	2 years

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
1/28/05	Lemke	.181	Sivertsen	46 days	40 suspended	\$3,000	\$1,500	90 days revocation	18 months
1/28/05	Knott	.205	Sivertsen	60 days	54 suspended	\$1,500		90 days revocation	2 years
1/28/05	Helart	.185	Sivertsen	150 days	130 suspended	\$3,000		One year revocation	3 years
1/28/05	Gomez- Olvera	.192	Sivertsen	90 days	70 suspended	\$3,000	\$3,000	One year revocation	3 years
1/28/05	Hcpe	.218	Sivertsen	46 days	40 suspended	\$3,000	\$1,500 suspended	90 days revocation	2 years plus guilty of probation violation, 30 days with 3 suspended and additional 2 years probation
1/28/05	Robinson		Sivertsen	90 days	70 suspended	\$3,000		One year revocation	2 years
1/28/05	Dusenberry		Miller	90 days	84 suspended	\$1,500		90 days revocation	3 years
1/28/05	Ortiz		Miller	70 days	50 suspended	\$3,000		One year revocation	5 years

From: Rep. Norman Rokeberg

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
1/28/05	Haltiner		Miller	40 days	30 suspended	\$1,500		90 days	2 years
2/04/05	Milton		Sivertsen	240 days	200 days		\$3,000	One year revocation	3 years probation + for probation violations
2/4/05	Wendling	Misdemeanor	Collins	12 months	10 months	\$4,000	\$4,000	4 years	30 months probation
2/4/05	Cooper		Sivertsen	46 days	40 suspended	\$1,500	\$750	90 days	2 years
2/4/05	Benson of Maui		Sivertsen	35 days	30 suspended	\$3,000	\$1,500	90 days	1 year probation
2/4/05	Casey		Sivertsen	180 days	120 suspended	\$4,000		3 years	3 years
2/4/05	Manager		Sivertsen	33 days	30 suspended	\$3,000	\$1,500	90 days	18 months
2/4/05	Lane	.186	Sivertsen	36 days	30 suspended	\$3,000	\$1,500	90 days	1 year

DRIVING WHILE INTOXICATED SENTENCES - PER NOME NUGGET

DATE Nome Nugget	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
10/7/04	Aketachunak			90 days	80 days	\$1500	\$1,200	90 days revocation	Until 9/1/2006
10/14/04	Cantrell			60days	40 days	\$3,000	\$1,000	1 year	Until 10/24/06
10/21/04	Tocktoo			30 days	27 days	\$1,500	\$1,200	90 days revocation	Until 10/12/05
10/21/04	Pete			140 days	120 days	\$,1500	\$1,200	90 days revocation	Until 10/08/05
11/04/2004	Nashoanak, Sr.			30 days	27 days	\$1,500	\$1,200	90 days revocation	Until 10/22/05
11/11/04	Otten, Jr.			30 days	27 days	\$1,500	\$1,300	90 days revocation	Until 10/26/05
11/11/04	Smith			60 days	40 days	\$3,000	\$2,000	1 year revocation	Until 10/28/05
11/25/04	Fagerstrom			1 year	120 days	\$10,000	\$5,000	Lifetime revocation	2 years
11/25/04	Angi			1 years	120 suspended	\$10,000	\$7,000	Lifetime revocation	2 years
11/25/04	Kavairlook, Sr.			30 days	27 days	\$1,500	0	90 days revocation	Until 11/8/05
11/25/04	Jackson			120 days	90 days	\$3,000	\$1,000	1 year	Until 11/9/08

DATE	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
12/2/04	McGuffey			30 days	27 days	\$1,500	\$1,200	90 days	Until 11/15/05
12/9/04	Malewotkuk, Jr.			150 days	0	\$1,500	\$1,200	90 days	Until 11/22/05
12/9/04	Iyakitan			30 days	27 days	\$1,500	\$1,300	90 days	Until 11/30/05
12/9/04	Wilson			60 days	40 days	\$3,000	\$2,000	1 year	Until 11/30/05
12/9/04	Hoogendorn			35 days	32 days	\$1,500	\$1,200	90 days	Until 12/1/05
12/9/04	Hamilton			30 days	27 days	\$1,500	\$1 200	90 days	Until 11/29/05
12/16/04	Kasper			40 days	20 days	\$3,000	\$2,000	1 year	Until 12/6/04
12/16/04	Hunt, Jr.			40 days	20 days	\$3,000	\$2,000	1 year	Until 12/2/05
1/6/05	Olanna			180 days	120 days	\$3,000	\$2,000	1 year	Until 12/21/07
1/27/05	Wheeler			30 days	27 days	\$1,500	\$1,200	90 days	Until 1/20/06
2/3/05	Tocktoo			120 days	90 days	\$1,500	\$1,200	90 days	Until 1/24/06



National Council on Alcoholism and Drug Dependence
Juneau Affiliate
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<http://www.ncadd-j.org>
National Intervention Network (800) 654-HOPE

March 3, 2005

Representative Norman Rokeberg
Chairman House Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Rokeberg:

The National Council on Alcoholism and Drug Dependence (NCADD)– Juneau Affiliate, strongly supports the passage of **HB 136**.

This bill enhances the current structure of therapeutic courts in Alaska by extending the same rights of a successful misdemeanor court graduate to a felony refusal or felony DUI court graduate. This would increase the amount of people able to benefit from therapeutic courts by increasing the pool of applicants and providing larger incentives to participate in these effective and cost efficient courts. It would also decrease the number of drunk drivers returning to Alaska's highways after release from a correctional institution.

Decreasing drunk driving and other alcohol related crimes is a priority for NCADD, especially in a state where the rate at which alcohol kills Alaskans is twice the U.S. average. Drug courts, DUI courts, family care courts, and mental health courts are just a few of the 1600 therapeutic courts currently operating in the U.S. These alternative "problem-solving" courts have proven themselves effective in reducing recidivism for the chronic alcohol or drug dependent offender. They have been so successful that John Walters, the drug czar for the Bush administration, recently came out in favor of them as the most effective way of dealing with this population of offender thus reducing drug crimes. The Bush administration's proposed budget for 2006 includes 70 million for drug/DUI courts, double the current budget. This financial commitment supports the value of these courts to our nation. **House Bill 136** fits very well with the federal commitment.

Thank you for your past efforts and continued support this year.

Sincerely,

Matt Felix, Executive Director



The Alaska Center for Therapeutic Courts

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A division of Partners for Progress, Inc.

James N. Wanamaker
Director

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March 2, 2005

Representative Norman Rokeberg
Chairman House Rules Committee
Alaska Legislature
Juneau, Alaska

Fax 1-907-465-2040

Re: House Bill No. 136

Dear Representative Rokeberg:

The Alaska Center for Therapeutic Courts strongly supports the passage of HB 136.

Sections 3 and 6 of the bill will extend the methodology of the Anchorage Wellness Court to include felony DUI and felony refusal cases. The Anchorage Wellness Court has certainly proved itself as a system that should be made available in other parts of the state. Any defendant who completes the 18 months of monitored sobriety and all the strict requirements of the Wellness Court can gain a suspension of 75% of minimum jail sentence and, with this bill, 75% of the minimum fine.

The Alaska public is protected by this system because that defendant who completes Wellness Court has embarked on a life of sobriety and has a wealth of tools to maintain sobriety. This is in stark contrast to the usual DUI defendant who gets drunk and rearrested for DUI within days of release from jail.

Currently, misdemeanor DUI courts are being developed in Ketchikan, Juneau, and Fairbanks. Extending the Wellness Court method to felony DUI and refusal cases will help to increase the volume of defendants who choose to enter these Wellness Court programs, and make more efficient use of public resources.

March 2, 2005

Page 2

This is an extremely opportune time to expand the DUI Wellness Courts since federal funding is available through National Highway Traffic Safety Administration (NHTSA).

Of a housekeeping nature, are Sections 1, 2, 4, and 5 of the bill which make it clear that the DUI defendant must actually pay the minimum fines set by the Legislature. This would end the minority practice of suspending all or a portion of the minimum fine or offsetting the cost of treatment as a credit against the fine.

The practice of reducing the minimum fine will then be limited to persons who graduate from Wellness Court. The bill increases the permitted offset (for Wellness Court graduates only) to 75%. This is a much smaller number than the whole DUI offender population and will not adversely affect state finances.

Thank you for your constant and effective support of the therapeutic court program. I return from Hawaii to Anchorage on March 9. In the meantime, I am available on my mobile phone (907) 227-4084 (yes, it will ring right through to Hawaii and I would be pleased to receive your call if there are any questions.)

Sincerely,



James N. Wanamaker
Director



MADD

Activism | Victim Services | Education

Mothers Against Drunk Driving
JUNEAU CHAPTER
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February 25, 2005

Representative Norman Rokeberg
State Capitol, room 214
Juneau, AK 99801-1182

RE: House Bill 136 -An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test;

Dear Representative Rokeberg:

The MADD Alaska Chapters are grateful for your sponsorship of HB 136. MADD is a strong proponent of restorative justice. The Justice System, the offender and the victim/community all play a necessary role in community safety, competency development and accountability.

There is a reason a DUI offender is held responsible for his/her actions. Society demands this of the offender. Accountability is connected to community safety and competency development; without one, the other two are most likely to be ineffective.

There is sensible reason behind the need for comprehensive sentencing. One DUI offender may find the fines deter any future drunk driving while another might discover treatment is the answer. Some discover losing their license an effective consequence and others discover jail is something they never want to go through again. It's important that each part of a DUI sentence be passed down to all offenders because there is no way of knowing which part of the sentence will be the effective tool in preventing future drunk driving.

Unfortunately Alaska has Judges who dismiss all or more than the mandatory minimum fines for many DUI offenders. Financial disclosures do not seem to play a part in the dismissals as MADD volunteers have witnessed dismissals with repeat offenders who own property and have lucrative jobs.

MADD is grateful Rep. Rokeberg is willing to take a stand for restorative justice.

Sincerely,

Cindy Cashen
Executive Director



Sentence Structure

DRIVEN magazine, Spring 2002



The case has gone to trial. The evidence has been presented. Both the prosecution and the defense have rested their cases. The jury has reached a verdict: guilty. Now the critical phase of punishing the defendant begins – the sentencing.

In cases where there's a guilty verdict, the judge is usually responsible for sentencing the offender. While some jurisdictions have mandatory minimum sentences for certain offenses that judges must adhere to or enhance, the judge has considerable discretion over sanctions including confinement, fines, probation, treatment and creative sentencing options.

Judges consider the defendant's background, past offenses, the seriousness of the crime, post-arrest behavior, circumstances of the offense, remorsefulness of the defendant and any victim impact statements. Ultimately, the fundamental question facing a judge is what sanction or combination of sanctions will most effectively reduce or eliminate future criminal activity by the offender.

In the case of driving under the influence (DUI) offenses, rendering punishment that reduces recidivism of drunk drivers is paramount. Currently, almost one-third of all offenders arrested for DUI are repeat offenders, indicating that traditional sentences such as jail time, fines and community service simply are not working. In fact, through its research-based Higher Risk Driver program, MADD advocates sanctions that encompass driving restrictions, community restitution and offender recovery.

One of the most difficult challenges now before the courts is to find the perfect combination of sanctions to reduce the alarming recidivism rate in this country. Fortunately, judges nationwide are rising to the challenge by establishing innovative sanctions and programs designed to reduce the crime of drunk driving. Here are just three examples of the hundreds of passionate judges across the country who are taking the first step.

Each Sentence Is a Work of Art

"DUI cases are the most important cases that judges handle," says Judge William Todd of Rockdale, Georgia. "And those sentences cannot be mechanical; they must be individualized to the offender."

During his 10 years as chief assistant district attorney, Todd saw his share of drunk driving cases. When he took the bench in 1993, he quickly developed a database for himself designed to track his cases and offender data such as the number of DUIs in the defendant's lifetime, number of DUIs in the past five years, crashes, sentence (s) received, location where the defendant was drinking, marital status, type of car the defendant was driving and demographic information. Using this database, Todd looks at trends, tracks progress and identifies problematic patterns. Most importantly, though, the database allows Todd to review the profile of the defendant before him, which helps him create an individualized sentence using a combination of sanctions designed to reduce the recidivism rate for that specific offender.

Todd uses a vast combination of sanctions. Traditional measures such as jail, electronic monitoring, Alcoholics Anonymous meetings, random drug and breath tests, fines, DUI school, treatment, victim impact panels, ignition interlock devices and other vehicle sanctions are used in conjunction with non-traditional sanctions. People who have sold cigarettes to minors have found that they and their families were required to pick up cigarette butts at a park. Those who littered have spent time on the side of the road picking up trash.

However, Todd believes sanctions alone are not the answer. "Both treatment and rehabilitation as well as prompt sanctions are the key," Todd says. "Follow-up is also important. You must enforce the sanctions and hold the offender accountable."

Todd has offenders check in with his court and keeps "steady pressure" on them by having defendants write

essays about their experience and charging offenders for all costs associated with their sanctions. He also works to establish a trust relationship with the offender. "I will try everything I can to turn people around," Todd explains. "This often means changing terms of probation, revoking terms where appropriate, or modifying sentences based on a change in behavior or a change in circumstances."

The numbers show that his program is working. Recidivism rates in Judge Todd's court dropped to half, and last year his court saw a considerable decline in the number of DUIs compared to years past. And since 1997, there have been only two DUI-related deaths in Rockdale County, even with increases in population and in the number of bars in the county. A 1998 study of the Todd program by the National Highway Traffic Safety Administration (NHTSA) found that it was more effective, by a wide margin, than a sentencing program that imposed the minimum sanctions.

Todd encourages other judges to try innovative sanctions and find the right combination for each individual offender. "Each sentence is a work of art," he says. "First you paint the picture, and then oftentimes it needs to be touched up."

Creativity and Consequences

Sentencing takes on new meaning in the courtroom of Judge Ted Poe of the Criminal District Court in Harris County, Texas, in Houston, as one woman convicted of a DUI found out. Poe sentenced her to carrying a placard reading, "I am a drunk driver" outside the Neiman Marcus store where she regularly shopped.



"It was far worse for her to have to carry that sign and face her friends than pay the \$5,000 fine," Poe says. "That woman will never be back in the system because it was far too embarrassing for her."

A judge for nearly 20 years, Poe uses what he calls "hybrid sentencing" – a combination of jail and creative sanctions. "I keep all the options open, from prison to community service," Poe explains. "My philosophy is that the offenders need to do something for the victim, do something for the community and do something for themselves."

Poe is known for his creative sentences. Whether it is sanctioning the offender to make restitution, personalizing the crime or inflicting public punishment, Poe does whatever is necessary to serve justice. "Restitution to the victim can include money for damages or funeral expenses," Poe says. "Offenders can be required to sell their cars, take out loans or get a job to pay the restitution owed." In one case, the offender had destroyed the victim's car in a drunk driving crash, leaving her with no vehicle. Poe required the defendant to turn over his vehicle to the victim in a courtroom ceremony for use until the victim's car was repaired. Poe maintains, "This type of punishment causes shock, thus changes the defendant's behavior."

Another victim-based sanction Poe uses is ordering defendants to erect and maintain markers at the crash site to honor victims. Poe says, "This personalizes the crime for the offender."

Along the same line, Poe requires that a picture of the victim be prominently displayed in the offender's prison cell – a standard part of Poe's sentences in all homicide cases, including those caused by drunk drivers. "This is also designed to change the offender's attitude," Poe explains. "I know it works because defendants are always trying to have [the pictures] removed."

The only time Poe doesn't use this sanction is when he believes the defendant will use the picture as a "badge of brag" – this is especially true with younger defendants.

Poe has found that younger offenders can be harder to reach. But that doesn't stop him from trying and succeeding. Poe recalls one case where a popular 17-year-old high-school senior drove drunk, and crashed into a van, killing two people and injuring another. Poe sentenced the minor to jail and ordered the victims' photos posted in his cell.

Poe also ordered him to attend a work camp for those younger than 27; to erect and maintain a marker at the crash site; to visit and maintain the victims' grave sites, including bringing flowers; to send a check to the victims'

high school as well as his own; to view an autopsy; and to carry a placard at the crash site and at the convenience store where he purchased the beer. The placard read, "I killed two people while driving drunk." Also, as part of the defendant's 10 years of probation, he was ordered to do 20 hours of public speaking a year at area schools about the dangers of underage drinking and drunk driving. Poe mandated that he start at his former high school, where he was once so popular.

That was five years ago. Today, the defendant not only does his annual 20 hours of speaking, he voluntarily dedicates nine months out of the year to speak at schools. In addition, on his own accord, he carries around his placard, which he now views as a public warning rather than a punishment.

Poe doesn't issue his creative sanctions to be cruel. On the contrary, he says, "People must learn that drunk driving is a crime of violence, much like shooting a gun into a crowd of people. Sometimes you hit and kill someone, and sometimes you are lucky. Drunk driving is not socially acceptable and people must learn that."

Poe is a tough judge, and his approach seems to be working. His court has a 20 percent recidivism rate, while the national average for offenders failing to maintain the terms of their probation is about 50 percent. Poe says, "The system must offer consequences. Where judges often fail is in giving lofty probation terms, and when the defendant fails to complete them, nothing happens. The system loses credibility and the probation office is unsuccessful in working with [offenders] because they have lost respect for the system."

Poe believes that through tough and appropriate sanctions, defendants can turn around and become productive citizens.

Empowering Offenders to Change

Similar to Poe's philosophy, Judge Dorothy Baker of the 4th Judicial District in Oregon also focuses on serving justice while enabling offenders to change their behavior. "In order to increase community safety, we as a society need to increase the quality of life for those who threaten our safety, because if you increase quality of life, it is less likely the person will re-offend," Baker says.

MADD Fact:
In 2000, it's estimated that more than 1 million people were arrested in the United States for driving under the influence.

On the bench for more than 20 years, Baker has chosen to work only with drunk driving offenders. And, like Todd, she feels that dealing with offenders needs to be individualized. "Each offender must be individually assessed and monitored closely while they work on their recovery," Baker explains. "By paying attention to each detail in an offender's life and investing time and energy to empower that offender, most can change their quality of life, become vested in themselves and make our communities a better place."

Baker's DUI Intensive Supervision Program (DISP) is one of a kind. The first phase of the program consists of obtaining and maintaining sobriety. The second phase concentrates on quality of life. "My program includes complete behavior modification and is designed to impact all areas of a defendant's life," Baker says.

Defendants voluntarily enter into Baker's three-year program through a plea agreement. Once in her courtroom, defendants discuss their plea, the legal consequences of their actions, their past crimes and the threat they pose to society. Baker then interviews them on a personal level, asking them questions such as: what they think about before they drink; if drinking makes them feel better; if they think drinking alcohol is working for their life; if alcohol is solving problems; and if they feel that there is an underlying problem and what that problem may be. Baker says her philosophy is clear: "Lead the defendant down the path to discover the destructive behavior and then attack the problem causing the drinking."

The conditions of Baker's program are standard. Participants must work a minimum of 35 hours per week, lead an organized, structured life, and have some type of social activity that does not involve alcohol.

Additionally, offenders are required to take polygraph tests, report to their probation officer and have a follow-up meeting with Baker 45 to 90 days after sentencing.

Offenders and their family members also must sign a document stating that there will be only one vehicle per licensed driver in the household, that the keys will be kept from the offender, and that there will be no alcohol or drugs brought into the house.