

Alaska Criminal Justice Commission
WORKGROUP ON TITLE 28
Thursday, April 28, 2:30-4:30 PM
AG's Conference Rooms, Anchorage and Juneau
(video- and audio-conferenced meeting)

Commissioners Attending: Stephanie Rhoades, Trevor Stephens, Gary Folger

Commissioners Not Present: Alex Bryner, Greg Razo, John Coghill

ACJC Staff: Brian Brossmer, Mary Geddes, Giulia Kaufman, Susan DiPietro

Other Attendees: Billy Houser, Matt Widmer, Seneca Theno, Dave Hanson, Susan Gravely, Alysa Wooden, Nancy Meade, Jayson Whiteside, Fred Slone

Next Meeting: TBD

Materials relied upon for discussion are attached to this Summary.

Legislative Update

Nancy Meade and others reported that SB91 includes therapeutic court limited license provision (originally proposed by Partners) that allows either court or DMV to grant a limited license if there had been a felony DUI (but not Refusal) as long as driver had been a participant in therapeutic court for at least six months, there is proof of insurance. The requirement for this provision is that they have to drive with limited license for three years. Defendant can't have had a previously limited license that was revoked. The provision is being amended to include folks that don't have access to the therapeutic court program; those individuals would still have to provide proof of successful treatment and proof of monitoring program by clear and convincing evidence, and sobriety for 18 months. The burden of proof is on defendant. There is no entitlement to representation by an attorney, and the defendant would have to petition court. Therapeutic court is only in Anchorage, Juneau, Palmer, Bethel, and Ketchikan. The concerns with any non-therapeutic court applicant are: that they may not be under any meaningful supervision, there may not be access to IID in their communities and how would DMV insure that they don't cancel their insurance.

Susanne DiPietro asked what kind of retroactive effect it might have. Meade said that she believes it would have effect for those whose licenses are currently revoked. After 3 years of a limited license with interlock, the person could go to DMV for a full restoration of a drivers' license. DMV will need to make sure they are eligible. Limited licenses are not limited by time, but DMV cannot reinstate if there are stacked suspensions.

ASAP

At this point, participants referred to the papers circulated for discussion. [See attached.]

They are substantial changes to ASAP in SB91, restricting it to DUI/ Refusals. Comr. Stephens asked what will happen to those cases previously tracked by ASAP which do not fall into the DUI category. Comr. Rhoades said that prosecutors will be responsible for collecting the proof of completion of probation requirements. Susan Gravely commented on ASAP's current programming status. In the past, they were

behind in follow-ups on referrals. Now they are less than 30 days behind. There are changes ahead when ASAP switches to using the LSI-R. It will involve more work. Gravely said that someone will need to provide information to treatment agencies.

IID Proposal Clarified

The group clarified that the proposal to the ACJC will be that

- There should be no court-imposed mandatory IID sentencing penalty
- Failure to complete the IID requirement will not preclude license reinstatement.
- In response to the question, what's the alternative?
 - Other alternatives exist. Some allow for remote monitoring. Some allow for continuous alcohol monitoring in real time, others involve daily downloads.

License Revocations

One question asked was why courts should use revocations and not suspensions. Are more fees involved in revocation actions? In distinguishing between suspensions and revocations, Whiteside noted revocations involve starting over essentially with a new license, and suspensions allow for the same license to be reactivated. The fee difference might be as great as \$100, and it is more of a hassle. However, the difference between the two essentially evaporates after a one year suspension. He typically associates revocations with criminal action and suspensions with administrative action, like child support nonpayment and too many points, although the accumulation of more points can change a suspension to a revocation.

There was next discussion as to what length of 'hard' and 'soft' revocations should sanction DUI convictions. Matt Widmer noted that the use of a 'soft' revocation period can operate as a graduated sanction. Comr. Rhoades noted that there is no evidence as to what revocation term is more efficacious. Widmer noted that a 30 day hard revocation period is hard for everyone. He suggests that we change or lengthen only the soft revocation periods. Offenders also need graduated, higher levels of treatment depending on number of convictions they have. Comr. Stephens recommends at minimum a 30 day hard revocation period. Mary Geddes asked about the principle of graduated sanctions/revocations for repeat offending. Shouldn't the principle require increases in periods of hard revocations?

Stephens also urge consideration of parity with other offenses such as Reckless Driving. The statute 28.15.181(see below)¹ requires for the 1st, 30 days revocation; for the 2nd, 1 year of revocation, and for

¹ (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license, privilege to drive, or privilege to obtain a license:

- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
- (2) a felony in the commission of which a motor vehicle is used;
- (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
- (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
- (5) operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;
- (6) reckless driving;

the 3rd, 3 years of revocation. No limited licenses are available either for Reckless Driving offenders nor for Refusal offenders. Fred Slone noted that we had not spoken about non-DUI revocations. Commissioner Rhoades suggested that the ACJC could merely drop a footnote noting the disconnect,

-
- (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
 - (8) refusal to submit to a chemical test authorized under AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, or authorized under AS 28.35.031(g);
 - (9) driving while license, privilege to drive, or privilege to obtain a license, canceled, suspended, or revoked, or in violation of a limitation;
 - (10) vehicle theft in the first degree in violation of AS 11.46.360 or vehicle theft in the second degree in violation of AS 11.46.365.

(b) A court convicting a person of an offense described in (a)(1)-(4), (6), (7), or (10) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1)-(4), (6), (7), or (10) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license, privilege to drive, or privilege to obtain a license and may not grant the person limited license privileges for the following periods:

- (1) not less than one year for the second conviction; and
- (2) not less than three years for a third or subsequent conviction.

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle, commercial motor vehicle, or aircraft shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in AS 28.15.201, grant limited license privileges during the minimum period of revocation. Except as provided under AS 28.35.030(n)(3) and 28.35.032(p)(3), the minimum periods of revocation are

- (1) not less than 90 days if the person has not been previously convicted;
- (2) not less than one year if the person has been previously convicted once;
- (3) not less than 3 years if the person has been previously convicted twice;
- (4) not less than 5 years if the person has been previously convicted more than twice.

(d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license, privilege to drive, or privilege to obtain a license for not less than the minimum period under AS 28.15.291(b)(4).

(e) Repealed.

(f) The court may terminate a revocation for an offense described in (a)(5) or (8) of this section if

- (1) the person's license, privilege to drive, or privilege to obtain a license has been revoked for the minimum periods set out in (c) of this section; and
- (2) the person complies with the provisions of AS 28.15.211(d) and (e).

(g) The court may suspend the driver's license, privilege to drive, or privilege to obtain a license of a person who fails to appear in court as required by a citation for an offense involving a moving motor vehicle, or who fails to pay a fine as required by the court for an offense involving a moving motor vehicle. If the court suspends a driver's license under this subsection, the court shall also provide notice of the suspension to the department. A suspension imposed under this subsection remains in effect until the person appears in court as required by the citation, or pays the fine as required by the court. When the person appears in court or pays the required fine, the court shall terminate the suspension imposed under this subsection and provide the department and the person with written notice of the termination.

(h) A court convicting a person under AS 04.16.050(c) or (d) shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license as provided in AS 04.16.050(c) or (d).

rather than getting into it. Stephens agreed that we should have a caveat, an identification of those statutes for which the penalties are inconsistent with recommended reforms.

Fines

After review of the comparison information, the consensus was that there should be a reduction of fines, commensurate with the fines charged by states in the western region because we want to encourage re-licensing. Court fines could be offset by fees paid for treatment and supervision.

Jail

There was discussion on the use of minimum mandatory penalties for repeat offenders. Widmer asked whether the minimum mandatory encourage judges to stick to that as a penalty. Comr. Stephens thinks that the former minimum mandatory penalty of 10 days 'works better,' i.e. that it still represents a significant sanction. Fred Slone thinks that a 20 day sanction is 'realistic' and not too harsh. He wanted to know if we could discuss the duration next time at greater length.

Public input was sought. No additional public input was provided.

REMAINING FROM PRIOR MEETING'S TO-DO LIST

- Matt Widmer volunteered to interview Muni Prosecutor and PD on their experiences and opinions re revocations

who is being referred for ASAP services (types of charges / level of offense – 1st, 2nd, etc.) and

Fiscal year 7/1/14-6/30/15 ASAP cases, statewide

A total of 7243 cases were opened.

4983 or 68% were OUI/DUI/Refusal, 146 of those cases were designated as 2nd, 3rd, 4th, etc.

444 or 6% were MCA/MOAC/Minor on Lic. Premises

754 or 10% were Assault cases and over half (389) were DV Assault cases

211 or 3% were MICS or Attempted MICS

The remaining 13% were a wide range of charges including:

Criminal Mischief/Crim. Trespass-117

Criminal Mischief, DV-33

Attempted Burglary/Theft/Shoplifting-89

Disorderly Conduct-112

Disorderly Conduct, DV-17

Reckless driving-73

Harassment- 73

Harassment, DV-5

Interfere with Officer duties/Resisting-32

Endangering Welfare of Minor/Reckless endangerment-17

Child Abuse/Neglect-47

MIW-41

Transport alcohol by Common Carrier/Import to dry area-37

Drunk person on lic. Prem./bring alcohol on lic. Prem. 7

Furnish Alcohol to Minor-8

Interfere with report of DV Crime-5

Mal. Dest. Of Property-6

Indecent Exposure-4

Leaving Scene of Crash-4

False Information-8

Attempted Assault-5

Aiding and abetting-1

Attempt. Veh. Theft. 3

Attempt forgery-2

Attempted hinder pros. 2

Fail to stop 2

Fail reg. sex off- 2

Fail obey citation-1

Obstruct hwy-1

Overtaking school bus-1

Permit unauthorized person to drive-1

Promoting contraband-1

Restrict on purchase of alcohol-1

Current fiscal year beginning 7/1/15 to 3/14/16 ASAP cases opened statewide

A total of 4060 cases were opened.

2491 or 61% were OUI/DUI/Refusal

489 or 12% were Assault cases with nearly half of those (235) being DV Assault

203 or 5% were MCA/MOAC/Minor on lic. Premises

126 or 3% were reckless Driving

The remaining 19% or cases were a wide variety of other offenses including:

Attempted MICS/Controlled Substance/MICS-92

Crim. Mischief/attempted Crim. Misch./Crim. Tres. -89

Attempted burglary/Theft/Shoplift/Conceal Merch/Forgery/Larceny-63

Crim. Mischief,DV-27

Disorderly Conduct—66

Disorderly Conduct-DV-8

Harassment -45

Harassment DV-1

MIW/Possess Weapon while Intoxicated-23

Endanger Welfare of Child/Reckless Endangerment-21

Child Abuse/Neglect-22

Trespass/Unauthorized Entry-12

Vio. Protective order-4

Indecent Exposure-3

Fail to stop at direction of officer/Eluding-16

Transport Alcohol by common carrier/Import alcohol to dry area-11

False Info.-8

Leave Scene of Crash-4

Interfere with report of DV Crime-4

Furnish Alcohol to Minor-2

terroristic threatening-1

alcohol on lic. Premises-1

deferred prosecution-1

fail to provide notice of accident-2

interfere with officer-1

obstruct traffic with vehicle-1

passing a school bus-1

restriction on purchasing liquor-1

Sex assault-victim not aware-1

what treatment / course of action is being recommended for those who are referred

Clients report to ASAP. They sit through a short presentation explaining what how the system works, the part ASAP plays, what is required of them to remain in compliance and the possible consequences if they fail to follow through. After the short class they meet individually with an ASAP staff member where they choose the treatment agency that hopefully will work best for them. This choice is made by identifying client's barriers to narrow it down to an agency that will best meet their needs. The most common barriers are financial, transportation issues, location, type of treatment needed and philosophy.

All ASAP Clients are classified using the Drinker Classification Chart.

1. If classified "non-problem" they are referred to a 12 hour alcohol drug information school and Victim Impact panel.

To be classified non-problem it must be a first offense DUI or Reckless, with BAC below .160, no prior drinking related charges, no prior education or treatment. All available information indicates this person made a mistake, there are no red flags to indicate there might be a substance abuse issue. Education not treatment is in order.

2. If classified "Pending" they are sent for an evaluation to determine whether they are eligible for the 12 hour class or do they need something more.

There are a number of criteria that make the classification pending. If there was violence involved, drugs involved, felony reduction, is a minor, weapon involved, refusal, and more. ASAP staff are not substance abuse treatment counselors, so are not qualified to determine whether the client needs a bit of education i.e. 12-hour ADIS or if they need substance abuse treatment. Thus they are sent for an evaluation so a trained assessment counselor can make the determination.

3. If classified "Problem" they are sent for an evaluation to determine how much treatment is needed.

A 12-hour class is not an option for this classification. A classification of problem drinker is made if the BAC is .160 or higher • 2 DUIs /DWIs within the last 5 years • 3 or more DUIs/DWIs in a lifetime • clinical determination of problem drinking within 5 years • client admission of problem drinking.

does this match-up with the severity of the charge (# of previous offenses)

Yes I believe this does match up. It should be noted that ASAP provides the treatment agency with a *client's treatment history and criminal history*. When an assessment is conducted the counselor is aware of whether it is a client's first or fifth DUI, whether they have completed treatment in the past and what level. They are provide with whether the client has suffered from blackouts, whether they have a family history of alcoholism and whether they themselves believe they have an alcohol or substance abuse problem.

Proposed Discussion Outline for T28 Workgroup

1. Whether a revision of the alcohol-related offenses in AS 28 is necessary
2. Should both administrative and court license revocation processes be maintained?

Application of research principles for future deterrence

- (Swift principle concerns the amount of time between the offense and sanction)
National research indicates that sanctions which can be quickly put into effect are more effective in deterring reoffending; therefore, administrative revocation is more likely to reduce recidivism.
- (Certainty principle that offenders will be caught and punished)
Administrative license revocation actions that utilize a lower standard of proof provide a more certain outcome than in a criminal court process.
- (Consistency among all drivers) Mandatory judicial license revocation provides a consistent response to all variants of DUI/Refusal but administrative license revocation only available in per se DUI cases and Refusal.

Research

- Suspensions and revocations are more effective in reducing DUI recidivism than jail.
- Early research on judicial suspensions shows some effectiveness in reducing total and non-alcohol crashes. Administrative suspension has been shown to be effective in reducing not only crashes overall, but also crashes where alcohol was a factor.
- Wagenaar and Maldonado-Molina (2007) examined both pre and post-conviction mandatory license suspension in 46 states evaluating the impact of these sanctions on monthly alcohol-involved fatal crashes occurring between 1976 and 2002. They found that administrative pre-conviction license suspension was associated with a significant 5% reduction in alcohol-involved fatal crashes, but that post-conviction suspension appeared to have little effect, a finding they hypothesize may be due to the speed of punishment associated with the administrative application of this sanction.
- The optimal length of 'hard' revocation periods is yet to be established. But shorter revocation periods are more effective than longer periods because they create inconvenience but are not so long as to 'teach' the individual that he or she can drive, unlicensed, without being apprehended.
- Many revoked drivers never, or significantly, delay license reinstatement beyond period of revocation. Cost is cited as the most significant deterrent. Other oft-cited factors are: confusion about process of reinstatement; and failure to satisfy other prerequisites.
- Drivers who have suspended licenses appear to drive less and more conservatively and have lower recidivism rates than those who are not suspended. Still, compared to fully licensed drivers, suspended offenders have 3.7 times the risk being at fault in a fatal crash.

Data relevant to this discussion

- Approximately one-third of Alaska DUIs convictions are DUIs based upon circumstantial evidence of impairment (from alcohol or drugs or a combination of both) as opposed to per se DUIs.
 - National and local trends show slowing rates of alcohol DUI but increasing rates of drug-involved DUIs
- 2/3 of all DUI's/Refusal in Alaska are *per se* offenses (DUIs at or exceeding .08 breath-alcohol or Refusals for violation of Implied consent law) subject to DMV administrative license revocation (ALR) process
 - Between 70-75% of cited drivers subject to ALR in the last three years do not seek an administrative hearing after citation and therefore their administrative revocation goes into effect 7 days after their arrest/citation.
- (Thus) 50% of all Alaska drivers cited for DUI do experience an immediate license revocation; but 50% are not so exposed.

Option 1: Maintain Status Quo (keep both court and administrative license revocations).

Administrative actions do not supplant the post-conviction judicial license actions, but rather constitute a parallel process to the judicial one.

Benefits of a dual system:

- Administrative license revocation can go relatively quickly into effect. (In contrast, criminal courts lack statutory authority to revoke in advance of a criminal conviction (although they may hypothetically order “no driving” as a condition of release).)
- For Refusal only, no potential 4th Amendment challenge in administrative license revocation; for criminal charge, warrant may be soon required under *Birchfield v. Minnesota*.
- For the 1/3 of all Alaska DUI/Refusal cases in which the blood-alcohol level does not establish a *per se* offense and therefore no ALR is authorized, courts have statutory authority to revoke licenses following criminal conviction.

Complaints concern inconsistent legal standards and transparency:.

- A lower evidentiary standard is utilized for (civil) administrative revocation. [However, important ameliorative measure is available if SB91 passes, mandating that ALR is rescinded if criminal court action is dismissed]
- Only application to 50% of the cases at present, i.e. revocation can be as immediate as 7 days for *Per se* DUI and Refusal cases, but not for impairment cases
- There is duplication of adversary process (2 hearings) and therefore additional costs may be involved for both sides.
- There is a potential for confusing revoked drivers:
 - Court probation terms do not necessarily coincide with license revocation terms (this seems to depend upon whether DMV received court paperwork)
 - license reinstatement is not automatic at the end of revocation

- driver may be subject to stacked revocation periods for non-DUI conduct but the court will not necessarily be aware of that.

Option 2: Administrative Revocation Only

Benefits :

- An administrative license revocation can go quickly into effect and is therefore more consistent with effective (swift and certain) correctional principles.
 - Unresolved: whether current statute allowing DMV to issue temporary licenses (not the same as limited licenses) pending administrative hearings undercut this potential such that a swift sanction is not uniformly imposed
- Alaska Supreme Court has stated that procedural protections are the same as in a criminal proceeding. *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007)(holding “the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense.”) Additionally, Alaska Statute 28.35.031(a) and AS 28.15.166(g) require a driver's license revocation to be based upon a lawful arrest. Under AS 28.35.031(a), the state may not use breath test results that are obtained following an unlawful arrest. And under AS 28.15.166(j), the driver's license revocation must be rescinded if the officer did not have probable cause to believe that the person was operating a motor vehicle while intoxicated.

Concerns:

- There is a lower evidentiary standard and no right to jury trial for administrative revocation. Also, as a general rule, the exclusionary rule does not apply in civil proceedings, but see discussion in *Hartman v. State of Alaska*, 152 P.3d 1118 (Alaska 2007) providing procedural safeguards and suggesting 4th Amendment suppression may be available.
- NB: Because current statutes do not allow ALR in non-per se DUI cases, so the more specific question may be whether options are
 - a. To expand authority for ALR to all DUI Offenses, or
 - b. Remove judicial revocation for only Per Se DUI and Refusal Offense

Option 3: Court Revocation Only (Remove Administrative Revocation for per se and Refusal cases)

Benefits:

- Higher standard of proof
- Court has expertise in non-per se DUI cases
- Court may pair revocation/limited licenses with probation requirements for alcohol treatment which heightens effectiveness of license revocation
- Theoretical ability of court or probation to supervise and enforce sanctions for non-compliance

(see next page)

Concerns:

- Not a swift sanction as judicial sanctions can't be not imposed until time of conviction.
- Not a certain sanction as adjudication process itself introduced substantial uncertainty as to whether a conviction would result and a suspension action be imposed.
- Greater risk to public safety when license is not immediately revoked, and deterrence effect is undermined.
- Greater risk to public safety as some offenders who pose a public safety risk of driving while under the influence may not be convicted, due to suppression orders and the high standard of proof required in criminal proceedings.
- Unresolved but before the Supreme Court right now: whether refusal criminal prosecutions are violative of 4th Amendment when premised on implied consent. In other words, will warrants be required for breath tests administered at a police station?

OTHER QUESTIONS, OPTIONS OR FIXES?

- Can ALR be expanded to any DUI or Refusal? What would be the barriers to successful implementation? (Swift, Certain, Fair)
- Change laws to disallow temporary license pending administrative hearing or in the first thirty days. (Swift, Fair, Consistent) Make consistent with 30-day revocation period for first DUI.
- For those that drive within that thirty day period, some kind of Mandatory Vehicle Action (Certain)
- Is there a different approach than the stacking of administrative revocation periods? Is any amelioration possible?

What is the effectiveness of ignition interlock devices in reducing DUI/Refusal offenses and recidivism

Data and research previously provided to Workgroup will be summarized here

Draft Workgroup Recommendation

In Alaska, use of an IID device is currently a mandatory sentencing requirement for all misdemeanor alcohol-involved DUI offenders. This means, in effect, that the completion of a term of IID monitoring is necessary for license reinstatement. The Workgroup proposes a statute change, making IID use discretionary only.

An IID disables a car from operation by a person who has a set amount of alcohol content in their breath. In Alaska, the pre-set amount on IID is devices is 0.02 alcohol. (state unit) Assuming the IID unit is working properly, the vehicle would be disabled by a “blow” test of 0.02 or higher, either at the start of driving or during its operation.

The evidence indicates that that use of an IID device is effective for public safety and recidivism reduction of alcohol involved DUIs during the period of use and if the vehicle is actually used, and if its use is effectively monitored. However, the use of an IID alone is ineffective in deterring future recidivism, after its use has been discontinued. There is promising evidence elsewhere that recidivism may be reduced when IID programs are coupled with treatment and consistently and closely monitored with immediate feedback and consequence for non-compliance.

No such program model exists in Alaska, nor frankly is it likely to in the near future, in terms of the expense involved both to individuals and to the State. IID services, provided by private vendors who charge drivers directly, are not coupled with treatment and do not involve remote monitoring of the vehicle, so attempts to operate a vehicle with a certain breath-alcohol level) which disable the vehicle are not documented in real-time. Rather, 'lock-outs' merely prompt additional fees paid to the vendors for the participants who want the car to start again. While current regulations require vendors to download and maintain records on the vehicle (much like the emission tests run by garages), there is no legal requirement for nor capability for immediate feedback to courts or prosecutors or DMV. Vendors do have an affirmative duty to report when they discern evidence of tampering, but otherwise they are simply to maintain the records. There is no consequences for 'lock-outs' [by so noting, we are not expressing an opinion of what type of consequence there should be]; nor is there any sanction for simply installing an IID on a car and then not using that particular car.

In sum, the existing statutory scheme of mandated IID use does not effectively protect public safety because

- Attempts to operate a vehicle with a certain breath-alcohol level) which disable the vehicle (“lock outs”) are not remotely monitored and are not timely documented or reported if at all.
- The IID does not monitor a driver when he or she is not driving that particular vehicle with the installed IID. This is unlike portable, personal monitoring devices (such as Secure Continuous Remote Alcohol Monitoring (SCRAM) bracelets which are worn around the clock. Portable

breathalyzers (most with facial recognition features) also monitor 24/7 the consumption of alcohol; these devices may also be remotely monitored in real time.

- The penalty/requirement for license reinstatement is applied inconsistently:
 - IID participation in Alaska is only available on the road system, which exempts a large number of offenders from its protections.
 - IID devices are not mandatory for drug involved DUIs, as the device has no capacity to register either drug use or impairment, and there are an increasing proportion of drug involved DUIs.
 - IID use is not required following a DUI occurring on certain federal lands and Indian reservations.
 - DMV cannot order IID after a DUI administrative revocation (only when a limited license is sought during the time of revocation), so it is not a condition for reinstatement.
- The mandatory penalty imposed on some Alaskans may unfairly burden the way back to lawful, licensed driving.
 - Drivers who do not own a car still have to prove that the IID has been installed on someone’s car.
 - Much more significantly, the cost of an IID for a first DUI offender is anywhere from \$675-950 and for a second DUI the cost is \$1275-1550. There are no provisions for financial assistance to indigents. See Table below.

Table: Costs to Defendant Associated with Interlock				
	1 st Misdemeanor DUI/Refusal	2 nd Misdemeanor DUI/Refusal	3 rd Misdemeanor DUI/Refusal	4 th misdemeanor DUI/Refusal
Installation of Interlock	75-350	75-350	75-350	75-350
Interlock servicing costs (ongoing): ranging between \$85-125, estimated here at 100/mo.	600 (6 mo.)	1200 (12 months)	1800 (18 months)	2400 (24 months)

OPTIONS/ALTERNATIVES

SR: “A more effective alternative to mandatory IID could be the mandatory use of a SCRAM unit (or other equivalent technology). The workgroup recommends that IID, SCRAM and other technological approaches to preventing DUI that may be effective as proposed for use on a case by case basis should be available as options for defendants to propose to the court as a condition of release in individual cases.”

Note; that limited licenses are permitted by court and DMV – can only be issued if IID requirement is concurrently satisfied

3. Should fines for DUI and Refusal be maintained, increased or reduced?

Research on fines among the states

At \$1500, Alaska has the single highest minimum-mandatory fine for a first DUI offense, 4.7 times the national average. A survey of all 50 states and the District of Columbia by WalletHub provides a median of \$250 and a mean of \$317 in a minimum mandatory fine for a first-time DUI.

At \$3000, Alaska also has the highest mandatory fine among all states and D.C. for a second-DUI offense, 4.5 times the national average. Among all fifty states and D.C., there is a \$500 median and a mean of \$667.

WalletHub also states that, after a DUI in Alaska, there is an average 80% increase in car insurance rates. This percentage is the fourth-highest reported increase in the country. Table 1 provides comparisons with other Western states.

State	Min. fine 1 st DUI	Min. fine 2 nd DUI	Reported percentage increase in auto insurance after DUI
Alaska	1500	3000	80%
Arizona	250	500	37%
California	390	390	103%
Colorado	600	600	34%
Hawaii	150	500	62%
Idaho	0	0	43%
Kansas	500	1000	46%
Montana	300	600	39%
Nebraska	500	500	58%
Nevada	400	750	29%
New Mexico	0	500	46%
No. Dakota	500	1500	33%
Oklahoma	0	0	28%
Oregon	1000	1500	26%
So. Dakota	0	0	27%
Texas	0	0	44%
Utah	1370	1560	39%
Washington	940.50	1195	28%

¹ <https://wallethub.com/edu/strictest-states-on-dui/13549/#adam-gershowitz>

Research on effectiveness of fines as a sanction for DUI

Some very weak evidence supports the deterrent effect of higher fines versus lower fines²; however, the literature is largely silent on thresholds at which sanctions become effective, are most effective, and cease to be effective (or become counter-productive). More importantly, a comprehensive study of 26 states between 1976 and 2002 concluded mandatory fine penalties do not have clearly demonstrable general deterrent or preventive effects, especially in contrast to two other DUI countermeasures (1) administrative drivers' license suspension for DUI and (2) reductions in the legally allowable BAC limit for driving – which show fairly consistent effects in reducing alcohol-related crash involvement.³

Concerns

- The amount of direct and indirect (insurance) costs of a DUI conviction in Alaska.⁴

² Homel (1981) found that fines of \$300 or more were more effective than smaller amounts in reducing DUI recidivism.

³ Wagenaar et al. (2007).

⁴

DUI/ Re-fusal	Min. – Mand. Fine	Police training Surcharge	State cases correction facility surcharge	Cost of Imprisonment or of EM	Forfeit vehicle?	Cost of Counsel	ASAP costs (variable)
1st	\$1,500	\$75 or \$50 if muni.	\$75	Jail costs are \$330; EM costs are either \$36 or \$78	Possible	Plea \$200; trial \$500; post-conviction \$250	u/k
2 nd	\$3,000	\$75	75	\$1,467	“	“	u/k
3rd	\$4,000	\$75	75	\$2,000	“	“	u/k
4th	\$5,000	\$75	75	\$2,000	“	“	u/k
5th	\$6,000	\$75	75	\$2,000	“	“	u/k
6 th	\$7,000	\$75	75	\$2,000	“	“	u/k
Felony / 3rd +	10,000	\$100	\$100	\$2,000	Mand.	Pre-indictment plea \$250; post-indictment plea with motions \$500; plea with motions and hearing up to time of trial \$1000; trial \$1,500; post-conviction \$250	u/k

- Inconsistent sentencing outcomes depending on different sovereigns.
 - In Municipality of Anchorage DUI cases, defendants may obtain a reduction of the fine amount based on out of pocket costs of substance abuse treatment. A similar reduction is not consistently available in State DUI cases because of how state law has been interpreted.

(concerns continued)

- In DUI cases prosecuted in federal court under the Assimilative Crimes Act (for crimes committed in the National Parks and on some other federal lands and in Metlakatla), no minimum fine is required. There is a maximum \$5000 fine, but it is more typical for a fine of \$150 to be imposed.

OPTIONS

1. No criminal DUI fine (13 other states)
2. Reduce fine to
 - national average,
 - western state average (with or without Alaska)
3. Suspend fine for first and second DUIs on condition of license reinstatement

4. Should the penalty of license revocation for DUI/Refusal be maintained or changed?

Research

- (Fair sanction) Whether imposed administratively or criminally, license suspension or revocation appears to be a fair sanction because it is directly related to the offense misconduct.
- Generally, license curtailment reduces driving exposure and prompts more cautious driving (Ross and Gonzales 1988).
- (Offender Recidivism effect) With respect to the question of whether license revocation in general in particular specifically deters a DUI driver offender from re-offending, earlier research results were somewhat mixed.
 - Homel (1981) and Stewart et al. (1988) found no association between driver's license suspension and recidivism.
 - Sadler et al. (1984) found such a specific association for repeat offenders, finding that a three-year license suspensions for repeat offenders were associated with decreased DUI recidivism and crash rates when compared to one-year suspensions.

More recent surveys indicate that license suspension works to control the overall traffic safety risk of first and repeat DUI offenders. (DeYoung, TRB, 2011)

- Studies of pre-conviction (administrative) license suspension laws passed in various states showed consistent effects across the cohorts of DUI offenders studied; although the results depended heavily on how quickly the sanction was effective.¹
 - Blomberg, Preusser, and Ulmer (1987) showed a significant decrease in recidivism associated with the law.
 - Rogers (1997) found that APS (administrative per se) was associated with significant reductions in subsequent alcohol-related crashes and DUI convictions among both first and repeat offenders, with effect sizes ranging from 27% to 33% for alcohol-related crashes and 19% to 27% for subsequent DUI convictions.
 - In general, the research evidence shows that administrative driver license suspension is effective... "in reducing not only crashes overall, but also crashes where alcohol was a factor. The evidence shows APS (administrative per se) exerts both specific deterrent (or incapacitative) effects ranging from 15% to 35% and general deterrent effects of 5% to 40%."

¹ A study by Wagenaar et al. (2007) of all states implementing mandatory fines for first-time offenders found that pre-conviction license suspension laws (i.e., administrative) were associated with fewer single-vehicle nighttime crashes and fewer fatal alcohol-related crashes; in contrast, post-conviction license suspension laws had no such associations. Pre-conviction license suspension laws reduced single-vehicle nighttime crashes by four percent, low-BAC (0.01 – 0.07) crashes by five percent, medium-BAC (0.08 – 0.014) crashes by seven percent and high-BAC (≥ 0.015) crashes by four percent.

- The optimal length of ‘hard’ revocation periods is yet to be established. More research is needed on minimum periods of hard license suspension necessary to maintain benefits. (DeYoung)
- Many revoked drivers never reinstate, or significantly delay license reinstatement beyond period of revocation. Cost is cited as the most significant deterrent. Other oft-cited factors are: confusion about process of reinstatement; and failure to satisfy other prerequisites.
- Drivers who have suspended licenses appear to drive less and more conservatively and have lower recidivism rates than those who are not suspended.
- However, compared to fully licensed drivers, suspended offenders have 3.7 times the risk being at fault in a fatal crash.

Current law and local data

- Both DMV and the state courts impose mandatory license revocation periods for DUI and Refusal Offenses. The DMV type of revocation is called Administrative (“ALR”); and the court (criminal) revocation is termed Judicial.
- Close to 2/3 of all DUI/Refusal cases are subject to both ALR and Judicial processes. About 1/3 of DUI cases is subject only to Judicial process. A very small number are subject to ALR only.
- ALR typically involves early action, to curtail the driver’s license of a DWI offender at the time of arrest (Lacey, Jones, and Stewart, 1991). In Alaska, an ALR will be effective in 7 days after arrest or citation unless an administrative hearing is requested by the driver. A temporary license will typically can be provided until the hearing.
 - Hearings are requested by drivers in approximately 1 out of 4 administrative cases.
 - The request for a hearing is later withdrawn in about 15% of those cases.
 - Average time for the scheduling of ALR hearing absent requested continuance is
 - 30 days for unrepresented individuals
 - 45 days for represented hearing
- A Judicial revocation may take 120 days or longer; 75% of all misdemeanor cases typically resolve within 120 days.²
- Statutory license revocation periods cannot be shortened by DMV or the courts.
- With respect to DUI, limited licenses can be granted during the period of revocation but only after a shorter “hard” period of revocation has been first observed. Under current law, limited licenses require compliance with mandatory IID law.

² Alaska Court system FY2014 disposition statistics.

- With respect to Refusal cases, there is no driving permitted during the full length of revocation period.

Table: Relationship Between Number of DUIs and Current Statutory Minimum Mandatory Periods of Revocation, Limited License and IID Use			
# DUI	Minimum Revocation	When Limited License Allowed for some DUI Offenders, but not Refusal	Accompanying Minimum Period of IID Use
1st	90 days	After first 30 days.	6 months
2 nd	1 year	After first 90 days.	12 months
3 rd	3 years	After first 90 days.	18 months
4 th	5 years	After first 90 days.	24 months
5 th	5 years	After first 90 days.	30 months
6 th	5 years	After first 90 days.	35 months
Felony	Permanent. Termination of revocation is within discretion of DMV after ten years based on statutory criteria. If revocation is terminated, prescribed IID use will follow.	None	60 months

Concerns

- License suspension is hard to enforce because of the invisibility of the sanction.
- Justification of treating refusal cases differently is arguably weak.
- There may be confusion as to whether the two types of revocation periods (Judicial and ALR) run concurrently.
- Delays in court and administrative hearings may undermine any effectiveness of the sanction.
 - NB: Due process must be provided.
 - “Suspension of issued licenses . . . involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.” *Bell v. Burson*, 402 U.S., at 539, 91 S.Ct., at 1589.
- Expenses and requirements involved may discourage license reinstatement, and suspended drivers pose a risk on the roads due both to their risky driving and also because there are large numbers of them (DeYoung)
 - Shorter revocation periods may be more effective than longer periods because they create inconvenience but are not so long as to ‘teach’ the individual that he or she can drive, unlicensed, without being apprehended.

- Concern remains with felony DUI defendants' inability to seek earlier termination of statutory revocation:
 - before ten years have elapsed. .
 - when there have been no driving related offenses for ___ years
 - when they have completed their probation requirements and so haven't completed a court ordered program as described in SB91
 - If ignition interlock is no longer a part of a mandatory sentence
- Concern is whether any previously convicted felons should receive retroactive application

OPTION 1: Eliminate confusion

- Propose statute that expressly makes judicial and ALR revocation periods wholly concurrent.

OPTION 2: Eliminate disparity and attenuated effect

- Make ALR applicable to all DUI cases (including drug and combined drug alcohol txt)

OPTION 3: Address barriers to reinstatement

- Change revocation to suspension to encourage speedy license reinstatement by reducing costs and requirements. [29 or 31 of states provide suspension only for first offender]
 - a. All offenders including Refusal?
 - b. Only DUI offenders ?
 - c. Only DUI offenders with a BA below a certain cut off?
- Reduce license reinstatement costs if reinstatement is within ___ years of revocation (incentivize)

OPTION 4: Make ALR more effective

- (fewer delays) Provide admin hearings more quickly, i.e. always within 30 days
- (visibility problem) Couple ALR with vehicle sanctions (license plate, seizure/whiskey plates, impoundments, e.g.) for first or repeat offenders
- (heighten visibility of enforcement efforts) Sobriety checkpoints and license checks (Michigan v. Sitz, 110 S.Ct. 2481 (1990) Of all states, 40 permit, 7 prohibit, 2 have no provisions (including Alaska) sobriety checkpoints

OPTION 5a: Reduce Revocation Periods to encourage licensed driving

- Workgroup Proposal (SR): For first offenders: Reduce total revocation period to 30 days (currently, only 1st time DUI and not Refusal offenders observe 'hard' revocation period that brief) with no limited license to follow as long as the defendant can demonstrate to DMV that he is treatment compliant, have required driver insurance and pay reinstatement fees.

- For first offenders, 11 states allow revocation/suspension periods 30 days or shorter (1 req. only 15 days)
- Workgroup Proposal (SR): Keep hard revocation period at 30 days for all other offenders with a limited license opportunity for the remaining total revocation period. The limited license periods for all second or greater DUI offenders (high risk DUI offenders) should be conditioned upon Intensive Supervision Programming and Monitoring which could be coupled with accountability court hearings for violations or with immediate DMV sanctions.
 - For repeat offenders, all states except 2 have a minimum one year revocation: 1 state (OK) allows 6 month revocation/suspension period and 1 other state (TX) allows 6 mo—2 years with one year mandatory interlock
NB: Many states' revocation periods are often 'soft' meaning that limited or restricted driving privileges are available early on for first offenders and after 30-60 days for repeat offenders as long as they drive with ignition interlocks and otherwise comply with licensing requirements.
- Another option: graduate hard revocation periods: e.g. 30, 45, 60 or 15, 30, 45, keeping in step with proportionate sanctioning

OPTION 5b: Reduce Revocation Periods to encourage licensed driving

- Lower the maximum driving revocation period for a recidivist driver
- Alternatively, provide more opportunities for termination of revocation

OPTION 6: Set different revocation periods based on conduct

A. *High BAC:*

NCSL: In 2013, 68 percent of drivers who had been drinking and were involved in fatal crashes had a blood alcohol content of .15 or greater. Therefore 22 states have enacted increased revocation terms for DUI offenders with a high BAC.³ Break points: .10, 15, 16, 117 .18 and .20 and above. Also 2 states expressly provide pre-conviction suspension for high BAC.

Example: California's laws require a 10 month license suspension for first time offender with .15 but allow a restricted license after one month with completion of 9-month DUI education and counseling program). The court may order a first offender to operate only motor vehicles equipped with "ignition interlock" devices for not more than 3 years. Heightened consideration is to be given to first offenders with a BAC \geq .15 or to first offenders who refused to take a chemical test, including to grant probation participation for at least 3 months or longer in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions. First offenders who have been placed on probation and at the time of the offense had either a BAC \geq 0.20 or refused to submit to a chemical test must be placed in

³ 48 states and DC provides some sort of increased penalty for high BAC drivers

a licensed alcohol and other drug education program that consists of at least 60 hours of program activities for at least 9 months or longer.

B. Injury Accident

E.g. California increases period of hard revocation for those with injury-related DWI offense

C. Timing of second or third offense within five years

E.g. Hawaii provides stricter sanctions for more rapidly occurring DUIs

5. Should AS 28 alcohol crime jail terms be decreased or increased?

Table: Relationship Between Number of DUIs and Current Statutory Minimum Mandatory Periods of Jail Tme			
# DUI/Refusal	Minimum Jail Term	Maximum Jail Term	Cost of imprisonment
1st	72 hours	1 year	\$330
2 nd	20 days	1 year	1467
3 rd within 15 years	60 days	1 year	2000
4 rd within 15 years	120 days	1 year	2000
5 th within 15 years	240 days	1 year	2000
6 th within 15 years	360 days	1 year	2000
3 rd within 10 years	120 days	5 years	n/a
4 th within 10 years	240 days	5 years	n/a
5 th within 10 years	360 years	5 years	n/a

- For a first DUI offender, 27 states have no minimum mandatory sentence. 14 states have sentences of 1-2 days. Three states have 3-day sentences (including Alaska). Nebraska has a 7-day minimum and Arizona has 10.
- However, for a first offender with a high BA, higher and even tiered minimums apply in many states.
- For a second offender, the minimum-mandatory sentences range from 0-180 days. The median is 7 days.

From Digest of Impaired Driving laws:

“To avoid the penalty of the transfer of Federal-aid highway funds, States must enact and enforce laws providing the following as sanctions for *second or subsequent DWI offenders*: a minimum license suspension of 1 year; the impoundment, immobilization, or installation of an ignition interlock on a driver’s motor vehicle; an alcohol assessment and treatment as appropriate; and not less than 5 days of imprisonment *or* 30 days of community service... [and 10 days of imprisonment or 60 days of community service for a 3rd or subsequent offense].”

Research

From [NHTSA Guide to Sentencing DWI Offenders 2005 HS 810 555 -](#)

Jail

In the past 15 years, most States have adopted some form of mandatory jail sentences for misdemeanor DWI and prison sentences for felony DWI. The effects of these laws have been hotly debated, and the evidence from studies of incarceration as a specific and general deterrent to DWI is mixed. In general, the available evidence suggests that as a specific deterrent, jail terms are extremely costly and no more effective in reducing DWI recidivism among either first-time or repeat offenders than are other sanctions (Hagen, 1978; Homel, 1981; Salzberg and Paulsrude, 1984; Jones, Joksch, Lacey, and Schmidt, 1988; (Mann, Vingilis, Gavin, Adlaf, and Anglin, 1991; Ross, 1991; Martin, Annan, and Forst, 1993). Nichols and Ross (1989) reviewed available studies of the effect of incarceration on DWI recidivism rates for the Surgeon General's Workshop on Drunk Driving. They found six studies that reported no reduction in recidivism, one that found no difference in recidivism between a special DWI facility and a traditional prison, and one that found reduced recidivism for first-time offenders sentenced to 48 hours in jail. Further, traffic deaths decreased in Norway and Sweden once both countries abandoned mandatory jail sentences for convicted impaired drivers (Ross and Klette, 1995).

There are some indications that the short-term effect of jail as a general deterrent depends on the extent of public awareness, the risk of incarceration, and the size of the community. These short-term effects are initially strong following public announcement of a sanction, but often dissipate over a period of about 3 years. Some studies have found that the use of 2-day jail sentences had a general deterrent effect for first-time offenders (Falkowski, 1984; Jones et al., 1988; Zador, Lund, Fields, and Weinberg, 1988); others concluded that jail terms were ineffective (Ross, McCleary, and LaFree, 1990). Researchers have also noted, however, that mandatory jail sentences tended to negatively affect the court operations and the correctional process by increasing the demand for jury trials, plea-bargaining, and jail crowding (NHTSA, 1986; Voas and Lacey, 1990). Consequently, in some jurisdictions the severity of the sanction was reduced, and swiftness was retarded; inconsistency in implementation raised equity questions.

Additional questions arise regarding sentence severity, or the appropriate length of a jail sentence. For example, 2 days in jail may have a specific deterrent effect and may be more effective than a 2-week sentence in reducing recidivism for first-time offenders (Wheeler and Hissong, 1988). In one study, lengthy periods of incarceration were actually associated with higher recidivism (Mann et al., 1991). This finding may be due to judges giving longer jail sentences to those offenders whom they regard as most likely to recidivate, rather than an indication of the negative effects of more severe penalties.

Based on these findings, it has been suggested that a weekend in jail may be useful for first-time offenders, for whom a “taste of punishment” may be an effective deterrent (Jones et al., 1988; Mayhew and Simpson, 1991). However, since many convicted impaired drivers, particularly repeat offenders, have severe life-stress problems, may be alcohol-dependent, and may have additional health problems, long jail terms are unlikely to resolve their problems and may even exacerbate them (Homel, 1981). For such individuals, incarceration, which effectively incapacitates them as a threat to public safety, but only for the period they are incarcerated, may be most effective as a complement to treatment-oriented measures (Jones and Lacey, 1991).

Research on other incarcerative-type programs

Weekend Intervention

A weekend intervention program (WIP) is designed to evaluate alcohol and other drug abuse and to create an individualized treatment plan for each offender while housing them away from their normal domicile (a “low-level” form of incarceration). For low-risk offenders, exposure to the WIP evaluation process itself may be sufficient treatment. High-risk offenders are referred to longer-term, more intensive programs. Repeat offenders assigned to WIP have lower recidivism rates than do jailed offenders or those given suspended sentences and fines (Siegal, 1985). An example of a WIP is the Wright State University WIP in Ohio (Siegal, 1987). Programs based on the WIP have been used in some additional locations including, for example, Augusta, Maine; Altoona, Pennsylvania; Gillette, Wyoming; and throughout the State of Missouri.

Dedicated Detention/Special DWI Facilities

Confinement in detention facilities dedicated to DWI offenders incapacitates the high-risk offender and provides supervised rehabilitation services, such as:

- Treatment for alcohol abuse and alcoholism
- DWI driver education
- Vocational training, sometimes in the context of work release
- Individual counseling (Timken, Packard, Wells-Parker, and Bogue, 1995)

Detention typically ranges from two weeks to one year. During this time, offenders may be released for work or community service (Harding, 1989a). Data on effectiveness is limited and inconclusive, although data analyses indicated reduced recidivism among both first-time and repeat offenders sentenced to a facility in Prince George’s County, Maryland (Harding, 1989b; Voas and Tippetts, 1989). In a recent study of a special facility in San Juan County, New Mexico, which was modeled after the Prince George’s

County facility, it was found that recidivism at five years after treatment was 23.4 percent compared to 40.1 percent for a similar group of offenders not treated at the facility (Kunitz et al., 2002). The San Juan County facility mainly treated offenders who were Native American (70%) and Hispanic (10%).

Home detention. This approach to incarceration recognizes a defendant's need to drive during the day either to get to work or to court-ordered treatment, but keeps the defendant off the road during evening and nighttime hours, when most DWI violations occur. Home detention as a condition of probation is generally enforced by electronic monitoring (see below), with violation punishable by jail (Jacobs, 1990). No data has been published on the effectiveness of this sanction with DWI offenders except for programs that couple home detention with electronic monitoring.

Electronic monitoring. Electronic monitoring is a computerized method of verifying that the offender remains at home except when excused to attend work or treatment (Harding, 1989a). Offenders are outfitted with a waterproof, shock-resistant transmitter on a band that is strapped securely on their ankles (Jones and Lacey, 2000). In a 7-year study (Lilly, Ball, Curry, and McMullen, 1993), recidivism was less than 3 percent among a group of DWI offenders who were electronically monitored over approximately 2 to 3 months while on probation. However, recidivism increased at the completion of the monitoring period. More recently, Jones et al., (1996) evaluated the Los Angeles County Electronic Monitoring/Home Detention Program. Their analysis found that the electronic monitoring program reduced the reconviction rate by nearly one-third. One study of offenders in Pennsylvania looked at the differences between those who served their sentences in jail only and those who served their sentences under house arrest with electronic monitoring. While there were no significant differences between the groups, those offenders who were employed at the time they were sentenced to electronic monitoring were more successful than those on electronic monitoring and unemployed (Courtright, Berg, and Mutchnick, 2000). There are other benefits of house arrest combined with electronic monitoring. For instance, it allows the offender to be home with his/her family, the curfew keeps the offender off the road during prime DWI hours, it can be adapted to employment hours, AA meeting, etc. and it is less expensive than jail (Jones et al., 1996). Some challenges of electronic monitoring include the cost (some suggest using grant money to help certain people pay for it; sliding scales have also been used), trouble with the monitoring devices (e.g., wakes up the offender too often, doesn't recognize his/her voice, disturbs others in the home), and a lack of face-to-face observation. However, at least one company has solved that problem by providing a digital image of the person being monitored when the probation officer calls the offender on the phone.

OPTIONS

Eliminate or decrease jail terms for DUI offenders, which also eliminates or reduces cost of cost of imprisonment.

Substitute electronic monitoring. Impose home detention for confinement, create day reporting option, or short-term intensive DUI-specific confinements.

5. Are there effective (non-incarcerative) programs that promote offender accountability, emphasize swift and certain, yet measured punishment, reduce recidivism, and maximize the offender's ability to remain productive in society?

Research from [NHTSA Guide to Sentencing DWI Offenders 2005 HS 810 555 -](#)

Probation

The U.S. Supreme Court recently wrote about probation and its purposes in the decision of United States v. Knights (2001). The Court concluded: "...a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens." Although probation may reduce recidivism slightly among drivers at low risk for recidivism (Wells-Parker, Anderson, Landrum, and Snow, 1988), probation alone does not measurably reduce recidivism among those at high risk (Jones and Lacey, 1991). There is some evidence that probation combined with treatment can be effective (Nochajski, Bell, and Augustino, 1995).

- Abstinence from alcohol and illegal drugs, subject to random screening by breath or urine testing;
- Additional sanctions for driving without a license that has been suspended by the court or motor vehicle administration, or driving without insurance; and
- Court-ordered treatment, home detention (sometimes with alcohol monitoring using various remote devices designed for such purposes), license or vehicle restrictions, or any other sanctioning option discussed in this guide.

Variations of DWI probation include basic supervision probation (monthly visits), unsupervised probation, and case-specific restrictions (individualized). Some of the more promising forms of probation are:

- ***Intensive supervision probation (ISP)***. In ISP programs, offenders have more contact with probation officers compared with standard (nonintensive) probation programs and participate in various educational and therapeutic programs in the community (Harding, 1989a; Transportation Research Board, 1995). Results of intensive probation have traditionally been difficult to evaluate (Latessa and Travis, 1988; Greene and Phillips, 1990). One NHTSA-sponsored evaluation (Jones, Wiliszowski, and Lacey, 1996) examined the Milwaukee County Pretrial Intoxicated Driver

Intervention Project (of which ISP was a component). Significantly fewer offenders who received ISP recidivated compared to those who did not receive the program (5.9 % versus 12.5%).

- **Day Reporting Centers (DRCs).** DRCs are highly structured, nonresidential facilities that provide counseling, supervision, employment, education, and community resource referrals to DWI probationers (Jones and Lacey, 2000). In a NHTSA-sponsored study of the Maricopa County (Arizona) DRC program, Jones and Lacey (1999) found that while the DRC was not significantly more effective in reducing recidivism (compared to traditional probation programs), the program facilitated offenders' reintegration into society and was more cost-effective than jail.
- **DWI courts.** Modeled after drug courts, and incorporating some of the forms of probation described above, DWI courts are designed to provide constant supervision to offenders by judges and other court officials who closely administer and monitor compliance with court-ordered sanctions coupled with treatment. DWI courts generally involve frequent interaction of the offender with the DWI court judge, intensive supervision by probation officers, intensive treatment, random alcohol and other drug testing, community service, lifestyle changes, positive reinforcement for successful performance in the program and going back to jail for noncompliance (National Association of Drug Court Professionals, 1997; National Drug Court Institute, 2002). Most DWI courts assign nonviolent offenders who have had two or more DWI convictions in the past to the court. At the present time, there are multiple sources of funding for drug/DWI courts to help defray their costs. DWI courts have been shown to hold offenders accountable for their actions, change offenders' behavior to end recidivism, stop alcohol abuse, treat the victims of DWI offenders in a fair and just way, and protect the public (Tauber and Huddleston, 1999; Freeman-Wilson and Wilkosz, 2002). Breckenridge, Winfree, Maupin, and Clason (2000) report that such a program significantly reduces recidivism among alcoholic DWI offenders. Other studies of this type of program are currently underway and DWI courts are being implemented in Georgia, Pennsylvania, and other States. Specialized DWI courts provide greater opportunity for close monitoring and offender accountability. However, this currently is only done with the most egregious offenders (Robertson and Simpson, 2002). At the end of 2003, there were approximately 70 DWI courts and 1,100 drug courts operating in the U.S. One report on a DWI court in New Mexico indicated that recidivism was reduced by over 50 percent for offenders completing the DWI court compared to similar offenders not assigned to the DWI court (Guerin and Pitts, 2002). Those results, however, were preliminary and did not include statistical tests. NHTSA is completing an evaluation of the Maricopa County (Phoenix), Arizona, DWI court using a random assignment design (Jones, in press). In this research, more than 250 felony DWI offenders were randomly assigned to the DWI court and a comparable number of offenders were assigned to traditional probation services. The Maricopa DWI court includes monthly in-person court appearances by the offenders before the judge, frequent contact with an assigned probation officer,

regular meetings with treatment personnel, participation in AA meetings, attendance at Victim Impact Panels (VIP), and random testing for alcohol and other drug use. Qualifications for graduation from the DWI court include meeting all treatment and program requirements, maintaining steady employment for six months, remaining alcohol-free for six months, and having a stable residence. NHTSA presently is collaborating with the Department of Justice to promote the increased use of DWI courts and encourage jurisdictions that utilize drug courts to accept repeat DWI offenders in them (NHTSA, 2003b).

ADDITIONAL DISCUSSION/PROPOSED ANSWER BY JUDGE RHODES:

There are several program types that promote offender accountability and emphasize swift, certain, and proportionate sanctions.

Intensive Supervision Programs (ISP) reduce recidivism of DWI offenders. All three ISPs evaluated indicate significant reductions in medium-term recidivism for ISP offenders up to 4 years (although one of the findings may have been due to an artifact in the comparison offender group, and the effect has disappeared by 15 years). The reductions in recidivism ranged from 18.1% to 54.1%. The evidence appears to be strong that ISPs with the following common features can be very effective:

- a. Screening and assessment of offenders for the extent of their alcohol/substance abuse problem
- b. Relatively long-term, close monitoring and supervision of the offenders, especially for alcohol and other drug use or abuse
- c. Encouragement by officials to successfully complete the program requirements
- d. The threat of jail for noncompliance⁴

ISP programs should be funded and be mandatory probation requirements for high risk DUI offenders, monitored by the Division of Behavioral Health ASAP program in misdemeanor cases and DOC Community Corrections in felony DUI offenders. The ASAP program should be funded and reformatted to concentrate on high risk misdemeanor DUI offenders only and to determine, through evidence based best practices, what components are most effective in reducing recidivism. These may include mandatory assessment and treatment of substance use disorders and criminogenic risks and needs,

⁴ Wiliszowski, C. H., Fell, J. C., McKnight, A. S., Tippetts, A. S., & Ciccel, J. D. (2010). An Evaluation of Three Intensive Supervision Programs for Serious DWI Offenders. *Annals Of Advances In Automotive Medicine / Annual Scientific Conference - Association For The Advancement Of Automotive Medicine*. Association For The Advancement Of Automotive Medicine. Scientific Conference, 54375-387. Accessed from www.nhtsa.gov/staticfiles/nti/pdf/811446.pdf This study confirms prior research showing that ISPs are effective.

frequent alcohol monitoring – either by 24/7 (see below), IID, SCRAM, random UA/drug tests or other components to an individual offenders risks and needs.

DOC felony probation should require felony DUI offenders to participate in and complete ISP immediately upon the offenders release to probation.

The South Dakota 24/7 Sobriety Monitoring program (pre-trial alcohol monitoring). Findings of initial studies were highly promising and, since then, comparable programs have been implemented in other jurisdictions across the country, including Alaska. However, the body of peer-reviewed literature on this topic is still in its infancy, and there are currently no long-term studies which have examined whether participation in these programs leads to lasting behavioral changes.

The Alaska equivalent to the South Dakota 24/7 Sobriety Monitoring program is the Alaska 24/7 Sobriety Monitoring program. The program was implemented in July, 2014. An evaluation of the program has not been conducted yet; the Alaska Judicial Council is currently working on a program evaluation.

Initial findings on a national level are promising. Therefore, one would assume the programs available in Alaska would also be effective. However, it is important to keep in mind that only a pilot evaluation has been conducted on PACE, and no evaluation has been conducted on 24/7. Because of the lack of data available, it is impossible to draw definite conclusions about the effectiveness of the programs available in Alaska

Even though the 24/7 program has shown great promise in other jurisdictions, the program is not a treatment program. The program can be used complementary to an ISP, to monitor sobriety, or as a standalone program. Those offenders who fail to maintain sobriety in the 24/7 program due to their inability to control substance use should be required to complete mandatory substance abuse treatment with sobriety monitoring.

Hawaii's Opportunity Probation with Enforcement (HOPE) program (probation drug monitoring) is a judicial hands on swift accountability court for felony probationers. The Alaska equivalent to HOPE is the Alaska Probation Accountability with Certain Enforcement (PACE) program. In 2011, the Alaska Judicial Council conducted a pilot evaluation of the program. The results were very promising and consistent with other study. However, a follow-up evaluation has not been conducted since. It is also important to point out that the PACE program solely focuses on drug use and not on alcohol consumption.

A HOPE or PACE court collaborates with probation to provide swift and certain court attention to a violation of a condition of probation. This court approach could easily be coupled with an ISP program probation requirement for misdemeanor and felony high risk DUI offenders.

Finally, DUI, drug and other therapeutic courts address addiction and, often times, co-occurring addiction and mental health disorders. These have shown positive results. These court models are intended for substance dependent offenders who benefit from a lengthy court involvement that involves a multidisciplinary legal and treatment team to provide case management and requires linkage to and participation in an array of substance abuse treatment, cognitive behavioral interventions to address criminal thinking errors, employment, etc. to help achieve and maintain sobriety for life.

Alaska Criminal Justice Commission
WORKGROUP ON TITLE 28
Thursday, April 7, 2:30-4:30 PM
AG's Conference Rooms, Juneau and Anchorage
(video- and audio-conferenced meeting)

Attendees: ACJC Commissioners Alex Bryner, Kris Sell, Trevor Stephens, Gary Folger and Stephanie Rhoades; DMV staff: Jayson Whiteside, Kirsten Jedlicka and Lauren Edades; MOA Prosecutor Seneca Theno; DPS Lt. David Hanson; Assistant PD Matt Widmer; attorney Fred Sloane; Partners for Progress Board member Billy Houser; ACJC staff Mary Geddes, Brian Brossmer; Alysa Wooden and Tricia Von Lohhoffel, ASAP/DHSS.

Next Meeting: Thursday, April 28 2:30-4:40 PM @ Brady Building, 5th floor conference room.

Legislative Update

Staff Mary Geddes reported that SB91 is working its way through the Senate and is expected to be on the floor this weekend. Partners for Progress had successfully advocated with the sponsors for an amendment that would allow those convicted of felony DUI to receive limited licenses if they were in a therapeutic court program for at least six months and received no other driving offenses. Comr. Rhoades suggested this provision would have limited impact because of the stacking effect of non-DUI related DI violations. Q: Comr. Alex Bryner asked if SB64 requires the Commission to evaluate the effectiveness of the Therapeutic Courts. A: SB64 does generally require the Commission to inventory existing treatment resources and provide information as to effectiveness.

A bill sponsored by Rep. Tammy Wilson proposes that administrative license revocation (ALR) processes be eliminated. Geddes does not know the current status of that bill nor its prospects. Jayson Whiteside noted that SB91/HB 205 does terminate an administrative revocation when there is an acquittal or if the case is dismissed.

Ignition Interlocks

The Workgroup returned to the topic of ignition interlocks. Geddes noted that she had prepared a background paper on the topic as a way of supporting the recommendation (draft was provided to the Workgroup) but sought clarification as to whether mandatory IID would be eliminated for all DUI offenders and whether the workgroup would be proposing IID as a discretionary condition of probation or of pretrial release.

Comr. Rhoades questioned the value of having an IID as a discretionary condition or pretrial condition if the interlock program is inadequate or is not evidence-based. Comr Sell indicated there is general unhappiness with the current program. Defendants are being told they have to have their cars towed to the IID servicers. Billy Houser said IID requirements are only worthwhile if the IID is being effectively monitored. He knows that the devices can be overcome (tampered). Really, he said, remote monitoring devices provide the only way to ensure that people are not drinking.

Comr. Stephens said we are struggling with whether the IID prescription is used as the carrot (incentive) or the stick (punishment).

Comr. Rhoades said our program does not sufficiently monitor IID use, so even if there are statistics from elsewhere that show recidivism reduction, it can't be assumed that the same is being achieved here. It shouldn't be mandatory for any driver. The only question, she thought, was whether it should be discretionary.

DMV was asked about the front end of the process, since there is a lot of evidence that ALRs are effective because they offer an immediate, swift and certain response to per se DUI. Jayson explained that when an arrest is made and the license is taken, drivers are given a notice that (1) their licenses are being revoked and (2) they are being given a 7 day temporary license allowing them to contest the police action. If they don't seek a hearing within 7 days, that license revocation goes into effect. About 2/3 of the drivers given the notice do not seek a hearing, therefore they are revoked. For those that seek a hearing, the temporary license remain in effect until the administrative hearing. There is no statutory provision allowing DMV to impose an IID requirement prior to an adjudication. However, for those who did not seek an administrative hearing and effectively capitulated to an administrative revocation, they may seek from DMV a limited license with an interlock restriction after the 'hard' revocation period has passed. The Courts do not have explicit statutory authority to impose an IID requirement as a pretrial condition, but there is nothing disallowing it either.

Matt Widmer asked if there is value in explicitly proposing IIDs as a discretionary condition of probation because judges will therefore impose it in every case. Shouldn't we be discouraging interlock use since it is not evidence based?

Someone asked about SCRAM or other remote monitoring technologies, and whether staff can get information as to their costs.

[Back to IID discussion] Comr. Stephens indicated that in most instances he would not see value in IID monitoring for first offenders, nor necessarily with respect to second offenders if the second offense was remote in time to the first. He noted the relevant look back time frame for misdemeanor DUI was 15 years.

The group was asked if it was agreed

- Not as a mandatory sentence
- Not to be used for bail conditions
- Instead utilize more effective tools like SCRAM
- Use these tools for more high risk offenders

Whiteside said that he would agree that use for first offenders should not be mandated, that IID should remain in the tool box for 2nd and offenders that need treatment, that there is information that IID use can be effective when it is tied to treatment. He asked for more information about SCRAM.

Billy Houser said that DOC has been using the SCRAM bracelet and other remote monitoring technologies since 2007. Like with IIDs, it is possible to set the level of alcohol for purposes of detection. They typically set the level as .02 because that level gets rid of false alerts for the use of mouthwash and other items like that. SCRAM can be as much as \$18-20/day or as low as \$6.45.

With respect to the IID question, Fred Slone said that his answer would depend on how the system is going to work as a whole. He agrees it makes sense to get rid of IID as a mandatory sentence. But with a second offender, facing a one year revocation, they can get an IID after 90 days, which keeps them working. He is wondering if remote technologies can really work statewide.

There was a discussion of what form of intervention or treatment should be ordered for the various levels of DUI offenders. For first offenders referred to ASAP (they all are), as long as there is no other history or not a high BA, they will be considered non-problem drinker. A repeat or a high BA will put them into another category and will trigger the need for an enhanced assessment.

Someone said [Rhoades?] there is no evidence that the prescription of treatment for first offenders is impactful. There was reference made to the Institute of Justice's April 2015 study showing that the combination of SCRAM in combination with treatment is beneficial.

Revocation Periods

Geddes reported that the research on revocations periods is that shorter is more effective than long. Short brings about a sanction, but too long can 'teach' an offender that they can drive cars without being caught.

Fred Slone said he thought the current revocation periods for misdemeanors were fair as long as limited licenses were provided. However, he does not think the periods of revocation for felony DUI is fair.

This reminded Comr. Rhoades that the second most frequently prosecuted criminal offense is DWLS. The current revocation periods are 90 days for a first offense (with 30 days as a hard revocation, and 60 days on a limited IID license) and 1 year revocation for a second offense (with 90 days as a hard revocation, and the remainder on a limited IID license). Rhoades stated that she thinks the 1 year revocation period for a second time DUI is too much.

Matt Widmer suggested that a 30 day revocation seems about right for a DUI. The lifetime revocation for a 3rd DUI teaches them they can get away with driving unlicensed. Plus not's not fair, he said, comparing the treatment of two DUI offenders – one of whom got his 3rd within ten years, and the other of whom got his 3rd in year 1 week 1. The first gets a felony DUI and a lifetime revocation. The second gets a hard 90 day revocation period.

Seneca Theno was not on line at this point in our discussion. It was proposed that staff or committee members talk to her and to the Muni's public defender to see what experiences and ideas they have on this topic. Rhoades suggested that the revocation sentence should be a shock, short, and capable of remediation. Jayson Whiteside likes a 30-day revocation noting that there seems no additional value obtained from longer revocations, and that we really want to encourage reinstatement.

Fines and Costs

There seemed little interest in doing anything about mandatory SR-22 insurance.

Public Comment

No additional public comment was provided.

To-Do List

- Develop proposal on revocation periods and supporting rationale.
- Redistribute earlier paper on administrative v. judicial revocation and the question on whether dual systems ought to be maintained, keeping in mind the evidence on effectiveness
- See if there is any way to determine what number of percentage of people opt out of re-licensing
- Finalize IID recommendation
- Formulate a recommendation re fines and jail times based on the research
- (Matt) interview Muni Prosecutor and PD on their experiences and opinions re revocations

Alaska Court System
DUI/Refusal Convictions
 Cases Closed FY 2015

Case Type	Conviction Type	District	Jurisdiction	2015	
Criminal	Felony Conviction	First District	State of Alaska	13	
		Second District	State of Alaska	3	
		Third District	State of Alaska	166	
		Fourth District	State of Alaska	41	
		Total			223
	Misdemeanor Conviction	First District		City and Borough of Juneau	110
				City and Borough of Sitka	17
				City of Ketchikan	23
				State of Alaska	151
		Second District	State of Alaska	109	
		Third District		Municipality of Anchorage	1101
				State of Alaska	1252
		Fourth District	State of Alaska	608	
		Total			3371
		Total Cases			3594

Note: Cases are categorized in the ACS Annual Report based on the most serious charge at the time of filing. This report is providing a count of cases with a DUI conviction regardless of how the case is categorized for annual statistical reporting.

Thu 8/27/2015 9:21 AM
FROM: Whiteside, Jayson O (DOA) <jayson.whiteside@alaska.gov>

Good morning,

Here are the statistics I agreed to provide after the last Title 28 subgroup meeting. Thanks to Lauren Edades and Audrey O'Brien for collecting and providing these statistics.

Limited Licenses Issued:

2013

Applications Received: 423
Limited Licenses Issued: 325
DUI Limited Licenses: 302

2014

Applications Received: 386
Limited Licenses Issued: 296
DUI Limited Licenses: 278

2015 through July 31

Applications Received: 219
Limited Licenses Issued: 163
DUI Limited License: 150

*DUI Limited Licenses includes Limited Licenses that were for Admin Per Se .08 revocations. Most but not all had a judgment.

Statistic	2012	2013	2014
Total Number Hearings	1273	1084	891
Admin Hearings – DUI (admin per se)	960	816	686
Admin Hearings – Refusal	163	164	136
Total Notice & Orders	4361	3909	3563
DUI – 1st Offense	2634	2372	2144
DUI – 2nd Offense	766	639	591
DUI – 3rd Offense	234	211	197
DUI – 4th Offense	53	44	36
DUI – 5th Offense	15	10	10
Refusal – 1st Offense	359	341	337
Refusal – 2nd Offense	163	161	135
Refusal – 3rd Offense	74	70	56
Refusal – 4th Offense	26	21	10
Refusal – 5th Offense	12	4	3
6th + N&O's	25	36	44

The only numbers that are missing are the total number of DUI and Refusal (criminal offense) offenders. We have requested a query run for those numbers through our IT department, but it takes a little more time to collect that data. I will provide that information to you as soon as it is received.

Please let me know if you have any questions or concerns.

JW

Jayson Whiteside
Hearing Officer
Anchorage Driver Services
DOA/DMV
Phone: (907) 269-3770
Fax: (907) 269-3774

DUI IMPACTS IF JRI RECOMMENDATIONS ARE APPROVED BY LEGISLATURE

Misdemeanor DUI defendants constitute a large number of DOC admissions.

- There were 2,539 post-conviction admissions to DOC for a DUI sentence in FY 2014. This amounted to one-quarter of all of DOC's post-conviction admissions.

Many DUI defendants serve their sentences in DOC hard beds.

- 1,736 of DUI postconviction admissions were assigned to either EM or to a CRC for service of a DUI sentence. The remainder were made to a DOC institution.
- The Alaska Court System reports that statewide 3594 people were convicted of DUI in FY2015.¹ Thus, the number of postconviction admissions underrepresents the number of people who are convicted of DUI. Only 52% of all Alaskan defendants are able to 'bail out' during the pretrial phase of their case. Many DUI defendants are likely to have 'served' their sentence while in pretrial basis.

The less costly alternatives of EM and CRC beds are underutilized.

- Even though EM/CRC sentences are mandated for first DUI offenders and permitted for second and subsequent misdemeanor offenders, the default assignment is often a hard bed.
- Because of Alaska's minimum-mandatory sentencing requirements, 100% of all DUI defendants who are convicted must receive an "active" sentence, meaning that it cannot be suspended sentence.²
- For a first-time offender, that minimum-mandatory sentence is a consecutive 72 hours, meaning that any amount of jail time less than 72 hours straight will not be credited. Additionally, any sentence of 72 hours or less is not eligible for good-time reduction.
- Current law already *requires* DOC to assign 1st time DUI offenders to serve their sentences at a private residence under electronic monitoring (EM) or in a community residential center (CRC). DOC is *permitted* to similarly assign convicted second and subsequent DUI offenders to EM and CRCs.
- Of these three options – prison, CRCs and EM – EM is by far the cheapest at ___ a day. Prison is the most expensive at _____ a day.
- One explanation is the lack of sufficient EM and CRC resources. The current statute allows that if neither is available "imprisonment ... may be served at another appropriate place determined by the commissioner of corrections."
- With respect to subsequent DUI's (2nd through 6th-- all misdemeanors) "Imprisonment required under (b)(1)(B)-(F) of this section may be served at a community residential center or at a private residence if approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring."
- Nevertheless the EM option – which is the least expensive prison alternative and which frees up both hard beds in the prisons and halfway house beds for higher-risk defendants – remains greatly underutilized.

¹ there were still 3594 convictions for DUI or Refusal in FY2015. 3371 were misdemeanors and 223 were felonies.

² The minimum mandatory sentence for a first-time DUI offender is 72 hours and good time credit is only available if the sentence exceeds 72 hours. AS 33.20.010. If a defendant applies 30 days in advance, and is eligible, DOC may allow the defendant to serve his or her sentence on electronic monitoring. DOC may also designate a halfway house as the place at which a defendant may serve his sentence. At any given time, less than 400 people are on EM and less than 600 people are in CRCs statewide.

Why is EM or some other remote monitoring technology a good option for repeat DUI offenders?

- When dealing with recidivists, the focus of sentencing should shift from deterrence to incapacitation or separation of the offender from the vehicle (Jacobs, 1990; Marques, Voas, and Hodgins, 1998).
- There is a growing body of evidence that sanctions administered on the vehicles of DWI offenders substantially reduce DWI recidivism during the period of implementation (Rauch et al., 2002b; Marques et al., 1998).
- Intensive supervision probation combined with frequent meetings with the judge and close monitoring of compliance with the offender's sanctions (e.g., DWI courts) appear to be effective in dealing with multiple repeat offenders (Jones, Wiliszowski, and Lacey, 1996; Jones and Lacey, 1998).

What are the obstacles

- DOC only provides EM as an option for sentenced defendants; it doesn't offer EM pretrial. Many DUI defendants unable to afford bail, may 'serve' or satisfy their sentences prospectively, on a pretrial basis.

What Percentage of DUI Offenders Are Recidivists?

- DWI recidivism is high, and has been estimated between 33 and 44%. However, 55-66% of first-time DUI offenders will not repeat.

How Long Do DUI Arrestees Stay in Jail Before Their Case is Decided?

- Because 52% of all offenders in Alaska are never released pretrial, it is likely that there are DUI defendants who spend some amount of pretrial time in jail.
- We don't know for how long this particular group - misdemeanor DUI offenders - stay in jail on a pretrial basis. But we know that all nonviolent misdemeanor defendants spent an average of 9 days in jail pretrial in FY 2014.
- We also know that district court cases (like misdemeanor DUIs) take a long time on average to resolve. In FY 2014, the median time to disposition was 53 days, and the mean was 89 days.

What is the Amount of Time Spent in Jail by Misdemeanor Offenders?

- Pew has reported that the average post-conviction length of stay (LOS) for sentenced misdemeanor DUI offenders is 18 days.

What Does the Research say About the Use of Prison Alternatives For Sentencing?

- For a first conviction, electronic monitoring and home confinement is an effective alternative, reducing recidivism by 35%.

Where are the DUI Offenders?

- 34% of all DUI filings statewide were from Anchorage.
- 66% of all DUI filings statewide were from the Third Judicial District.

What Changes Are Proposed to DUI Laws by the JRI Process?

- Consensus recommendations are to substitute mandatory language ("shall") for permissive ("may") language, essentially directing DOC to utilize remote monitoring technologies for first DUI offenders. Instead of spending 3 days in jail

How Many DWLS Convictions Per Year?

- In FY 2015, the state courts reported 1,865 misdemeanor DWLS convictions.

How Many DWLS Offenders Receive A Jail sentence?

- All DWLS offenders whose license revocation was based on a DUI conviction receive jail time to serve. First-time DWLS offenders face a minimum 10 day jail sentence. For a second offense of this type, they receive a 30 day sentence to serve.
- First-time DWLS offenders *whose license revocation was not based on a DUI conviction* receive a minimum-mandatory sentence of 10 days, all suspended, and a requirement of 80 hours of community work service. However, for a second DWLS offense of this type, offenders receive an “active” sentence of 10 days. For a third DWLS offense, the sentence is 30 days to serve.
 - It appears that most DWLS offenders served some amount of jail time (either pretrial or for a sentence) as DOC reported close to 1700 remands for DWLS offenses during FY 2014.
- Pew has reported that the average post-conviction length of stay for sentenced DWLS offenders is 41 days. This statistic most certainly underreports the length of time spent in jail by the convicted defendant because the LOS only computes post-conviction time actually served and does not count any jail time that DWLS offenders may have served while on pretrial status.
- According to the state courts, there were 1,865 misdemeanor DWLS convictions in FY 2015.

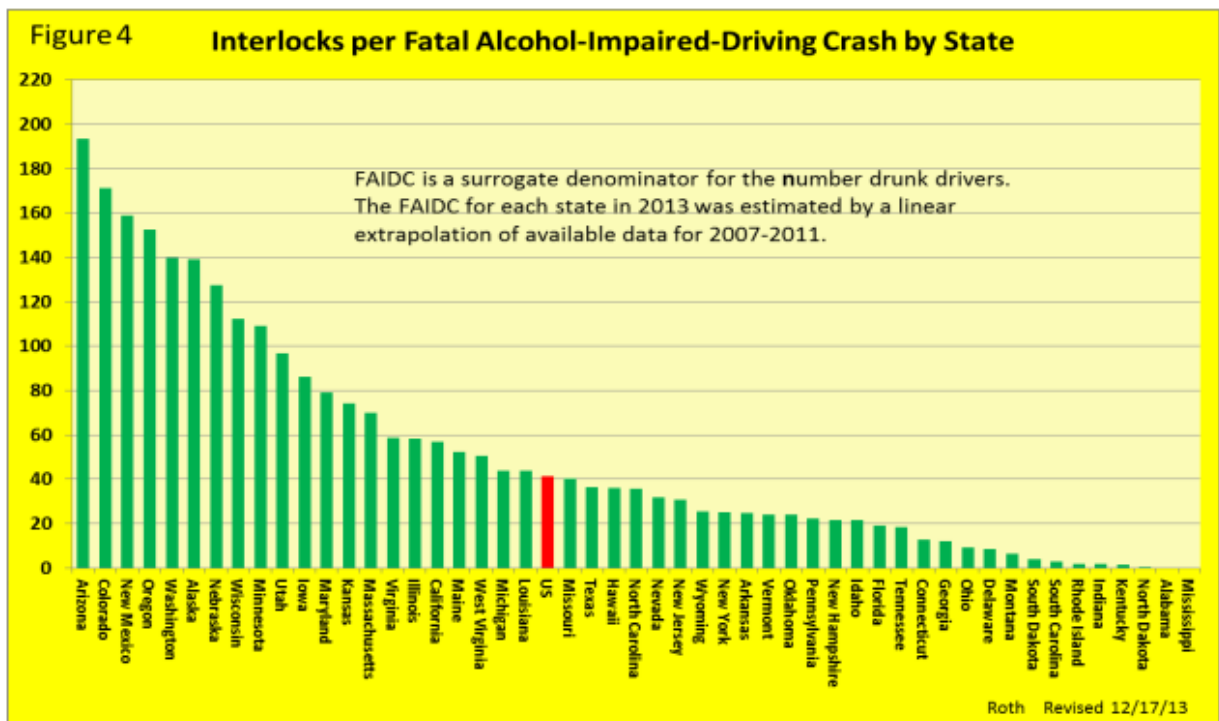
What Percentage of DUI Offenders Are Recidivists?

- See also Rauch et al (peer reviewed), Risk of Alcohol-Impaired Driving Recidivism Among First Offenders and Multiple Offenders,” American Journal of Public Health, May 2010, Vol 100, No. 5, noting an annual recidivism rate of 24.3 per 1000 among first offenders. In 6 year study, there were, on average, 5.4 DUI violations per 1000 Maryland drivers. Among drivers with no prior offenses, there was an average of 3.4 new first-time offenders a year per 1000 drivers. Among drivers with 1, 2, and 3 or more priors, the comparable rates of new offenses were, respectively, 24.3, 35.9, and 50.8. Thus, the magnitude of risk increased substantially as the number of prior offenses increased.

Per Roth,

“[FAIDC is] the estimated number of currently-installed interlocks per fatal alcohol-impaired-driving crash by state. **This is one relative measure of the specific deterrent effect of interlock programs in the states.**” Also, it’s a way to compare states, as Roth says, “**FAIDC is a surrogate denominator for the number of drunk drivers**” (see graph below).

http://www.rothinterlock.org/2013_survey_of_currently_installed_interlocks_in_the_us_revised-12_17_13.pdf, p. 4



DRAFT BACKGROUND PAPER FOR IID RECOMMENDATION - DO NOT DISTRIBUTE

Table of Contents

- Overview
- What is the IID Law in Alaska?
- Which DUI Drivers Are Exempted from Using IIDs?
- How Do IID Requirements Interact with the Issuance of Limited Licenses?
- What Are the Direct Costs to an Offender Resulting from a DUI Conviction?
- What Are the Costs Associated With Obtaining an Interlock-Restricted License After a DUI/Refusal Conviction?
- Is There Any Mechanism By Which Interlock or Related Costs Can Be Reduced?
- How Many Alaskans Are Effected By the Interlock Requirement?
- Is The Required Use Of An Ignition Interlock Device Effective In Reducing Post-Interlock Recidivism Among DUI Offenders?
- How is the Alaska Ignition Interlock Program Structured?
- Has the Alaska Interlock Program Been Reviewed?

Overview

All fifty states have made some provision for ignition interlock use by DUI offenders. An alcohol ignition interlock prevents a vehicle from starting unless the driver provides a breath sample with a BAC lower than a pre-set level.

Approximately thirty-eight states mandate interlocks for repeat DUI/Refusal offenders. Thirty-one states require interlocks for first DUIs with high BACs. Less than half of all states, 23 including Alaska, require interlocks for all first offenders convicted of either DUI or Refusal.

In all remaining states, courts may impose ignition interlocks either as a condition of probation or as a restriction on the issuance of temporary or hardship licenses during a period of license suspension or revocation. Other states also allow Interlock use to shorten the length of license revocation.

What Is the IID Law in Alaska?

Under current Alaska law, any person convicted of a DUI or Refusal¹ whose offense involved the use of alcohol will be ordered to: serve a mandatory sentence, pay a mandatory fine, have their license to drive revoked for a mandatory period, and use an ignition interlock for a mandatory period of time once he or she regains a privilege to drive.²

¹DUI and Refusal are crimes which pertain to driving a motor vehicle or the operating an aircraft or watercraft. AS 28.35.030 and AS 28.35.032. A "motor vehicle" is defined as "a vehicle which is self-propelled except a vehicle moved by human or animal power." AS 28.90.990(a)(17). Thus, the requirement applies to cars, trucks, motorcycles, planes, boats, ATVs and snowmachines if they are not being operated in certain exempted rural communities.

²AS 28.35.030(c)(2)(sentencing court may not suspend the IID requirement).

The IID requirement does not expire. It is a springing requirement, meaning that it becomes effective when the convicted driver regains the privilege to drive. A person regains that privilege after a statutory revocation period ends and when he or she can satisfy various re-licensing requirements e.g. completion of treatment requirements; passing written, vision and road tests; payment of DMV fees). Any license obtained (whether “limited” or not) will be subject to a separate ignition interlock (“C”) restriction.

The court’s judgment specifies the time period an IID must be in use on a driver’s vehicle. The amount of time an IID is required depends on whether the offense is a misdemeanor or a felony, and on how many prior convictions the defendant has had during the ‘lookback’ period.³ See below.

Table 1: Amount of IID Use Required Post Conviction	
# of DUI/Refusal	Mandatory Minimum Period for IID
1st	6 months
2 nd	12 months
3 rd	18 months
4 th	24 months
5 th	30 months
6 th	35 months
Felony (3 rd DUI/Refusal)	60 months

Who Is Exempted from the IID Requirement?

Although Alaska is often described as a mandatory IID state, there are lawful exemptions.

- No IID shall be required for drivers of motor vehicles in listed rural communities not on the state highway system and with a daily traffic volume of less than 499 where motor vehicle registration and mandatory insurance is not required.⁴
- No IID is mandated for a defendant required to drive an employer’s vehicle if a court first determines: (1) it is a condition of employment to drive a vehicle owned or leased by defendant’s employer; (2) the defendant’s driving will not create a substantial danger; and (3) the employer is notified of the defendant’s “probation [sic]” and provides the defendant with a letter authorizing him/her to drive the vehicle.
- No post-revocation IID can be merely administratively mandated; however, as stated elsewhere interlocks will be required for a limited license approved by DMV.

³For misdemeanor penalties, the lookback for a prior DUI or Refusal is fifteen years. For felony (recidivist) penalties, the lookback is two prior convictions within ten years.

⁴AS 28.35.030(t) and AS 28.22.011(b). The list of communities is here: <http://doa.alaska.gov/dmv/faq/manins.htm>

- No IID is required for offenders convicted of a drug-involved DUI. A court may impose an IID requirement as a condition of probation even when the impairment was not alcohol-related.

How Do IID Requirements Interact with The Issuance of Limited Licenses?

There are no pre-adjudication or pretrial ignition-interlock provisions of law. However, a court convicting a misdemeanor DUI offender may approve a limited license to have effect during the period of a license revocation.⁵ Any limited license will be subject to and labelled with the interlock restriction until the requirement is satisfied.

There are no limited interlock licenses permitted by statute for a person convicted of misdemeanor or felony refusal, felony DUI, for driving in violation of the limitations of an interlock-restricted limited license, or for a DUI while on probation for a prior DUI or Refusal.

The actual issuance of the limited license depends upon the person’s installation of an ignition interlock as well as the satisfaction of other requirements.

Limited licenses are issued only after a no-drive period is first observed. The no-drive period (often called the ‘hard’ revocation) is mandatory. Its length depends on prior DUIs/Refusals. (see below)

Table 2: Relationship Between Statutory Minimum Mandatory Periods for Revocation, Limited License and IID Use			
# DUI	Minimum Revocation	When Limited License Allowed for some DUI Offenders	Minimum IID Use
1st	90 days	After first 30 days.	6 months
2 nd	1 year	After first 90 days.	12 months
3 rd	3 years	After first 90 days.	18 months
4 th	5 years	After first 90 days.	24 months
5 th	5 years	After first 90 days.	30 months
6 th	5 years	After first 90 days.	35 months
Felony	Permanent. Termination of revocation is within discretion of DMV after ten years based on statutory criteria. If revocation is terminated, IID use will follow.	None	60 months

Neither a period of driving with a limited license nor the completion of the interlock requirement will shorten the full revocation term.

⁵ See AS 28.15.201(d), and 28.15.181(c). Similarly DMV may approve limited licenses during revocations based on administrative per se DUI determinations. See AS 28.15.201(d) and 28.15.165(c).

What Are the Direct Costs of a DUI Conviction?

An individual convicted a crime is liable for those fines and fees that are usually identified by his or her court judgment. We can call these the direct costs of the conviction. For a first-time DUI/Refusal offender, the direct or judgment-associated costs are between \$2000-2680, exclusive of impoundment fees,⁶ forfeiture related losses, and ASAP-related costs.

Table 3: Direct Costs of a DUI Conviction							
DUI/Refusal	Min.-Mand Fine	Surcharge for conviction	Correctional facility surcharge	Cost of Imprisonment or of EM	Forfeiture	Cost of Counsel	ASAP screening, evaluation, and referral
1st	\$1,500	\$75 or \$50 if muni.	\$75	Jail costs are \$330; EM costs are either \$36 or \$78	Possible	Plea \$200; trial \$500; post-conviction \$250	u/k
2 nd	\$3,000	\$75 "	75	\$1,467	"	"	u/k
3rd	\$4,000	\$75 "	75	\$2,000	"	"	u/k
4th	\$5,000	\$75 "	75	\$2,000	"	"	u/k
5th	\$6,000	\$75 "	75	\$2,000	"	"	u/k
6 th	\$7,000	\$75 "	75	\$2,000	"	"	u/k
Felony / 3rd +	\$10,000	\$100	\$100	\$2,000	Mand.	Pre-indictment plea \$250; post-indictment plea with motions \$500; plea with motions and hearing up to time of trial \$1000; trial \$1,500; post-conviction \$250	

What Are the Costs Associated With Obtaining an Interlock-Restricted License after a DUI/Refusal Conviction?

Many more costs are associated with license reinstatement. For a first-DUI offender, the costs would include interlock fees⁷ of about \$700 for the period of 6 months, DMV fees at about \$600-700, and mandatory SR-22 insurance costs.⁸

⁶The State does not have an impoundment program, however the Municipality of Anchorage does have such a program. If a driver has no prior conviction, the vehicle is impounded for a maximum of 30 days; if a person does have a prior conviction of any of the enumerated offenses, the vehicle is forfeited. Costs associated with impoundment in a DUI case when there is no prior conviction are \$1592.50.

⁷ All interlock -related costs – which include installation, removal, monthly servicing, optional insurance to cover the unit, and any vendor charges for IID re-start after a alcohol lock-out - are paid by the offender to a third-party vendor.

⁸ Mandatory SR-22 insurance is by far the highest cost. SR-22 insurance is required not only during the term of an

Table 4: Costs to Defendant Associated with Interlock, Limited License and License Reinstatement				
	1 st DUI/Refusal	2 nd DUI/Refusal	3 rd DUI/Refusal	4 th DUI/Refusal
ASAP fee (show proof)	\$200	\$200	\$200	\$200
Alcohol restricted card if ordered	50	50	50	50
Processing fee	100	100	100	100
Driving Record	10	10	10	10
Road Test	15	15	15	15
Limited License Application	100	100	100	100
Reinstatement after 1st DUI	200	500	500	500
Installation of Interlock	75-350	75-350	75-350	75-350
Interlock servicing costs (ongoing): ranging between \$85-125, estimated here at 100/mo.	600 (6 mo.)	1200 (12 months)	1800 (18 months)	2400 (24 months)
<i>SR-22 insurance (ongoing): vary but estimate from State Farm is 286/mo. I used \$300/mo.</i>	<i>(5 years) \$18,000</i>	<i>(10 years) 36,000⁹</i>	<i>(20 years) 72,000¹⁰</i>	<i>(lifetime)</i>

Is There Any Mechanism By Which Interlock or Related Costs Can Be Reduced?¹¹

Although some states maintain a fund and a mechanism through which indigent drivers may apply for assistance with the costs of IID, the State of Alaska does not provide such assistance.

While the current DUI/Refusal statute does allow a sentencing court “to include” IID costs as part of the fine, see AS 12.55.102(d), courts do not prospectively reduce the minimum-mandatory fine. A defendant may obtain credit for any IID payments against the fine if s/he keeps their receipts and submit them to the court by a deadline specified in the judgment. It has been reported that this deadline presents a problem for some defendants, as well as an administrative headache for the courts who are frequently asked by defendants to reopen closed files so that they can get credit against an outstanding judgment.¹²

interlock-restricted license, but also for a statutory term of years after the full revocation term ends. For example, a first-offender would have to have SR-22 insurance for: the 60 day term of a work-limited license; (b) the 6- month term of an interlock-restricted license; and (c) the 5-year term after the period of license revocation period ends.

⁹Probably underestimated since the cost of SR-22 insurance increases with more convictions.

¹⁰Ibid.

¹¹Costs associated with license reinstatement are most frequently cited as the reason why eligible offenders don’t re-license after a revocation. As reflected in one survey from California, a state which has not yet mandated interlock use, only 54% of the eligible first-offenders and only 35% of the eligible second-offenders had reinstated 3.8-4.8 years later. The cost relating to reinstatement was the most frequently reason given by 79% of the first-offenders and 82% of the second-offenders. N. Rogers, (May 2012).

¹²It is also uncertain whether state law allows a sentencing court to reduce a minimum-mandatory fine based on a defendant’s out-of-pocket costs for substance abuse treatment. AS 28.35.030(b)(2)(a)(ii). Individual state prosecutors have argued successfully against such credit. In contrast, the Anchorage Municipal Prosecutor has no objection to courts crediting treatment costs against the fine.

How Many Alaskans Are Affected By the Interlock Requirement?

While ignition interlock use may have been directed by the courts since 1989 and mandated for some DUI offenders since 2004, it is likely most of the Alaskan drivers impacted by IID mandatory provisions are those convicted of DUI/Refusal crimes since 2008.¹³

No entity currently tracks the number of persons who have failed to install or comply with interlock requirements. Nor does Alaska DMV know the number of DUI/Refusal offenders whose licenses have been reinstated after satisfying interlock requirements. However, the DMV does know that there are still 12,784 *living* drivers with pending – meaning unsatisfied – interlock restrictions. The interlock restriction remains in the DMV driver’s record until the requirement is satisfied.

While it can be reasonably assumed that some of those 12,784 individuals are currently driving on a DMV-issued interlock-restricted license,¹⁴ certainly many are not. It is well known that many DUI/OUI offenders delay or never reinstate their driving privileges. And some DUI offenders may obtain limited licenses with interlocks but then do not complete interlock requirements. Based on the available data, it is difficult to draw definitive conclusions concerning DUI/OUI convictions, license revocations and license reinstatements.

However, the number of interlock-restricted individuals (12,874) can reasonably be expected to increase over time the longer that mandatory IID requirements pertain to all DUI drivers in Alaska. Although the annual number of DUI/Refusal arrests has been trending downward since 2008, there were still 3594 convictions for DUI or Refusal in FY2015. 3371 were misdemeanors and 223 were felonies.

One extrapolation is that as many as 60 percent of offenders may not be reinstating their driving privileges. Alaska “stakeholders” interviewed by TIRF have guessed even lower, according to its 2012 study of the Alaska ignition interlock program. Stakeholders interviewed by TIRF believe that more than 75% of eligible offenders are not participating in the interlock program. Both estimates are consistent with studies indicating that only a small percent of eligible offenders have an interlock installed.

¹³Since 1989, courts have had discretion to require IID use in DUI/Refusal cases specifically and in criminal cases generally. AS 12.55.102, 28.35,.030-.032. In 2004, a new law provision ensured that a court’s requirement for IID use would not expire with the close of probation. See AS 12.55.102. Also mandatory IID provisions were first passed, mandating IID use for high BA cases and limited licenses. AS 28.35.030(s). In 2008, the Legislature imposed the current IID scheme, requiring IID use as a condition of license reinstatement for all DUI and Refusal offenders.

¹⁴ One researcher who extrapolates interlock installation rates for all states has estimated that there are 1,922 presently installed IID devices in Alaska. (cite)

Is the required use of an IID effective in preventing the occurrence of DUI and Refusal?

Interlocks are an effective method for preventing alcohol-impaired driving (DUI) *while they are installed*.¹⁵ Research has repeatedly shown that these devices reduce recidivism among offenders who use them. This includes hardcore offenders (also known as persistent/chronic drinkers and repeat offenders) who repeatedly drive after drinking with extremely high BACs and are resistant to change this behavior. A systematic review of 15 scientific studies conducted by the Centers for Disease Control and Prevention (CDC) found that, while interlocks were installed, the rearrest rate of offenders decreased by 67% compared to groups that did not have the device installed.¹⁶

However, researchers agree that the potential for IID effectiveness to reduce DUI offenses is greatly limited by the relatively small proportion of offenders who have the devices installed. Also drivers who do have the devices installed don't necessarily complete program requirements. In a 2007 study, while 10% of drivers ordered to participate in an interlock program did so, only 40% of those participants thereafter completed program requirements.

Ignition interlocks' effectiveness is also undercut by the inevitable attempts to tamper or otherwise evade detection of alcohol consumption. Newer technologies make it harder, but the far easiest means of evading detection is simply to not operate the vehicle on which the device is installed,¹⁷ but use another.

The reality is that, for many offenders, unlicensed driving may seem like a low-risk/low cost alternative after a suspension or revocation. Many delay reinstatement of driving privileges¹⁸ and remain outside of the driver-control system, making corrective action difficult if their driving continues to be a problem.¹⁹

Is the required use of an ignition interlock device effective in reducing post-interlock recidivism among DUI offenders?

Studies have conclusively shown that after ignition interlocks are removed, any recidivism effect disappeared, with interlock and comparison drivers having similar recidivism rates.²⁰ As a stand-

¹⁵ UNC Highway Safety Research Center, 2011, pp. 1-32-1-33; Marques and Voas, (2010).

¹⁶ Beirness and Marques (2004); Elder et al. (2011).

¹⁷ 13.5% of interlocked drivers monitored in a Washington State pilot study exhibited no, little or minimum vehicle use.

¹⁸ Voas et al. (2010).

¹⁹ Lenton et al. (2010). TIRF has also noted "Between 25% and 75% of offenders who have a driver's license that is suspended or revoked continue to drive, making it likely that they will continue to drink and drive and be a danger on the roadways (McCartt et al. 2003; Ross and Gonzales 1988; Griffin III and De La Zerda 2000)."

²⁰ Insert cites here.

alone measure, interlock requirements do not ‘teach’ an offender to exercise restraint.

How is the Alaska Ignition Interlock Program Structured?

The Alaska Department of Corrections Commissioner is responsible for ignition interlock device certification, which means the Commissioner determines which interlock devices are certified for use in Alaska by vendors. Approved vendors are listed on the DOC website.

The interlock program is bare bones and self-policing. The driver has to keep the device installed for the period of the interlock, have the device calibrated every 90 days by the vendor and maintain a record of up to date record of servicing and calibration which he must produce on request. Vendors are required to recalibrate every 90 days and must maintain records downloaded from the device for three years. Vendors do have to report suspected interlock tampering within 72 hours, but a driver is not sanctioned or even reported for any fails or lock-outs by the device.

Individuals who have an interlock requirement receive instructions from court and DMV agencies how to locate a vendor in their area. They contract with the vendor and bring documentation of the installation into DMV.

Has the Alaska Interlock Program Been Reviewed?

The Traffic Injury Research Foundation (TIRF) has a cooperative agreement with the National Highway Traffic Safety Administration (NHTSA) to provide training and technical assistance to jurisdictions to help them strengthen and improve the delivery of their alcohol interlock program. In 2011, TIRF consultants came to Alaska, examined the existing program and offered recommendations to improve the delivery of interlocks in the state and to increase program participation rates.

Alaska’s program strengths, as noted by TIRF, included

- The DOC approval process for interlock devices;
- The court-based interlock program because courts impose interlocks as a probation condition and monitor compliance;²¹
- The combined requirement of ASAP screening because “research has shown that alcohol interlocks alone should not be expected to change behavior and are most effective in facilitating behavior change when paired with an appropriate treatment program”;²²
- The availability of short hard suspension periods because shorter suspensions can facilitate offenders getting into the interlock program more quickly and shortens the window in which they may learn to drive unlicensed”;²³

²¹ Incorrect.

²² ASAP screening etc are not necessarily contemporaneous with interlock use, under the current scheme.

²³ Interlocks are not available for all drivers; the current law excludes refusal and felony DUI offenders.

- The policy allowing continued participation by individuals who are non-compliant (failed starts or lockouts) ensures that high-risk offenders at least have the opportunity to learn to separate drinking from driving.

Alaska's program weaknesses were "typical to court-based interlock programs and jurisdictions with large rural populations." They included:

- Low program participation rate, with a majority failing to participate (because, reportedly, "few judges consistently adhere to the mandatory requirement to order IID installation");
- The lack of monitoring of offenders for non-compliance by any agency;
- No consequences for failed breath tests;
- State's reliance on a paper-based reporting system (vendor's data downloads are not sent to any supervising agency);
- Lengthy 90-day calibration cycle means that offenders would not face swift and meaningful consequences for reports of non-compliance and subsequently, would be less likely to change their behavior;
- No graduated sanctions or performance-based exit criteria, which can ensure that offenders who pose the greatest risk (based on their demonstrated inability to separate drinking from driving) stay in the interlock program until they come into compliance with program requirements and those who don't need it exit; and
- The challenges with a large rural population in terms of device availability, servicing, and monitoring.

TIRF suggested both short and long term measures to increase interlock program participation. Those measures included:

- "Increase understanding among policymakers of the implications of long hard suspension periods/revocation periods and increase awareness of the availability of the reduced 45-day license suspension. A reduction in the long hard suspension period can get offenders into the program more quickly before they learn that they are able to drive unlicensed. This issue will require a fundamental shift in philosophy from an emphasis on license suspension to an emphasis on keeping offenders in the licensing system so that they can drive legally."
- "Make program information directly available to offenders, and make it available earlier in the process (following arrest or conviction instead of toward the end of hard suspension period.)"
- Reduce insurance premiums.

Substance-Abuse-Related Fatal Crashes ¹						
	Driver Status	2010	2011	2012	2013	2014
Number of Fatal Crashes in Alaska	Alcohol Test Results Positive (BAC<.08)	1	5	0	1	4
	Alcohol Test Results Positive (BAC=.08-.15)	5	7	2	4	4
	Alcohol Test Results Positive (BAC≥.16)	10	11	9	8	15
	TOTAL	16	23	11	13	23
	Drug Test Results Positive (All Types)	19	22	16	14	31
	Alcohol (BAC<.08) and Drug Test Results Positive	1	3	0	1	1
	Alcohol (BAC=.08-.15) and Drug Test Results Positive	2	4	1	2	3
	Alcohol (BAC≥.16) and Drug Test Results Positive	6	7	4	4	6
	TOTAL	9	14	5	7	10

¹ NHTSA, Fatality Analysis Reporting System (FARS), <http://www-fars.nhtsa.dot.gov/QueryTool/QuerySection/SelectYear.aspx>

**Meeting Summary for
ACJC WORKGROUP ON TITLE 28
Friday, March 11, 10:00 AM-12:00 PM
Brady Building, 1034 W. 4th Avenue, 5th floor conference room (AG's conference room)**

Attendees: ACJC Commissioners Alex Bryner, Stephanie Rhoades, Kris Sell (intermittently); DMV Amy Erickson, Nicole Tham, Jayson Whiteside and Kirsten Jedlicka; MOA Prosecutor Seneca Theno; DOL Christina Sherman; DPS Lt. David Hanson; PD Matt Widmer; Fred Sloane; Partners for Progress Director Doreen Scheckenberger and Board member Billy Houser; Alysa Wooden, ASAP/DHSS. ACJC staff Mary Geddes, Giulia Kaufman, Brian Brossmer.

Next Meeting: APRIL 7, 2016, 2:30-4:30 PM

Materials provided prior to the meeting:

AJC STAFF MEMOS

1. Vehicle-based sanctions – Brian Brossmer
2. Punishments, Fines and Driver's License Actions- Brian Brossmer
3. Responding to SB64 query: Effectiveness of treatment programs - Giulia Kaufman

OTHERS' STUDIES ON DUI RECIDIVISM

1. Effectiveness of interventions for convicted DUI offenders in reducing recidivism: A systematic review of the peer-reviewed scientific literature
2. An Evaluation of Intensive Supervision Programs for Serious DWI Offenders
3. Comparative Study and Evaluation of SCRAM Use, Recidivism Rates, and Characteristics, April 2015 (Limited to Nebraska and Wisconsin)
4. DWI Recidivism in the United States: An Examination of State-Level Driver Data and the Effect of Look-Back Periods on Recidivism Prevalence, March 2014
5. Countermeasures That Work ["deterrence "focus] (NHTSA, 9th Edition)(online only)

IGNITION INTERLOCK RESEARCH

1. Ignition Interlock – Alaska – Brian Brossmer
2. [General Deterrence Evaluation of the Ignition Interlock Pilot Program in California](#)
3. Alaska Technical Assistance Report - from TIRF
4. Email from TIRF TA provider Robyn Robertson (also forwarding the articles below)
 - a. [Evaluation of States Ignition Interlock Programs from 28 states 2006-2011](#) (linked)
 - b. [Nova Scotia Outcome Evaluation](#) (linked)
 - c. [How Offenders on an Interlock Learn to Comply](#) (linked)
 - d. [Behavioral Patterns of Interlocked Offenders Phase II](#) (linked)

STAFF CONTACTS AND RESEARCH

Mary Geddes reported on the contact that she, Amy Erickson had with state highway safety planner Jeff Jeffers. They were able to confirm that when Alaska has been deemed to be out of compliance with **federally 'mandated' impaired driving countermeasures**, there is no net loss of funding to the state. The 'sanctions' simply involve a temporary hold and then a re-direction of those funds away from general highway funding to the Governor's Highway Safety office for targeted DUI interventions in communities around the state. No one in the Governor's Office or DOT for that matter has a problem with this result.

Following presentations by staff, Stephanie Rhoades complimented Brian Brossmer and Giulia Kaufman on their excellent research.

Kaufman had reviewed the limited **research available on 24/7 programs**. Rand published a study in 2012 on the South Dakota program showing that DUI arrest rate went down and DV arrest rate was reduced. (Rhoades clarified the status of the Alaska 24/7 program. It is not available for indigents anymore because state funding was depleted.) Giulia noted that the Alaska program does not provide a clear group of DUI offenders for study because there are lots of probation violators in the program at present. Also she interviewed the vendors about their methods of tracking charge information. There are questions about the accuracy of the charge information used by Intoxitrack vendors in 2 out of 3 locations. Evaluation will be difficult.

With respect to measurements for recidivism reduction, there were questions. Rhoades expressed concern that **the interlock ignition (IID) program** treats rural and urban offenders differently, with a different set of sanctions. She is interested in learning more about **intensive supervision**, which tends to give good effect. She is puzzled at conflicting reports concerning the recidivism research on **DUI courts** and asked staff to contact the National Center on Drug Courts. She also asked if there was information on the relative cost-effectiveness of **vehicle immobilization efforts**. Brossmer stated that vehicle immobilization such as 'the boot' and plate- impoundment is far less costly than vehicle-impoundment because there are no storage costs.

Doreen Schenkenberger mentioned the research on **Victim Impact Panel (VIP) programs**. Research shows low or no impact on recidivism. Offenders are charged \$40 for participating. This begs the question of why use them if there is no impact. Schenkenberger Doreen believes that effectiveness may depend on the specific program. Local program no longer has exclusive focus on victims, as Therapeutic Court alumni participate, too. It's a ten-part program.

RECIDIVISM

Rhoades wondered about getting recidivism statistics for first offenders. Also ASAP compliance information, especially with first offenders.

Rhoades said the ASAP approach for most – assuming they are considered a non-problem drinker- is that they will receive 12 hours of alcohol information (Alcohol Information School) and participate in a victim panel. Why should we be mandating this if they are not likely to re-offend? We should be saving resources for intensive supervision of those who need it. Kaufman noted that ASAP has had a problem with getting

information back from agencies to which offenders had been referred. Now they have only thirty days to report back.

Rhoades observed that ASAP, created to monitor DUI offenders, is now watered down. Every misdemeanor Rule 1 involving alcohol or drug offender is referred; if it were restored to primary statutory purpose, there would be far more resources for those people who need it. This is the basis for the ACJC Recommendation: targeting resources to the group who poses the highest risk.

Assuming that there are people who need immediate swift interventions, Rhoades asked. How do we disable them from driving? If the evidence is that swift, certain and proportional punishments are needed, then we should be talking about pretrial components, Geddes said. That's where administrative sanctions come in. Muni impoundment is an immediate sanction but many people do bail out their car, which undermines its effectiveness, according to Kaufman.

IGNITION INTERLOCK

Rhoades stated the view that ignition interlock is not warranted. Doreen Schenkenberger agreed that immobilization and vehicle based sanctions - particularly in more rural areas - punish the family instead of the offender. Kaufman asked if most of the state's driving offenses aren't all from more urban, populated areas. Schenkenberger noted that DUI includes the operation of snowmachines. Christina Sherman noted the enforcement challenges with the IID law in that so many individuals simply borrow someone else's car. Fred Slone commented that ignition interlock as opposed to immobilization has value, because it provides a social benefit, allowing individuals to move, to work, to stay focused. Billy Houser questioned the use of IIDs because it sanctions the family and not the individual. Fred Slone suggested that IID should remain one of the tools available.

Rhoades asked if the group should vote. Staff noted that the ACJC precedent was consensus decision making. Alex Bryner indicated that he was in favor of Rhoades' position of getting rid of the ignition interlock mandate. Matt Widmer asked if we could expand the toolbox, to allow it among the options. The group expressed interest in limiting the mandatory aspects of it. Slone asked if we should consider a hierarchy of sanctions. Seneca Theno stated that she is concerned that it doesn't have any teaching effect and that people don't learn what impairment is. Also, only some drivers have to comply. Only some drivers use it. It is definitely silly that putting it on a car, any car, satisfies the requirement. She would like to see it go back to being an optional probation condition. Dave Hanson said that he agreed with Theno, that law enforcement knows that the requirement is easily evaded; also, importantly it doesn't stop drugged drivers, and that is the growing challenge. He would agree that the mandatory statewide provision probably doesn't make sense. Jayson Whiteside said that he was speaking personally, not as a representative of DMV, because DMV is agnostic. But he agrees with Slone that ignition interlock can be valuable and that the battery of sanctions including IID may resonate with the first offender. Whiteside asked if there is a small percentage of offenders that may learn from it, isn't it worth keeping it. Rhoades asked if the group agreed to eliminate mandatory IID as a penalty, but possibly keep it open as a tool for intensive supervision program. Slone indicated that he would like the option of IID as a way to get DL back early. He also wondered how the ignition interlock issue would impact the issuance of limited licenses, and shouldn't the discussion be intertwined.

Staff was asked by Rhoades to draft a recommendation to change the mandatory ignition interlock requirement, and to circulate it as soon as possible.

ASAP VERIFICATION REQUIREMENT

Slone also mentioned that he was concerned that not just cost but ASAP sign-off can be a substantial barrier to getting limited licenses. ASAP was not signing off on completed treatment. There needs to be a letter of verification to show completion of treatment before getting a limited license. Rhoades gave the example of a second offender, with a one year DL revocation, who might be ordered into treatment. Treatment requirements could be lengthy, requiring 13-20 weeks of treatment and then aftercare would continue for weeks later. Workgroup members wondered if alcohol treatment requirements could be fine-tuned so as to allow for earlier eligibility for limited licenses.

RECIDIVISM, PART II

Three related questions were then identified. What evidence based interventions reduce recidivism? And what is the point of the intervention? Which are these laws are intended to accomplish: stop impaired driving or stop drinking? Certainly license reinstatement is a carrot, i.e. a way to motivate change.

Administrative license revocations were then referenced. As unpopular as ALRs may be with many people, the evidence is strong as to their effectiveness. They provide the swift, certain response which courts cannot provide, and show impacts in terms of recidivism. The number of licenses revoked by administrative process is a smaller number of DUIs because drug cases are not covered by DMV. Rhoades asked DMV/Whiteside for data in terms of numbers of offenders. This information was previously distributed to the Workgroup, but will be re-distributed by Geddes. Whiteside explained that there are holes in their data, because of the drug DUIs and because they receive little paperwork from rural areas. He suggested that the most accurate number overall for DUIs will be obtained from the courts.

Rhoades stated that she hoped we could answer “who are our DUI recidivists”? Back when, for the purposes of a grant, she had done a small study of the offenders who received their second DUIs within 1 year of their first. Those are the offenders who have a high risk of picking up a felony DUI. This begs the question of who you want to target for intervention. The quickly repeating DUI offenders represent a higher risk. Chronic alcohol abusers on the other hand may be high need. What does current ASAP data look like? Should we look at judgments, say for a one year period, to help us determine patterns of repeat offending? As previously noted, Nicole Tham and DMV had provided the numbers as to administrative action on (alcohol) DUIs, from 2012-2014, showing the numbers for each number of DUI. But it may be difficult for DMV to generate more complex information. Remember look backs for misdemeanors is 15 years and for felony is 10. Widmer asked how such data should be evaluated; are we looking to determine the largest bump of offenders. For the next meeting, staff will collect what local recidivism data we have, so we can determine how to proceed. Rhoades suggested that the National Center on DUI Courts has both recidivism and effectiveness information.

DUI SPECIFIC RISK AND NEEDS ASSESSMENTS

Noting that DOC will be using a risk and needs assessment tool for sentenced offenders, Rhoades wondered if DOC will use an evidence-based tool specific to DUI offenders so as to better determine risk of DUI propensity and the need for treatment. Rhoades also wondered if ASP shouldn't be using the free NHTSA endorsed instrument [which was released in 2014-MG]. Alysa Wooden will find out what instrument is used by ASAP. Kaufman said that a prior 1999 study of ASAP identifies the instrument in use.

She recalls it makes a simple division of problem vs. non-problem driver, using a list of criteria. Rhoades wondered if the Title 28 report to be issued by this group shouldn't encompass a recommendation that ASAP should be using the DUI specific assessment tool. The assessment should be specific to DUI, not the pee-in-the-street type offender.

MISCELLANEOUS

It was suggested that proportionality be part of the sentencing review because of the reported cost of a DUI being so high.

Lethality statistics were requested for DUI. Rhoades mentioned that NHTSA may have information on the characteristics of lethal drivers.

ADDITIONAL PUBLIC COMMENT SOUGHT

At the close of the meeting, all attending in person and on the phone were asked if they wished to make any additional comment. No comment was offered.

Meeting Summary for
ACJC WORKGROUP ON TITLE 28
Friday, February 12, 10:00 AM-12:00 PM
Brady Building, 1034 W. 4th Avenue, 5th floor conference room (AG's conference room)

Attendees: ACJC Commissioners Gary Folger, Alex Bryner and Stephanie Rhoades; DMV Amy Erickson, Nicole Tham, Jayson Whiteside and Kirsten Jedlicka; MOA Seneca Theno; DPS Lt. David Hanson; PD Matt Widmer; Fred Sloane; Partners for Progress Doreen Scheckenberger and Billy Houser; Staff Mary Geddes, Giulia Kaufman, Brian Brossmer

Announcement: No longer a 'subgroup, 'this workgroup will offer any proposals directly to the Commission itself.

Anchorage's Impoundment/Forfeiture Program. Giulia provided her memo and reported. The MOA would appear to net about \$350,000 a year from the program. Also, 20% of all DUI related impounded cars and 40% of all DWLS impounded cars are ultimately abandoned. Seneca discussed the recent Court of Appeals decision in *Tala v. State*. Tala successfully argued that the community caretaker exception to the Fourth Amendment did not excuse his car's impoundment by the MOA following his arrest for DUI. The case – which did not involve the MOA as a party - was remanded to the Superior Court for further proceedings. Gary noted that the State does not have an impoundment program. Stephanie noted that this sets up a strange dichotomy in Anchorage because persons stopped by APD have cars impounded and those stopped by AST do not. Jayson suggested that vehicle measures other than impoundment may have similar 'effectiveness' but cost the driver much less; he gave 'the boot' as an example. Brian has drafted a memo on vehicle-based sanctions and will distribute for discussion next time. Stephanie asked if AJC future research could better focus on measures of effectiveness with respect to reducing recidivism.

TIRF Evaluation of AK's Ignition Interlock Program. Seneca had passed along a completed 2012 study of Alaska's Ignition Interlock Program done by TIRF (The Traffic Injury Research Foundation) in conjunction with NHTSA. She obtained this from the Impaired Driving Task Force. This was the first that the members of this group had heard about TIRF's technical assistance to AK. We wondered with whom they had been in contact. Mary will follow up by emailing authors. [TIRF's contact list, since received, is appended by MG] Mary/Brian will determine whether there has been any follow through with the recommendations for improvements in the AK program. This discussion prompted more questions about ACJC research on IIDs. Stephanie suggested that the IID requirement standing may be ineffectual because it breeds hopelessness and people can't afford it. Is there evidence that its use reduces recidivism? Brian reported that IID's are 100% effective when used; no long term (post decice) l;; effect on behavior of driver.

Impaired Driving Task Force. Seneca was asked for more information about the Impaired Driving Task Force. She and Lt. Hanson from DPS have attended for a little more than one year. The Task Force meets quarterly. Some support is provided through a national consulting firm, Cambridge Systematics. The state DOT liasions are Tammy Kramer and Miles Brooks. Members include: DPS, APD, ABC Board, the State Crime Lab. The Task Force has some input into the Strsatagic Highway Plan. More relevant materials may be online. [Here's one paper: [2008 Impaired Driving Technical Assessment of the State of Alaska](#)]

Research requests. Stephanie asked that staff study which states have been most effective over time in reducing DUI recidivism, which may not be the same question as which states have the lowest instance of DUI. What interventions were utilized? How have DUI lethality instruments been used? Is there any study yet on the utility of DUI specific assessments? What has been the experience with them? She would also like to know if there is information on the effectiveness of specific provisions, like a \$10,000 fine: how does it impact subsequent behavior? How does a lifetime license revocation help? Does it impact recidivism?

Stephanie also noted another state/muni disparity in treatment of drivers exists in offsetting treatment costs. Under current state law, a defendant's out of pocket treatment costs cannot be deducted from the amount due for the DUI mandatory fine; in contrast, Muni policy allows for the offset. Billy Houser noted that the state DOC EM program historically has offset out of pocket payments for treatment and victim restitution against the amount of money a DOC supervisee has to pay for EM. Fred Slone stated that the genesis of the state's opposition is the statutory language itself ('minimum portions of sentences is not to be suspended'). Staff should clarify whether a statutory change is required (or merely a policy shift) in order to allow the offset for state DUI defendants.

Review of SB91 and HB162 provisions. Mary noted that her summary chart of the Title 28 proposed changes in SB91 had a significant typo: a DMV administration revocation for a DUI would be terminated if there had been a acquittal or dismissal with (not without) prejudice in the related criminal court case.

The Sponsor Statement for [HB 162](#) ("HB 162 solves this dual burden of driver license revocations by repealing the DMVs independent authority to administrative revocation of a driver's license and place it solely within the court.") is found [here](#).

ASSIGNMENTS FOR NEXT MONTH: Friday, March 11, 10AM – 12PM

- Brian's memo on vehicle-based sanctions will be distributed.
- Mary will confer with DOL to determine its current position with respect to treatment offsets for min.mand fines. Staff will report next time.
- Brian will confer with TIRF researchers about their Alaska IID study and the technical assistance they provided to Alaska on this topic.
- Brian will begin contrasting Alaska punishments with those of other states. He will start with fines and go on from there.
- Giulia/Brian will determine which states have seen the greatest drop in DUI recidivism and attempt to determine why.
- Mary will track down the Impaired Driving Task Force materials and review minutes of past meetings, in order to avoid duplication of effort with this group
- Mary, Nicole Tham and Amy Erickson will follow up with Alaska DOT/DHS. We need a definitive answer to the perennial question of whether reforms to Title 28 risk the loss of federal highway money.
- *LONGER TERM*- Giulia will undertake the \$64,000 question, i.e. the SB64 directive of determining which programs are most "effective in promoting DUI offender accountability, providing swift and certain, yet measured, punishment, reducing recidivism, and maximizing the offender's ability to remain productive."

Alaska Interlock Technical Assistance Meeting

<p>Name: Christopher McKenzie Title: Adult Probation/Parole Officer Agency: Dept. Corrections/Anchorage Probation Phone: 907-334-2300 Email: christopher.mckenzie@alaska.gov</p>	<p>Name: Tiffany Thomas Title: Driver Licensing Manager Agency: Dept. Motor Vehicles Phone: 907-269-3775 Email: tiffany.thomas@alaska.gov</p>
<p>Name: Susan Draveling Title: ASAP Coordinator Agency: Anchorage ASAP - DHSS Phone: 907-264-0553 Email: susan.draveling@alaska.gov</p>	<p>Name: Tony Piper Title: ASAP Program Manager Agency: DHSS/DBH/ASAP Phone: 907-264-0500 Email: tony.piper@alaska.gov</p>
<p>Name: Randy Hahn Title: Captain Agency: Alaska State Troopers Phone: 907-269-5648 Email: randal.hahn@alaska.gov</p>	<p>Name: John Schauwecker Title: Procurement Manager Agency: Dept. Corrections Phone: 907-465-3399 Email: john.schauwecker@alaska.gov</p>
<p>Name: Richard Schmitz Title: Program Coordinator Agency: Dept. Corrections Phone: 907-465-4640 Email: richard.schmitz@alaska.gov</p>	<p>Name: Don Leistikow Title: MADD Volunteer Agency: MADD Phone: 907-479-5558 Email: donl80@yahoo.com</p>
<p>Name: Greg Browning Title: Chief of Police Agency: Juneau Police Phone: 907-586-0600 Email: gbrowning@juneaupolice.com</p>	<p>Name: Blain Hatch Title: Officer Agency: Juneau Police Phone: 907-586-0600 Email: bhatch@juneaupolice.com</p>
<p>Name: Sharon Chamard Title: Associate Professor Agency: Justice Center, University of Alaska Phone: 907-786-1813 Email: sechamard@uaa.alaska.edu</p>	<p>Name: Troy Payne Title: Associate Professor Agency: Justice Center, University of Alaska Phone: 907-786-1816 Email: tpayne9@uaa.alaska.edu</p>
<p>Name: Tammy Kramer Title: Administrator HSO Agency: Dept. Transportation Phone: 907-465-8944 Email: tammy.kramer@alaska.gov</p>	<p>Name: Cynthia Johnson Title: GA II Agency: HSO/Dept. Transportation Phone: 907-465-5642 Email: cynthia.johnson@alaska.gov</p>
<p>Name: Stefanie Hayes Title: Probation/Parole Officer Agency: Anchorage Probation/Dept. Corrections Phone: 907-334-2340 Email: stefanie.hayes@alaska.gov</p>	<p>Name: Tom Dunn Title: Lieutenant Agency: Alaska State Troopers Phone: 907-299-6054 Email: arthur.dunn@alaska.gov</p>
<p>Name: Glenn Cramer Title: Law Enforcement Liaison Agency: NHTSA Phone: 360-485-2374 Email: glenn.cramer.ctr@dot.gov</p>	<p>Name: Erin Holmes/Robyn Robertson/Ward Vanlaar Title: Agency: Traffic Injury Research Foundation Phone: 613-238-5235 Email: erinh@tirf.ca; robynr@tirf.ca; wardv@tirf.ca</p>

Meeting Notes from
ACJC Barriers to Reentry
Subgroup on Title 28

Friday, December 11, 2015 10:00 AM-12:00 PM

Brady Building, 1034 W. 4th Avenue, 5th floor conference room (AG's conference room)

Present: Mary Geddes, Brian Brossmer, Matt Widmer, Karin Thomas, Araceli Valle, Doreen Schenkenberger, Seneca Theno, Susanne DiPietro, Billy Houser, Fred Slone. On the phone: Ralph Andrews, Giulia Kaufman, Amy Erickson, Nancy Meade, Nicole Tham, Audrey O'Brien and Jayson Whiteside.

Next Meeting: Friday, January 15, 2015, , 10:00 AM – 12:00 PM, Attorney General's Office, 1031 W. 4th Ave., Anchorage, 5th floor conference room.

Vehicle Sanctions for DUI and DWLS (Alternatives to Jail or as Additional Punishments)

The larger Subgroup meeting was preceded by a smaller meeting on vehicle sanctions. Giulia and Mary spoke with Seneca and then later reported on their conversation to the group. Giulia will be doing a report on the Muni experience and look at impound and forfeiture practices around the state. . The State doesn't currently include impoundment as part of a sentence.

For Muni cases, however, under city code, there is mandatory impoundment for driving with no insurance, DUI , DWLS, and solicitation of prostitution. There is a 30-day impoundment on the first DUI. Prior to plea/verdict, the vehicle can be 'bailed ' out with a \$250 bond. If driver is convicted he/she can negotiate the timing of the impoundment. Only the registered owner can 'bail out' the car and has to show valid and current title, registration and insurance. Apparently a significant number of impounded vehicles are abandoned. The related fees are: towing (\$200 was the guestimated cost), the administrative fee (between \$180-250) (the only revenue obtained by the municipality), and daily storage fees at \$30 a day. The Muni has contracted with one company for towing DWLS cars and another for towing DUI cars. Giulia will talk to the Muni legal department to find out more. Impoundment has been cited as the sanction that upsets drivers the most, even more than jail. Impoundment of a vehicle takes a lot of the officer's time. S/he have to conduct an inventory search and wait until the tow truck has come. It takes at least an hour.

The next level of penalty is forfeiture for the second DUI. It does seem very harsh, especially given that the look-back for a previous DUI is 15 years. It is mandatory in every DUI case. It involves Muni attorneys in court appearances, sales, vehicle valuation, basically a lot of work. Giulia will talk to Pam Weiss in the Muni Attorney's office for more information. The general impression is that forfeiture is not much of a revenue generator.

We are not sure if Juneau or Fairbanks impound or forfeit vehicles under their MV codes, but Giulia will find out.

Alternative approaches include license plate seizures, which take the officer only a few minutes to do. This avoids inventory searches and waits for two trucks. The idea is that the driver can thereafter apply to

get plates at DMV. Some states issue temporary marked plates to make the driver more visible to law enforcement during the pretrial or probationary period.

Dual Administrative and Criminal License Revocation processes (continuing with past discussion)

Fred Slone asked whether we are spending resources (energy in committee work) where we don't need to, where the question is going to be resolved anyway. He referenced SB91, page 9, line 8. That line says that a person who has been acquitted for DUI or who has had all charges dismissed with prejudice, DMV shall rescind the DL revocation. Fred wondered if this wording will remain the same during this legislative session. Matt Widmer noted that it is rare to ever get a dismissal with prejudice. Fred is wondering about provision's real world value. Assume a January 1 arrest, a typical March 1 date for the administrative revocation action, with final court action rescinding the revocation on August 1. The only impact may be on the SR-22 requirement.

Seneca Theno stated that whether the case was dismissed often has very little to do with whether there was probable cause for the stop. In cases for BA .08 and over, which is when you get an administrative revocation, dismissal usually has to do with officer/witness availability.

Jayson Whiteside from DMV noted that a 8-9% reduction in recidivism has been achieved by the additional measure of administrative license revocations (ALR). He believes that federal transportation funding requirements to Alaska do require ALR, and that there may be reductions as great as a 10% penalty if we were to get rid of it. Every year the Governor has to certify Alaska's compliance with federal ALR drunk driver laws. Jayson cited some United States Code sections. [Mary has attached these to the meeting summary. After this meeting Mary also saw that there were major revisions to one of these statutes approved by Congress on December 4 which substantially change state requirements. These changes are also attached.] Mary will also look for 2015 state certification docs so we see how they read.

Ignition Interlock Questions

Brian Brossmer reported on his study so far of the state's ignition interlock program. He was able to use an extrapolation reported by another researcher to estimate that there were 1900 IIDS ordered installed in Alaska 2013. It was suggested that we could estimate the number of IID orders based on the number of misdemeanor convictions because felony drivers can't get licenses. Brian asked DMV if there is a number (a record) of reinstated licenses. In a discussion of whether the IID installation companies report to DMV, DMV noted that they get notice when drivers are non-compliant, either by removal of the device or by cancellation. Cancellation occurs when either the requirements are met or if the device is removed. DMV (Audrey) thinks we can get the number of reinstatements based upon satisfaction of the IID requirements.

Susanne asked, and Doreen 'seconded,' the idea that one legislative fix could be to require vendors to report the number of persons who have IID installed per court order. There are people who are not ordered to have IIDS installed, but get it anyway because they recognized they need help in controlling their drinking and driving conduct. This is believed to be a very tiny number. Bill Houser noted that from a Probation perspective, IID requirements can be a joke because unlicensed drivers can use other cars.

Previously it was also possible to have cars started by other drivers and drive with an elevated BA but now many IID technologies require random rolling tests as well., so that is less of a problem.

Audrey stated that she can get the number of reinstated licenses following conviction for DUI and refusal. She can also get stats on cancellation of DL based on IID removal.

Brian asked if there are any funds for someone who can get IID's installed if they can't lack money. It was noted that mandatory fines can be reduced by the costs paid for IIDs. Someone said that there is a small but significant number of persons who do not take advantage of this offset.

Matt Widmer noted that it is a criminal offense AS 28.15.291(b)(1)(D) to drive without an IID, although the Muni itself has no such provisions. See also 11.76.140. What is the number of state filings under this statute? There may be a significantly lower number for convictions as it might be a charge which is 'dealt away.'

To Do list:

- Audrey will gather DMV information on the number of reinstatements and cancellations relating to IID
- Mary and Susanne – will see if they can develop a proposal uiring vendors to report numbers of IIDs installed under court orders.

Meeting Notes from
ACJC Barriers to Reentry

Subgroup on Title 28

Friday, November 13, 10:00 AM-12:00 PM

Brady Building, 1034 W. 4th Avenue, 5th floor conference room (AG's conference room)

Present: Alex Bryner, Lauren Edades, Kirsten Jedlicka, Jayson Whiteside, Audrey O'Brien, Jordan Shilling, Matt Widmer, Giulia Kaufman, Brian Brossmer, Ralph Andrews, Amy Erickson, Nicole Tham, Doreen Schenkenberger, Fred Slone, Seneca Theno, Susanne DiPietro, Mary Geddes.

Next Meeting: Friday, December 11, 10:00 AM – 12:00 PM, Attorney General's Office, 1031 W. 4th Ave., Anchorage, 2nd floor conference room

Dual License Revocation Authority

Prior to this meeting, Mary Geddes had circulated data and a short paper. The subgroup discussed the reasons for dual administrative and judicial revocation authority.

- It was noted that DMV currently lacks statutory authority to revoke DLs or the privilege to drive when the DUI is not per se (.08 BA), also when the DUI involves a watercraft or an off-road vehicle.
- The time frame for getting a court trial date is about 7 weeks out. In contrast DMV currently provides an unrepresented driver with an administrative hearing in about 30 days, and a represented driver with a hearing in about 45 days. Attorneys typically seek more discovery, hence the delay.
- There is no mechanism by which the court and the DMV can communicate directly about the status of the other's revocation action.
 - However, the prosecutor who has access to APSIN can see the DMV record. If a driver has requested an administrative hearing (thus delaying an administrative revocation) then the notation will be "hearing pending" and a temporary license will have been issued. Once the hearing is held, the license status is changed to reflect the outcome of the hearing.
- The DMV administrative hearing does not resolve evidentiary issues. Thus a 'bad stop' or a lack of PC is not going to result in the dismissal of the administrative case. The only and very rare exception is if the license action is the result of outrageous police misconduct.

Matt Widmer noted that the advantage of administrative revocation process is the immediacy of license action. But DMV administrative hearing officers can't hold jury trials, and due process needs to be provided. Fred Slone reiterated that the courts can revoke licenses in more circumstances than DMV can. This raised the question of whether other states allows DMVs to revoke for non-per se-related and drug-related DUIs. (To be researched). Alex raised the logistics of dealing with drug DUIs in an administrative context. Alex also noted that, while DMV can act more expeditiously on a DL revocation, the courts can take immediate measures in a criminal case for the purposes of setting bail.

Jayson stated that the DMV is trying to avoid inconsistent results and is trying to keep court judgments contemporaneous with DMV revocation periods. He also pointed the group to SB91 which if passed would require DMV to dismiss an administrative revocation if a DUI charge results in either an acquittal or a dismissal with prejudice. He thought that statutory 'cut-outs' of DMV authority in cases in which there is a court proceeding would be more confusing than the current system. Seneca agreed. Jayson referenced NHTSA's recommendation that states have dual revocation processes. DPS has to have a certain number of measures in place in order for the state to qualify for federal highway funding.

Seneca proposed that a more effective reform might involve license plate action.

Fred said that we presently lack consensus on whether we should have a singular system for DL revocation. He has clients who are administratively revoked even though they were not criminally convicted. He thinks that the only real value in

DMV action is its immediate first response, but there are still considerable delays for anyone who wants to contest that action.

Seneca stated that if we want to recommend that Alaska have a singular system then: if its administrative, DMV authority will need to expand to other categories of conduct, and; if its judicial, then the courts/law enforcement will need to have some greater legal capacity for immediate action. Perhaps license plate action would figure in here. Matt agreed that some form of immediate action is needed for problem drivers. His preference would be for the courts, but an immediate response capability is required, regardless.

Susanne suggested that if the revocation authority was vested exclusively with the courts, thereby delaying action on the DL, mandatory bail conditions (like an IID LL) could be one legislative response. Law (Kaci Schroeder) might have some ideas if we were to go in this direction. Seneca said that we should look at the current bail schedules for driving without a license. Susanne acknowledged that there is the rare case in which officers do cite and release on DUIs. Also a statutory change would have to address the problem of getting any bail paperwork over the DMV, otherwise there could be a 5 day delay, according to Susanne.

In response to Susanne's suggestion, Lauren Edades noted that DMV cannot put an IID requirement onto a DL without a conviction. Fred agreed and said this is a problem for those with staggered administrative and judicial revocations because it effectively lengthens revocation periods. Susanne agreed that this an example of the type of new statutory authority which could be requested of the Legislature.

Barriers to License Reinstatement

Mary asked if the subgroup could turn its attention to a different question, i.e. whether 'enough' revoked drivers are reinstating their licenses. If they are not, then maybe some of the bases for revocation or the qualifications for reinstatement are too harsh. The discussion began with references to revocations stemming from the failure to carry mandatory insurance. Mary noted that the failure to have insurance in effect on the day a driver is stopped is not remediable by getting insurance the next day. License revocation is mandatory, as is the requirement that the driver thereafter carry SR-22 insurance for the next three years.

DMV staff wondered if the group fully understood the SR-22 requirement. It does involve additional cost but the cost is relatively minimal. This cost is additional because the insurer is required to communicate with DMV if the driver stops insurance payments. However, it was noted that not all insurers provide SR-22, and that drivers may be denied the coverage, and thus may prove a significant barrier to reinstatement.

Seneca asked if there were other ways of making sure that drivers were insured, for example by linking that some car titles or registration with insurance requirements. Jayson didn't think that was workable and noted drivers show proof of insurance but then subsequently cancel it to save money.

In contrast to the jailable offense of driving without mandatory insurance, driving without proof of insurance is worth 6 points. Seneca noted that many police officers do not cite for this if they can ascertain the driver has valid insurance by making a quick phone call at the time of the stop. Seneca wonders at the value of maintaining this offense on the books. However, not having mandatory insurance in effect (whether or not there was an accident) led to 1009 criminal charges in Anchorage during the first part of this year (2015) according to Seneca.

Our meeting time ended. At our next meeting, we agreed to discuss the following additional topics: whether there should be mandatory jail for first-time DUI offenders, ideas and directions for Brian's IID research, and other non-driving related reasons for license suspension.

Meeting Notes from
ACJC Barriers to Reentry
Subgroup on Title 28

Friday, October 30, 2015, 10:00 AM-12:00 PM

Brady Building, 1034 W. 4th Avenue, 5th floor conference room (AG's conference room)

Present: Jayson Whiteside, Audrey O'Brien, Nicole Tham, all of DMV. Jordan Shilling, Sen. Coghill's office. Giulia Kaufman, Brian Brossmer, Mary Geddes, ACJC/AJC staff. Jayce Robertson. Doreen Schenkenberger and Janet McCabe, Partners for Progress. Matt Widmer, State PD. Seneca Theno, Muni of Anchorage. Carmen Gutierrez, consultant for Mental Health Trust. Phil Cole, DOC. Commissioners Razo and Taylor were not able to attend, but Phil Cole attended on behalf of Commissioner Taylor. Matt Widmer attended on behalf of Commission Steiner.

NEXT MEETING: Friday, November 13, 10:00 AM-12:00 PM, location TBD

Meeting Materials Distributed or Discussed:

- Overall Compilation of Statistics for Title 28 group (sent out by email 10/29)
- DWLR Tally for One Month in 2012 in ANC (Muni cases only) (sent out by email 10/29)
- [AAMVA Recommendation re Suspension of Licenses for non-highway safety reasons](#)
- [NCSL States' License Restrictions for Failure to Pay Child Support Jan 2014](#)
- [Cong. Research Service Report on Child Support Enforcement and Driver's License Suspension Policies April 2011](#) (previously distributed by email)
- (not distributed) AAMVA 's [Best Practices Guide to Reducing Suspended Drivers 2013](#)
- [Traffic Safety Impact of Judicial and Administrative Driver License Suspension](#)
- [Estimation of Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers in California 2012](#)
- San Francisco Office of Economic and Workforce Development PP: ["Driver's License Suspensions as a Workforce Barrier"](#)
- [Is a National Integrated Model for Management of DUI Offenders Possible?](#)
- [Strictest and Most Lenient States on DUI](#)
- [Identifying Barriers to Driving Privilege Reinstatement Among California DUI Offenders](#)
- [Pre-trial Diversion Programs for DUIs](#)

Introductions/Ignition Interlock Device

Among the attendees were Giulia Kauffman and Brian Brossmer. Brian has relatively recently joined the Alaska Judicial Council. Both Giulia and Brian are researchers who are or will soon be available to help on discrete research projects generated by this group.¹

¹ Post-meeting update: Brian will be looking at and ultimately writing up a report on the Ignition Interlock Device and its efficacy. Giulia will be helping with presentation of relevant statistics for the discussion of the license suspension in Alaska.

Questions from the group focused on the following chart.

# DMV/ADMINISTRATIVE SUSPENSIONS/REVOCATIONS FOR REASONS OTHER THAN DUI AND REFUSAL			
	2012	2013	2014
POINT SUSPENSIONS	2106 (2092 indiv.)	1617 (1614 indiv)	1408 (1401 indiv)
MANDATORY INSURANCE SUSPENSION	2744	2422	1987
FINANCIAL RESPONSIBILITY SUSPENSION	374	236	148
UNSATISFIED COURT JUDGMENT SUSPENSION	244	124	129
DEFAULT JUDGMENT SUSPENSION (FOR DEFAULTING ON A PROMISSARY NOTE)	112	65	68
CHILD SUPPORT SUSPENSION	266	362	368
UNDER 21 REVOCATION FOR ZERO TOLERANCE OF MINOR CONSUMING ETOH B4 DRIVING, 28.15.283	265	207	154.
UNDER 21 REVOCATION FOR FRAUDULENT USE OF ID FOR ETOH 04.16.060 (D)	15	8	1
TOTALS	6226	5041	4262

The group was reminded that these are only the administrative bases for revocation; criminal laws may allow or require suspension on other legal grounds. For example, the criminal laws provide for license suspension for repeat Minor Consuming (unrelated to driving).

There was confusion about the differences between an unsatisfied court judgment suspension and a default judgment suspension. The statutes allowing administrative suspension on each ground will be cited in a future written discussion so there can be clarity.

There was also much discussion of administrative suspensions due to a failure to carry mandatory insurance. The real test is whether a driver has the insurance at the time of a MV accident; suspension is not avoided by getting the insurance a few days later even if there was no damage to the other driver's car. Although there is an exception provided in 28.22.041, Carmen thought that the prerequisites for the exception were too demanding and asked the group to consider whether those could be changed. DMV noted that if a driver does have insurance at the time of the accident, the violation is correctable; otherwise a 90-day suspension takes place 60 days after notice has been given.

Members of the workgroup were unaware that a limited license can be obtained for a mandatory insurance suspension under 28.22.041. The LL provision still limits work hours to 12 hours a day; Jayson said its provisions need to be updated and broadened because it is currently more strictly than the LL which can be obtained by DUI drivers. These are the only two categories of drivers that can apply for LL. LL fees are charged and drivers also face reinstatement costs. Carmen later stated that those who receive mandatory suspensions also have to obtain SR-22 insurance to qualify.

Generally speaking, license suspensions can currently be ordered for three different groups of drivers: (1) a bad driving group which poses traffic safety risks, i.e. DUI and Points- related; (2) a group for whom the suspension is related to driving but is not necessarily because they are a bad driver, e.g.. a failure to carry mandatory insurance, and (3) a third group for whom suspension is wholly unrelated to driving, e.g. child support failures. Seneca questioned whether driving without insurance is a public safety risk. Jayson thought that having such a provision probably deters people from driving, but others questioned this and characterized this as a disincentive to licensing.

Mary mentioned that states getting rid of the Suspension of Licenses for non-highway safety reasons is considered a "best practice" among a national association of MV agency administrators. She cited other sources which indicate that the group of drivers suspended for non-driving reasons are shown to be involved in many fewer crashes than those drivers

suspended for driving related reasons and thus are considered much safer drivers. Further, the lack of a valid DL has been cited by many as a significant barrier to employment. Consequently Mary asked the group if they would like to see the research and proposals for change to statutes for administrative suspension. The group indicated unanimous support for looking at these specific issues. Mary will draft a Word document and circulate it to those on the email list for comment, additions. People will use Word to provide comments.

Matt Widmer then asked what is the goal of licensing suspension? For asking such a good question, Matt was assigned some heavy reading, "The Traffic Safety Impact of Judicial and Administrative Driver License Suspension." He'll read and report back.

There was further discussion about the use of criminal penalties for DWLS. Matt Widmer said that he hadn't seen any jail sentences imposed for a non-DUI (first) DWLS, but 80 hours of CWS is required and many clients were discouraged by that requirement. The second DWLS require a mandatory 10-day sentence. Matt thought that the minimum-mandatory 10 days of punishment was not proportional to the seriousness of the offense. Others agreed that jail sentences are probably not an appropriate sanction for non-DUI DWLS. However, Seneca indicated support for strong sanctions for drivers with a DUI-related suspension who drove in violation of a court's order. She also noted that such offenders end up released on EM, anyway. Attendees discussed whether other sanctions (besides jail) could achieve compliance and deterrence.

Phil Cole said he thought that the DWLS criminal laws do have an impact on the DOC's capacity. He further stated that he hated to see correctional resources spent for the wrong reasons and that people should have an opportunity to prove they are low-risk for re-licensing. He was aware of an ex-offender who was working on paying restitution but he lacked a vehicle which would have made that a lot easier.

Phil said DOC would assist the group if it determined it needed additional data about the number of DWLS offenders admitted to DOC facilities. Jordan indicated that he may already have the information needed to show the numbers of arrests and DOC remands for DWLS. He will provide that data to Mary .

Nicole Tham indicated that she will provide some rough estimates for the costs of getting a limited license, and for reinstating a license. Doreen Schenkenberger said she had done some research and quoted a likely monthly cost of \$500 to cover insurance, IID, and 24/7, in addition to upfront costs of between \$320-600. Both Nicole and Doreen will provide their calculations to Mary who will circulate. Jordan indicated strong interest in seeing those figures.

Carmen asked if it was possible to get a clear sense idea of how the steps involved and the requirements for getting SR-22 insurance. Doreen indicated that it is a big application, that applications can be denied and that the number of requirements depends on the individual.

Doreen asked the group to return to its earlier discussion of dual administrative and judicial revocations. Jayson thinks that 95% of DMV revocations run concurrently with judicial revocations and that DMV does allow individuals to go back to court to seek clarification. Matt Widmer asked if identifying one entity wouldn't be better than allowing two entities dual authority? Nicole Tham said she had completed some legislative research from the 80's as to the legislature's intent, and that she would organize that research and provide it to Mary for circulation. Jordan noted that SB91 has provisions which would allow for some synching between the courts and DMV.

Member Assignments:

- Mary will start and circulate a paper on the issue of license suspensions. It will at least cover administrative non-driving related suspensions. Members will comment.
- Matt will read and report on the traffic safety implications of judicial and administrative license suspensions.
- Jordan will send along DOC and DPS data on DWLS.
- Nicole will provide legislative research to Mary.
- Nicole and Doreen will provide their calculations on costs attendant to obtaining limited licenses and reinstatement of licenses.

Meeting Notes from
ACJC Barriers to Reentry
Subgroup on Title 28
Friday, September 25
Brady Building, 1034 W. 4th Avenue, AG's conference room

Present: Jayson Whiteside, Audrey O'Brien, Jordan Shilling, Giulia Kaufman, Jayce Robertson, Kaci Schroeder, Lacy Wilcox, Ralph Andrews- BBNA, Amy Erickson, Nicole Tham, Doreen Schenkenberger, Fred Slone, Seneca Theno, Greg Razo, Matt Widmer, Mary Geddes. Michelle Bartley later joined the meeting.

Our last meeting recapped: In the first meeting we reviewed the multiple directives, broadly and relating to Title 28, that had been given by the Legislature to the ACJC. We also reviewed the relevant SB 91 provisions.

We discussed the question relating to DMV administrative hearings because the Legislature is wondering if dual administrative and court revocations are duplicative. How many are there? In how many instances are there related court proceedings? Does DMV does dismiss cases when there is a court dismissal of a related case? (The answer is no). This is a proposed provision in SB91, so the agency was asked if it has a position on that requirement.

We also discussed lifetime DL revocations, and wondered how many there have been.

We wondered about the fairness of SB91 and other proposals allowing limited licenses (LL) when getting one is premised on participation in treatment given that treatment is not available in all communities. We wondered what the availability of treatment services does look like statewide.

We discussed the possible expansion of therapeutic court. Is it likely in this fiscal climate? We wondered how well utilized the programs are. Matt Widmer agree to look at court locations and whether the practices within those courts were uniform.

We began a discussion of Ignition Interlock Devices, the fact that it is a requirement for getting a LL, and the lack of oversight of private contractors.

Among the topics the group could choose for future meetings are: the re-licensure of suspended drivers; the ignition interlock program- what exactly we are expected to look at; whether there are alternative vehicle sanctions that can make driver-monitoring more effective; DWLS prosecutions - how many are they and are they useful? Statewide in 2010, there were 3714 DWLS court cases (not sure if this is conviction).

In this second meeting, we began with a presentation by Matt Widmer **on the therapeutic courts that are engaged with felony DUI offenders**. There are 5 wellness courts. The benefit that is offered to the voluntary participants who complete the program is that no jail term will be imposed only suspended. Matt explains that this is does not provide enough incentive for many people as they cannot avoid the felony and they cannot avoid the license revocation. Matt said the same challenge exists with respect to any misdemeanants who participate in court programs. Fred Slone asked the group whether it could recommend a change to allow greater inducements for the second-time (misd.) DUI offender.

[Later in the meeting] The group also heard from Michelle Bartley who is the head of the therapeutic courts. She noted that exist in Anchorage, Juneau, Bethel, Fairbanks and Ketchikan. There is also a planning process for a Kenai wellness court through a state-tribal court partnership. Most of the established courts are at a 76% capacity. The numbers are rising. ANC/FBX/ JUN court are almost to capacity; Bethel is lower but improving. Questions asked: what number of people have successfully graduated, and what are the recidivism stats? There will be information forthcoming in response to these questions. The requirements are tough: they are tested 2-3x a week, and see a PO 1-3x a month, in addition to court meetings 1-3x a month.

The group then discussed **non-driving suspensions**. Seneca Theno had forwarded snapshot related information from the Muni for one month in 2012; this provides us with an idea of the numbers of DWLS cases prosecuted and the bases for

revoked status. DMV reps explained that among the non-DUI related reasons for are: minor consuming convictions and missed child support payments. One question asked was whether there is any give with respect to the **federal requirement for a linkage between DL and child support enforcement**. It was reported that apparently 10 states provide LL despite arrears. Nicole Tham offered to send along a 2011 overview of the requirement. Seneca Theno said that she thought people could ask for a hearing before suspension. Jayce Robertson shared that he got served with an administrative order of revocation which was intimidating and that he had gotten the letter even though he had gotten caught up on his payments. The group suspected that many people never get reinstated after suspension ends because of reinstatement requirements. More information is needed on this question.

A related question emanates from the numbers of felony DUI convictions – **how many reinstate** after the minimum 10 years. Matt suspected the number would be small because DMV can't reinstate if there has been any other criminal conviction. Jayson confirmed the number is small, but doesn't know why. Fred noted that the felony provision took place 15 years ago, so the numbers will be growing. Mary and Seneca will read and report on a recent study in CA looking at the numbers of people who get their licenses reinstated after revocation. This study attempts to determine the barriers to reinstatement.

With respect to the **Ignition Interlock providers**, Audrey O'Brien noted that DMV does request records when needed from the IID providers. The providers are supposed to maintain records and provide records whenever there is an IID removal, or when there is non-compliance. Non-compliance may occur when a BA is over the limit, or because the driver hasn't kept up with payments for the interlock, or because the driver didn't bring in the car as required to have its computer read. DMV can track the numbers of drivers who have the IID requirement (when the court ordered it). The group asked about getting court system records for Criminal convictions for IID non-compliance. Matt noted that the court system may have records of charges for failures to have an IID as required but he suspects there are a small number of convictions. The numbers may be understated because of plea bargains.

There was further discussion of **the Legislature's inquiry concerning the IID**. Jordan noted that Rep. Keller, an ACJC Commission, had expressed great interest in evaluating the requirement, given the costs associated with it. Does the IID requirement add value? Is it a swiftly applied sanction? Does it correct behavior? There has been frustration with IID vendors closing their doors without transferring their records to some responsible party. This has frustrated people who have sought to comply with the IID requirement. Also the Legislature seems concerned with the general lack of oversight.

Seneca noted that even if a driver's response to conviction is to decide not to drive and not have a car, they now have to get an IID installed on somebody's car in order to regain their license. Fred noted that the IID requirement used to be just a condition of probation following court conviction, but now is a required administrative step for re-licensing. Jayce noted that IID costs can be credited against court fines but not DMV costs. Fred also noted that there is also an inconsistency with respect to DUI-drug cases. In drug-related cases, the court has the authority to suspend the requirement for an IID, but requirements for a LL still require the installation of an IID, no matter what the court determined.

The group members began identifying **the steps to license reinstatement and the costs involved** after a DL is revoked. Getting a LL requires: completion of ASAP, identifying the car to be used for the IID, getting SR-22 insurance (20-30 dollars plus premium), writing for approval by DMV in Juneau for a LL, receipt of the letter back from DMV, paying \$100 to get verification that ASAP requirements have been met, a written DMV test, the initial IID installation fees (at about 100 per month). Doreen requested that we compile this information in a more organized way to identify all the costs. Both Nicole of DMV and Doreen of Partners will help do this before our next meeting.

There was also discussion of the problem that DMV revocations are not necessarily concurrent with court revocations. DMV said that court judgments do not consistently state that they are concurrent. Matt suggested that there should be standard language on a court form to correct this problem. Seneca said that in her experience courts always agree to concurrent, when asked to do so. SB 91 would correct inconsistent outcomes of court and DMV in some circumstances. Seneca asked if there is value in having both court and administrative revocations.

There was also discussion of the Anchorage "OWL" court which handles DWLS defendants. The benefit for non-DUI DWLS defendants is dismissal. DMV participates to the extent of providing information as to what are the requirements for reinstatement in each instance. Defendants plead NC or guilty to two contingencies: knowing if they get their license, their charge will be dismissed or reduced to operating without a license; otherwise they will receive the statutory minimum. Seneca said that prior to the OWL court the Muni used to offer pretrial diversion for DWLS. A question was raised as to whether the OWL court reduces recidivism. Seneca believes that there may be a high rate of re-offense.

The group agreed that **the subject of DWLS and penalties can be the subject of an entire future meeting.**

There was some discussion of **risk assessment tools for DUI offenders**. Mary reported that the NHTSA (National Highway Traffic Safety Association) is promoting a free instrument. There is the one free and the one proprietary risk needs assessment specifically validated for DUI offenders. Matt noted that the question is when such an instrument would be used, whether prior to sentencing or for determining the appropriateness of treatment. Seneca noted that the issue for re-offense is less about alcoholism than about bad or criminal thinking. She noted that first time DUI offenders can include very young people who shouldn't be put into the same problems as people with lifelong alcohol problems, and we should do a better job of separating out those offenders. The group briefly discussed diversion strategies for DUI offenders used elsewhere. Mary will collect such information. Apparently at least these states have diversion statutes: PA, OR, KN and WA.

Meeting Notes from
ACJC Barriers to Reentry
Subgroup on Title 28

Friday, August 7, 12-1:30 PM

Brady Building, 1034 W. 4th Avenue, 5th floor conference room (AG's conference room)

Meeting Attendees: Nicole Tham, Alex Bryner, Jayson Whiteside, Kirsten Jedlicki, Amy Erickson, Fred Slone, Matt Widmer, Susanne DiPietro, Doreen Schenkenberger, Seneca Theno, Jordan Shilling, Mary Geddes

Jordan Shilling from Senator Coghill's office discussed some of the components of proposed [SB 91](#). Among other things, SB 91 proposes that:

- (new) A person can request a revocation for DUI or Refusal be rescinded if the parallel criminal case resulted in acquittal or dismissal w/o prejudice of these charges
- (amendment) The court may terminate a revocation period if EITHER the license or privilege was revoked for the statutory minimum period OR the person completes treatment, has no convictions, has successfully driven under a limited license for 3 years
- (new) Limited licenses for felony-related revoked licenses may be granted by court or by department if the person
 - has spent a successful 6 months in, or has completed, court-ordered treatment,
 - there is proof of insurance,
 - there is use of an IID during the limited license when required by the place of residence
 - the person participates in a 24/7 monitoring program for 120 days
 - has no prior limited licenses which were revoked
- (new) The DMV shall restore driver's license privilege if the person
 - has had the limited license for 3 years with no problems
 - the court revocation was terminated
 - there are no subsequent offenses,
 - completed court ordered treatment
 - proof of financial responsibility is provided
- (amendment makes explicit) If a defendant has successfully participating in court-ordered treatment, then the court may choose to reduce sentence including imprisonment, fines, length of license revocations arising from Title 28 offenses.

The DMV personnel present expressed the view that they had no problem with the proposal that acquittals or dismissals with prejudice could led to terminations of administrative revocation; as 7 other states do this. However, DMV noted that there are hadly any dismissals with prejudice, as most dismissals are made pursuant to CR 43(a) and provides the dismissal is without prejudice.

One question asked was whether we had any idea of how many lifetime license revocations have resulted from felony convictions. It was thought we needed to ask the court for that number.

Jayson Whiteside thought he could obtain get the number of DL revocations by DMV. It would be really good to also have the number of court ordered revocations. One goal is to compare court v. administrative revocation numbers given the Legislature's interest in determining if the processes are duplicative.

Everyone agreed that any reforms should advance public safety, however current restrictions on licenses don't necessarily get at the problem. It was asked, why haven't prior proposals passed? The concern expressed by some legislators has been that limited licenses somehow 'excuse' past misbehavior.

Seneca Theno asked if there would be a corresponding increase in funding for therapeutic courts attached to the bill. It was noted that the thereapeutic courts where in existence (ANC, BE, KN and JUN) are presently underutilized.

Matt Widmer noted the need for a DUI court in the Mat-Su. He expressed the view that its not fair to effectively limit the availability of limited licenses to people in communities that have a therapeutic court. He also noted that participation in the therapeutic court depends on Law's agreement. Sometimes their criteria are unreasonable: e.g. Law has precluded from participation anyone who had been in an accident which fails to make any meaningful distinction between an accident that is 'fender-bender' and one that results in a manslaughter. At this time it was noted that we didn't have a representative from the DOL present.

Susanne DiPietro, executive director of the Alaska Judicial Council, mentioned that the Council was in the process of evaluating one program to flag and divert DUI offenders. She also noted that adding the condition of treatment always slows things down in terms of program availability and length.

Seneca Theno, the Municipal Prosecutor, wondered if there could be other similar provisions for other groups of offenders , e.g. which could certify participation in treatment (rather than outright completion) and remaining offense free.

Fred Slone asked why there is such focus on the use of therapeutic courts. Susanne stated that the courts provide for continuous monitoring and that the programs are typically of 18 months duration. Matt stated that in looking on his iPad he found a slide show on the therapeutic courts which stated that had treated 192 drug or DUI offenders. Susanne said that it was important to distinguish between therapeutic courts generally and those specific to DUI's.¹

¹ FROM THE ALASKA COURT HOMEPAGE

For Felonies Only:

- Anchorage Wellness Court
 - [Felony Drug Court](#)
 - [Felony DUI Court](#)
- [Fairbanks Wellness Court](#)

For Felonies & Misdemeanors:

- [Anchorage Coordinated Resources Project \(Mental Health Court\)](#)
 - [An Evaluation of the Anchorage Mental Health Court \(Anchorage Coordinated Resources Project\)](#)
- [Anchorage Veterans Court \(PUB-121\)](#)
- [Bethel Therapeutic Court](#)
- [Juneau Therapeutic Court](#)
- [Ketchikan Therapeutic Court](#)
- [Palmer Coordinated Resources Project \(Mental Health Court\)](#)

With respect to the Anchorage Wellness Court, Seneca Theno said that they have an attorney who is assigned to the court. The city has a strong interest in getting offenders, particularly those who have engaged in violence, into the courts. However, with misdemeanors, they seemingly cannot provide enough incentives to interest most defense counsel given that the length of a therapeutic program is typically 18 months. .

There was mention of diversion programs and discussion as to whether diversion reduced recidivism. Fred Slone noted that WA provides for diversion on the first DUI offense, but if there is a second offense, the diversion will account for penalty purposes.

Seneca was also asked if the rates of recidivism among DUI offenders have changed since the IID was implemented. Susanne noted that, with Alaska's program, [the DOC determines if the proposed providers have met the approved manufacturer's certification requirements](#). But otherwise the IID provider is essentially on an honor system with the courts and with DMV.² We agreed that we weren't wholly unfamiliar with how the IID program works now. Does the LL get cancelled if you blow a high enough BA? The breath alcohol measuring device prevents a vehicle from starting if it measures a blood alcohol concentration (BAC) at .02 to .04 (typically). People agreed it shouldn't result in a revocation unless there was another issue such as a court-ordered restriction on any alcohol consumption. Mary will resume looking at other states' legislation her research on the Ignition Interlock Device and other vehicle related sanctions as alternatives to license revocation.

Jayson also (later) indicated that DMV should be able to retrieve the following information:

- The numbers of limited licenses
- The reporting of IID installations, violations and terminations (completions)

The group agreed to continue these discussion at our next meeting.

-
- [An Evaluation of the Palmer Mental Health Court \(Palmer Coordinated Resources Project\)](#)

For Misdemeanors Only:

- [Anchorage Municipal Wellness Court](#)
- [Juneau Coordinated Resources Project \(Mental Health Court\)](#)

² The vendor (installer) is required to inspect the device itself every 90 days. The device makes a record of every time it is used. If there's an attempt to circumvent or tamper with the device, it will be recorded. The 90-day inspections provide for this record to be downloaded and retained. The vendor is required to keep copies of these records as well as a report on the inspection. The vendor must supply these records to the court, motor vehicles and/or the Department of Corrections, if asked.