

State DUI Laws: Alaska

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

Alaska Statutes

Sec. 12.25.033. Arrest without warrant for operating vehicle while under the influence of an alcoholic beverage, inhalant, or controlled substance

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

Sec. 12.55.102. Alcohol-related offenses

(a) The court may order as a condition of probation or generally as part of a sentence that a defendant convicted of an offense involving the use, consumption, or possession of an alcoholic beverage may not operate a motor vehicle during the period of probation unless the vehicle is equipped with a properly functioning, monitored, and maintained ignition interlock device. A condition of probation or sentence imposed under this subsection takes effect after any period of license revocation imposed under AS 28.15.165(d) or 28.15.181(c).

(b) The court, in imposing probation or a condition of a sentence under (a) of this section, may allow the defendant limited privileges to drive a motor vehicle without an ignition interlock device if the court determines that the defendant is required as a condition of employment to drive a motor vehicle owned or leased by the defendant's employer and that the defendant's driving will not create substantial danger. If the court imposes probation described by this subsection, the court shall require the defendant to notify the defendant's employer of the probation, and shall require that the defendant, while driving the employer's vehicle, carry a letter from the employer authorizing the defendant to drive that vehicle.

(c) A court imposing a condition of probation under this section shall require the surrender of the driver's license and shall issue to the defendant a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction. The defendant shall pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device.

(d) The court may include the cost of the ignition interlock device as a part of the fine required to be imposed against the defendant under AS 28.35.030(b) or (n) or 28.35.032(g) or (p).

(e) In this section,

(1) "ignition interlock device" means equipment designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage, and that has been certified by the commissioner of corrections under AS 33.05.020(c);

(2) "motor vehicle" has the meaning given in AS 28.40.100, but does not include snow machines and all-terrain vehicles not designed for and not operated on highways or roads.

Sec. 28.15.165. Administrative revocations and disqualifications resulting from chemical sobriety tests and refusals to submit to tests

(a) A law enforcement officer shall read a notice, and deliver a copy of it, to a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces a result described in AS 28.35.030(a)(2); a chemical test administered under AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person refuses to submit to a chemical test authorized under AS 28.33.031(a) or AS 28.35.031(a) or (g). The notice must advise that

(1) the department intends to revoke the person's driver's license, privilege to drive, or privilege to obtain a license, refuse to issue an original license to the person, or disqualify the person;

(2) the person has the right to administrative review of the action taken against the person's license or determination not to issue an original license;

(3) if the person has a driver's license or a nonresident privilege to drive, the notice itself is a temporary driver's license that expires seven days after it is delivered to the person, except that if the person was operating a commercial motor vehicle the person will be ordered out of service for 24 hours under AS 28.33.130;

(4) revocation of the person's driver's license, privilege to drive, or privilege to obtain a license, a determination not to issue an original license, or a disqualification of the person, takes effect seven days after delivery of the notice to the person unless the person, within seven days, requests an administrative review.

(b) After reading the notice under (a) of this section, the law enforcement officer shall seize the person's driver's license if it is in the person's possession and shall deliver it to the department with a sworn report describing the circumstances under which it was seized. If the person was operating a commercial motor vehicle, the officer shall order the person out of service under AS 28.33.130.

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

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

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

(3) describing the

(A) circumstances surrounding the arrest and the grounds for the officer's belief that the person operated a motor vehicle, commercial motor vehicle, or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance in violation of AS 28.33.030 or AS 28.35.030; or

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

(d) The period of revocation of a driver's license, privilege to drive, privilege to obtain a license, refusal to issue an original license, or disqualification shall be for the appropriate minimum period for court revocations under AS 28.15.181(c) or court disqualifications under AS 28.33.140. A department hearing officer may grant limited license privileges in accordance with the standards set out in AS 28.15.201 to a person whose driver's license or nonresident privilege to drive was revoked under this section. The department may terminate a revocation imposed under this section and issue a driver's license to the person, if the license, privilege to drive, or privilege to obtain a license was revoked for an offense described in AS 28.15.181(a)(5) or (8) and the person meets the conditions set out for termination of a revocation by the court under AS 28.15.181(f).

Sec. 28.15.166. Administrative review of revocation

(a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c) or for limited license privileges under AS 28.15.165(d). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

(b) A request for review of the department's action under AS 28.15.165 shall be made within seven days after receipt of the notice under AS 28.15.165 or the right to review is waived and the action of the department under AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the department's action or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request. An initial request for limited license privileges may be made at any time. Subsequent requests for limited license privileges may not be made unless the applicant demonstrates a significant change in circumstances.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license and that the driver's license has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to

stay the effective date of its action under AS 28.15.165(c) until the final order after the review is issued.

(d) A person who has requested a hearing under this section and who fails to attend or appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.

(e) The hearing under this section must be held by telephone unless the hearing officer finds that a telephonic hearing would substantially prejudice the rights of the person involved in the hearing or that an in-person hearing is necessary to decide the issues to be presented in the hearing. An in-person hearing must be held at the office of the department nearest to the residence of the person involved in the hearing unless the department and the person agree that the hearing is to be held elsewhere.

(f) A review under this section shall be held before a hearing officer designated by the commissioner. The hearing officer has authority to

- (1) administer oaths and affirmations;
- (2) examine witnesses and take testimony;
- (3) receive relevant evidence;
- (4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) regulate the course and conduct of the hearing;
- (6) make a final ruling on the issue.

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

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

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

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

(h) The determination of the hearing officer may be based upon the sworn report of a law enforcement officer. The law enforcement officer need not be present at the hearing unless either the person requesting the hearing or the hearing officer requests in writing before the hearing that the officer be present. If in the course of the hearing it becomes

apparent that the testimony of the law enforcement officer is necessary to enable the hearing officer to resolve disputed issues of fact, the hearing may be continued to allow the attendance of the law enforcement officer.

(i) Testimony given by the person at the hearing is not admissible against the person in a criminal trial unless the person's testimony at the trial is inconsistent with that given at the hearing.

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's action shall be rescinded.

(k) If the action of the department in revoking a nonresident's privilege to drive a motor vehicle is not administratively contested by the nonresident driver or if the departmental action is sustained by the hearing officer, the department shall give written notice of action taken to the motor vehicle administrator of the state of the person's residence and to any state in which that person has a driver's license.

(l) [Repealed, § 34 ch 119 SLA 1990.]

(m) Within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination may file an appeal in superior court for judicial review of the hearing officer's determination. The judicial review shall be on the record, without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record.

(n) The filing of an appeal under (m) of this section or a petition for review does not automatically stay the department's order or revocation. The court may grant a stay of the order or revocation only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits, that the petitioner will suffer irreparable harm if the order is not stayed, and in a case where the petitioner operates a commercial motor vehicle that the public can be adequately protected by conditions imposed by the court.

Sec. 28.15.176. Administrative revocation of license to drive for consumption or possession of alcohol or drugs

The department shall revoke the driver's license or permit, privilege to drive, or privilege to obtain a license of a person not yet 18 years of age for

(1) six months when notified of an informal adjustment under AS 47.12.060(b)(4) and shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license for an additional six months when notified of an unsuccessful adjustment under that paragraph;

(2) the time period specified in AS 28.15.185(b) when notified of an informal adjustment under AS 47.12.060(b)(5).

Sec. 28.15.181. Court suspensions, revocations, and limitations

(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;
- (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, § 34 ch 119 SLA 1990.]
- (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).
- (i) In this section, "previously convicted" has the meaning given in AS 28.35.030.

Sec. 28.15.183. Administrative revocation of license to drive

(a) If a peace officer has probable cause to believe that a person who is at least 14 years of age but not yet 21 years of age has operated a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical test under AS 28.35.285, and the peace officer has cited the person or arrested the person for the offense, the peace officer shall read a notice and deliver a copy to the person. The notice must advise that

- (1) the department intends to revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license or permit;
- (2) the person has the right to administrative review of the revocation;

(3) if the person has a driver's license or permit, the notice itself is a temporary driver's license or permit that expires 10 days after it is delivered to the person;

(4) revocation of the person's driver's license or permit, privilege to drive, or privilege to obtain a license or permit, takes effect 10 days after delivery of the notice to the person unless the person, within 10 days, requests an administrative review;

(5) if the person has been cited under AS 28.35.280 or under AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle, aircraft, or watercraft during the 24 hours following issuance of the citation.

(b) After reading the notice under (a) of this section, the peace officer shall seize the person's driver's license or permit if it is in the person's possession and shall deliver it to the department with a sworn report describing the circumstances under which it was seized.

(c) Unless the person has requested an administrative review, the department shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license or permit, effective 10 days after delivery to the person of the notice required under (a) of this section, upon receipt of a sworn report of a peace officer

(1) that the officer had probable cause to believe that the person is at least 14 years of age but not yet 21 years of age and has violated one of the offenses described in (a) of this section;

(2) that the peace officer has cited or arrested the person for a violation of AS 28.35.280 or 28.35.285 or a municipal ordinance with substantially similar elements;

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

(4) describing the circumstances surrounding the offense.

(d) The department shall impose the revocation required under this section

(1) for a first revocation, for a period of 30 days;

(2) for a second revocation, for a period of 60 days;

(3) for a third revocation, for a period of 90 days; or

(4) for a fourth or subsequent revocation, for a period of one year.

(e) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, the department may not require proof of financial responsibility before restoring a driver's license, permit, or privilege that is revoked under this section.

(f) A revocation imposed under this section shall be consecutive to a revocation imposed under another provision of law, except that (1) a revocation imposed under this section shall be concurrent with a prior revocation imposed under this section; and (2) a revocation imposed under this section for an offense for which a revocation is required under AS 28.15.185 shall be concurrent with a revocation imposed under AS 28.15.185 that is based on the same incident. A person whose driver's license, permit, or privilege was revoked for a period of at least 60 days under this section may

apply for limited license privileges under AS 28.15.201(d). A person whose driver's license, permit, or privilege to drive was revoked for a period of more than one year under this section may apply for reinstatement as provided under (i) of this section.

(g) Except as provided under (h) of this section, the department may not issue a new license or reissue a license to a person whose driver's license, permit, or privilege to drive has been revoked under this section unless the person, if required to participate in a juvenile alcohol safety action program, as defined in AS 04.16.050, has successfully completed any education or treatment recommended.

(h) The department may waive the provisions of (g) of this section if a person who is required to obtain drug or alcoholism treatment resides in an area where drug rehabilitation or alcoholism treatment is unavailable.

(i) A person whose driver's license, permit, or privilege to drive was revoked under this section may apply for reinstatement of the person's driver's license as provided in this subsection. A person may apply to the department for reinstatement by filing a written request for review of the revocation imposed under this section with the department. The department shall issue a new license or reissue the person's driver's license as provided under AS 28.15.211(d) if the department finds that

(1) the application for reinstatement is filed at least one year after the person's license, permit, or privilege was revoked;

(2) the person complies with (g) of this section; and

(3) the person has not violated a provision of this title or a regulation of the department since the revocation.

(j) In this section, "peace officer" does not include a person employed by the Department of Corrections.

Sec. 28.15.184. Administrative review of revocation of a minor's license

(a) A person who has received a notice under AS 28.15.183(a) may make a written request for administrative review of the department's action. If the person's driver's license or permit has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

(b) A request for review of the department's revocation under AS 28.15.183 shall be made within 10 days after receipt of the notice under AS 28.15.183 or the right to review is waived and the action of the department under AS 28.15.183(c) is final. If a written request for a review is made after expiration of the 10-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license or permit and that the driver's license or permit has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.183(c) until the final order after the

review is issued.

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the officer's report becomes final.

(e) Notwithstanding AS 28.05.141(b), the hearing under this section may be held telephonically at the discretion of the hearing officer.

(f) A review under this section shall be held before a hearing officer designated by the commissioner. The hearing officer may

- (1) administer oaths and affirmations;
- (2) examine witnesses and take testimony;
- (3) receive relevant evidence;
- (4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) regulate the course and conduct of the hearing;
- (6) make a final ruling on the issue.

(g) The hearing for review of a revocation by the department under AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years of age but not yet 21 years of age and whether the person operated a vehicle after consuming alcohol in violation of AS 28.35.280 or refused to submit to a chemical test of breath in violation of AS 28.35.285.

(h) The determination of the hearing officer may be based upon the sworn report of a peace officer, if the sworn report is supported by probable cause based on personal observations as required under AS 28.15.183(a). The peace officer need not be present at the hearing unless either the person requesting the hearing or the hearing officer requests in writing before the hearing that the officer be present. If in the course of the hearing it becomes apparent that the testimony of the peace officer is necessary to enable the hearing officer to resolve disputed issues of fact, the hearing shall be continued to allow the attendance of the peace officer.

(i) Testimony given at the hearing is not admissible in a criminal trial unless the testimony given at the trial is inconsistent with testimony given at the hearing.

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's revocation action shall be rescinded.

(k) If the action of the department in revoking a nonresident's privilege to drive a motor vehicle is not administratively contested by the nonresident driver or if the departmental action is sustained by the hearing officer, the department shall give written notice of action taken to the motor vehicle administrator of the state of the person's residence and to any

state in which that person has a driver's license.

(l) Within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination may file an appeal in superior court for judicial review of the hearing officer's determination. The judicial review shall be on the record without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record.

(m) The filing of an appeal under (l) of this section or a petition for review does not automatically stay the department's order or revocation. The court may grant a stay of the order or revocation under the applicable rules of court, after a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is not stayed.

Sec. 28.15.201. Limitation of driver's license

(a) A court of competent jurisdiction revoking a person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(b) may, for good cause, impose limitations upon the driver's license of a person that will enable the person to earn a livelihood without excessive risk or danger to the public. A limitation may not be placed upon a driver's license until after a review has been made of the person's driving record and other relevant information, and a limitation may not be imposed when a statute specifically prohibits the limitation of a license for a violation of its provisions.

(b) A court imposing a limitation under (a) of this section shall

(1) require certification of employment;

(2) require proof of enrollment in and compliance with or completion of an alcoholism treatment program when appropriate;

(3) require the surrender of the driver's license; and

(4) issue to the licensee a certificate valid for the duration of the limitation.

(c) After the termination of a limitation as shown on the certificate issued under (b) of this section, the license of a person on whom a limitation was imposed is revoked until the person receives a new license meeting the requirements set out in AS 28.15.211.

(d) A court revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges if

(1) the revocation was for a misdemeanor conviction under AS 28.35.030(a) and not for a violation of AS 28.35.032;

(2) the person has

(A) not been previously convicted and the limited license is not granted during the first 30 days of the period of

revocation;

(B) been previously convicted, the limited license is not granted during the first 90 days of the period of revocation, and

(i) the person has successfully completed a court-ordered treatment program under AS 28.35.030(p); or

(ii) the court or department requires the person to use an ignition interlock device during the period of the limited license;

(3) the court or the department determines that

(A) the person's ability to earn a livelihood would be severely impaired without a limited license; or

(B) the person has successfully completed a court-ordered treatment program described under AS 28.35.030(p) and the person's ability to earn a livelihood, attend school, or provide for family health would be severely impaired without a limited license;

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

(5) the court or the department determines that the person is enrolled in and is in compliance with or has successfully completed the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030(h); and

(6) the person has not been previously convicted under AS 28.15.291(a)(2), AS 28.35.030, or 28.35.032 while driving or operating a vehicle, aircraft, or watercraft under a limited license issued under this section.

(e) In (d)(2) of this section, "previously convicted" has the meaning given in AS 28.35.030 and also includes convictions under laws presuming that the person was under the influence of intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the person's blood.

Sec. 28.15.291. Driving while license canceled, suspended, revoked, or in violation of a limitation

(a) A person is guilty of a class A misdemeanor if the person

(1) drives a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended, or revoked in this or another jurisdiction; or

(2) drives in violation of a limitation placed upon that person's license or privilege to drive in this or another jurisdiction.

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

(1) shall impose a minimum sentence of imprisonment

(A) if the person has not been previously convicted, of not less than 10 days with 10 days suspended, including a

mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

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

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

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

(2) may impose additional conditions of probation;

(3) may not

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

(B) suspend imposition of sentence;

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

(5) may order that the motor vehicle that was used in commission of the offense be forfeited under AS 28.35.036.

(c) In this section, "previously convicted" means having been convicted in this or another jurisdiction, within 10 years preceding the date of the present offense, of a violation of this section, of AS 28.33.150, or another law or ordinance with substantially similar elements.

Sec. 28.35.029. Open container

(a) A person may not drive a motor vehicle on a highway or vehicular way or area, when there is an open bottle, can, or other receptacle containing an alcoholic beverage in the passenger compartment of the vehicle, except as provided in (b) of this section.

(b) Except as provided in AS 28.33.130, a person may transport an open bottle, can, or other receptacle containing an alcoholic beverage

(1) in the trunk of a motor vehicle;

(2) on a motor driven cycle, or behind the last upright seat in a motor home, station wagon, hatchback, or similar trunkless vehicle, if the open bottle, can, or other receptacle is enclosed within another container;

(3) behind a solid partition that separates the vehicle driver from the area normally occupied by passengers; or

(4) if the open bottle, can, or other receptacle is in the possession of a passenger in a motor vehicle for which the owner receives direct monetary compensation and that has a capacity of 12 or more persons.

(c) In this section

(1) "alcoholic beverage" has the meaning given in AS 04.21.080(b);

(2) [Repealed, § 29 ch 3 SLA 1992.]

(3) "motor vehicle" means a vehicle for which a driver's license is required;

(4) "open" includes having a broken seal;

(5) "passenger compartment" means the area normally occupied by the driver and passengers and includes a utility or glove compartment accessible to the driver or a passenger while the motor vehicle is being operated.

(d) A person who violates (a) of this section is guilty of an infraction.

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance

(a) A person commits the crime of driving while under the influence of an alcoholic beverage, inhalant, or controlled substance if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

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

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

(3) while the person is under the combined influence of an alcoholic beverage, an intoxicating liquor, an inhalant, and a controlled substance.

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Except as provided under (p) of this section, upon conviction,

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

(A) not less than 72 consecutive hours and a fine of not less than \$ 1,500 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than \$ 3,000 if the person has been previously convicted once;

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

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

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

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

(2) the court may not

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

(B) suspend imposition of sentence;

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

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

(c) [Repealed, § 34 ch 119 SLA 1990.]

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under this section shall supply the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress. Information compiled under this subsection is confidential and may only be used in connection with court proceedings involving the defendant's treatment, including use by a court in sentencing a person convicted under this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) [Repealed, § 34 ch 119 SLA 1990.]

(g) Notwithstanding (b) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

(h) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action program if such a program is available in the community where the person resides, or a private or public treatment facility approved by the Department of Health and Social Services, under AS 47.37 to make referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person is convicted under (n) of this section, the court shall order the person to be evaluated as required by this subsection before the court imposes sentence for the offense.

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

(j) If a person fails to satisfy the requirements of an authorized agency under (i) of this section, the court

(1) may impose any portion of a suspended sentence; however, if the person was convicted under (n) of this section, the court shall impose a part or all of the remaining portion of any suspended sentence;

(2) may punish the failure as contempt of the authority of the court under AS 09.50.010 or as a violation of a condition of probation; and

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a driver's license until the requirements are satisfied.

(k) Imprisonment required under (b)(1)(A) of this section shall be served at a community residential center or, if a community residential center is not available, at another appropriate place determined by the commissioner of corrections. 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. The cost of imprisonment resulting from the sentence imposed under (b)(1) of this section shall be paid to the state by the person being sentenced provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed \$ 2,000. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. While at the community residential center or other appropriate place, a person sentenced under (b)(1)(A) of this section shall perform at least 24 hours of community service work. A person sentenced under (b)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically

adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

(l) The commissioner of corrections shall determine and prescribe by regulation a uniform average cost of imprisonment for the purpose of determining the cost of imprisonment required to be paid under (k) of this section by a convicted person.

(m) If the act for which a person is convicted under this section contributes to a motor vehicle accident, the court shall order the person to pay the reasonable cost of any emergency services that responded to the accident, if the convicted person or the convicted person's insurer has not already paid the cost of the emergency services. If payment is required under this subsection, the payment shall be made directly to the emergency service and shall be equal to the actual cost of responding to the accident or the previous year's annual average cost of responding to a motor vehicle accident, whichever is higher. In this subsection, "emergency service" includes a peace officer, fire department, ambulance service, emergency medical technician or emergency trauma technician.

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense. For purposes of determining minimum sentences based on previous convictions, the provisions of (r)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than \$ 10,000 and a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

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

(B) suspend imposition of sentence;

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

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

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(6) shall order the department to revoke the registration for any vehicle registered by the department in the name of

the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle or is registered as a co-owner under a business name, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

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

- (1) the license has been revoked for a period of at least 10 years;
- (2) the person has not been convicted of a criminal offense since the license was revoked; and
- (3) the person provides proof of financial responsibility.

(p) If the court determines that the person has successfully completed a court-ordered treatment program, the court may suspend up to 75 percent of the mandatory minimum sentence required under (b)(1) of this section and up to 50 percent of the minimum fines required under (b)(1) of this section. This subsection does not apply to a person who has already participated in a court-ordered treatment program two or more times. In this subsection, "court-ordered treatment" means a treatment program for a person who consumes alcohol or drugs and that

- (1) requires participation for at least 18 consecutive months;
- (2) includes planning and treatment for alcohol or drug addiction;
- (3) includes emphasis on personal responsibility;
- (4) provides in-court recognition of progress and sanctions for relapses;
- (5) requires payment of restitution to victims and completion of community work service;
- (6) includes physician approved treatment of physical addiction and treatment of the psychological causes of addiction;
- (7) includes a monitoring program and physical placement or housing; and
- (8) requires adherence to conditions of probation.

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

(r) In this section,

- (1) "inhalant" has the meaning given to the phrase "hazardous volatile material or substance" in AS 47.37.270;
- (2) "operate an aircraft" means to navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(3) "operate a watercraft" means to navigate a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state;

(4) "previously convicted" means having been convicted in this or another jurisdiction of any of the following offenses; however, convictions for any of these offenses, if arising out of a single transaction and a single arrest, are considered one previous conviction:

(A) operating a motor vehicle, aircraft, or watercraft in violation of this section or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under (a)(2) of this section;

(B) refusal to submit to a chemical test in violation of AS 28.35.032 or in violation of another law or ordinance with similar elements; or

(C) operating a commercial motor vehicle in violation of AS 28.33.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AS 28.33.030(a)(2).

Sec. 28.35.031. Implied consent

(a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(r) or who operates a watercraft as defined in AS 28.35.030(r) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance or if lawfully arrested under AS 28.35.280 for the offense of minor operating a vehicle after consuming alcohol. The test or tests shall be administered at the direction of a law enforcement officer who has probable cause to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while under the influence of an alcoholic beverage, inhalant, or controlled substance or that the person was a minor operating a vehicle after consuming alcohol.

(b) A person who operates or drives a motor vehicle in this state or who operates an aircraft or watercraft shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has probable cause to believe that a person's ability to operate a motor vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and that the person

(1) was operating or driving a motor vehicle, aircraft, or watercraft that is involved in an accident;

(2) committed a moving traffic violation or unlawfully operated an aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any federal, state, or municipal statute, regulation, or ordinance, except for violations that do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages; or

(3) was operating or driving a motor vehicle in violation of AS 28.35.029(a).

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver or operator should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

(f) If a driver or operator is arrested, the provisions of (a) of this section apply. The preliminary breath test authorized in this section is in addition to any tests authorized under (a) of this section.

(g) A person who operates or drives a motor vehicle in this state shall be considered to have given consent to a chemical test or tests of the person's breath and blood for the purpose of determining the alcoholic content of the person's breath and blood and shall be considered to have given consent to a chemical test or tests of the person's blood and urine for the purpose of determining the presence of controlled substances in the person's blood and urine if the person is involved in a motor vehicle accident that causes death or serious physical injury to another person. The test or tests may be administered at the direction of a law enforcement officer who has probable cause to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person.

(h) Nothing in this section shall be construed to restrict searches or seizures under a warrant issued by a judicial officer, in addition to a test permitted under this section.

Sec. 28.35.032. Refusal to submit to chemical test

(a) If a person under arrest for operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance refuses the request of a law enforcement officer to submit to a chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person involved in a motor vehicle accident that causes death or serious physical injury to another person refuses the request of a law enforcement officer to submit to a chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being advised by the officer that the refusal will result in the denial or revocation of the driver's license, privilege to drive, or privilege to obtain a license, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating a motor vehicle or aircraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, and that the refusal is a crime, a chemical test may not be given, except as provided by AS 28.35.035. If a person under arrest for operating a watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance refuses the request of a law enforcement officer to submit to a chemical test authorized under AS 28.35.031(a), after being advised by the officer that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating a watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, and that the refusal is a crime, a chemical test may not be given, except as provided by AS 28.35.035.

(b) [Repealed, § 25 ch 77 SLA 1983.]

(c) [Repealed, § 25 ch 77 SLA 1983.]

(d) [Repealed, § 25 ch 77 SLA 1983.]

(e) The refusal of a person to submit to a chemical test authorized under AS 28.33.031(a) or AS 28.35.031(a) or (g) is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.

(f) Except as provided under (p) of this section, refusal to submit to a chemical test authorized by AS 28.33.031(a) or AS 28.35.031(a) or (g) is a class A misdemeanor.

(g) Except as provided under (r) of this section, upon conviction under this section,

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

(A) not less than 72 consecutive hours and a fine of not less than \$ 1,500 if the person has not been previously convicted;

(B) not less than 20 days and a fine of not less than \$ 3,000 if the person has been previously convicted once;

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

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

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

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

(2) the court may not

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

(B) suspend imposition of sentence;

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

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole

imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

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

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under this section shall supply the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress. Information compiled under this subsection is confidential and may only be used in connection with court proceedings involving the defendant's treatment, including use by a court in sentencing a person convicted under this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under this section.

(i) A person who is sentenced to imprisonment for 72 consecutive hours under (g) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(j) For purposes of this section, convictions under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a chemical test under this section, if arising out of a single transaction and a single arrest, are considered one previous conviction.

(k) Notwithstanding (g) of this section, if the court imposes probation under AS 12.55.102 the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device.

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

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

(n) If a person fails to satisfy the requirements of an authorized agency under (m) of this section, the court

(1) may impose any portion of a suspended sentence; however, if the person was convicted under (p) of this section, the court shall impose a part or all of the remaining portion of any suspended sentence;

(2) may punish the failure as contempt of the authority of the court under AS 09.50.010 or as a violation of a condition of probation; and

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a driver's license until the requirements are satisfied.

(o) Imprisonment required under (g)(1)(A) of this section shall be served at a community residential center, or if a community residential center is not available, at another appropriate place determined by the commissioner of corrections. Imprisonment required under (g)(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. The cost of imprisonment resulting from the sentence imposed under (g)(1) of this section shall be paid to the state by the person being sentenced provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed \$ 2,000. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. While at the community residential center or other appropriate place, a person sentenced under (g)(1)(A) of this section shall perform at least 24 hours of community service work. A person sentenced under (g)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

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

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

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) the court may not

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

(B) suspend imposition of sentence;

(3) the court shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration under (q) of this section;

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

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

(6) the court shall order forfeiture under AS 28.35.036, of the motor vehicle, aircraft, or watercraft used in the commission of the offense, subject to remission under AS 28.35.037; and

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

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

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

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

(3) the person provides proof of financial responsibility.

(r) If the court determines that the person has successfully completed a court-ordered treatment program, the court may suspend up to 75 percent of the mandatory minimum sentence required under (g)(1) of this section and up to 50 percent of the minimum fine required under (g)(1) of this section. This subsection does not apply to a person who has already participated in a court-ordered treatment program two or more times. In this subsection, "court-ordered treatment" has the meaning given in AS 28.35.030(p).

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

(t) In this section,

(1) "cost of imprisonment" means the cost of imprisonment as determined under AS 28.35.030(1);

(2) "previously convicted" has the meaning given in AS 28.35.030.

Sec. 28.35.033. Presumptions and chemical analysis of breath or blood

(a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

(1) If there was 0.04 percent or less by weight of alcohol in the person's blood, or 40 milligrams or less of alcohol per 100 milliliters of the person's blood, or 0.04 grams or less of alcohol per 210 liters of the person's breath, it shall be presumed that the person was not under the influence of an alcoholic beverage.

(2) If there was in excess of 0.04 percent but less than 0.08 percent by weight of alcohol in the person's blood, or in excess of 40 but less than 80 milligrams of alcohol per 100 milliliters of the person's blood, or in excess of 0.04 grams but less than 0.08 grams of alcohol per 210 liters of the person's breath, that fact does not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but that fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage.

(3) If there was 0.08 percent or more by weight of alcohol in the person's blood, or 80 milligrams or more of alcohol per 100 milliliters of the person's blood, or 0.08 grams or more of alcohol per 210 liters of the person's breath, it shall be presumed that the person was under the influence of an alcoholic beverage.

(b) For purposes of this chapter, percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 milliliters of blood.

(c) The provisions of (a) of this section may not be construed to limit the introduction of any other competent evidence bearing upon the question of whether the person was or was not under the influence of intoxicating liquor.

(d) To be considered valid under the provisions of this section the chemical analysis of the person's breath or blood shall have been performed according to methods approved by the Department of Public Safety. The Department of Public Safety is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individuals to conduct the analysis. If it is established at trial that a chemical analysis of breath or blood was performed according to approved methods by a person trained according to techniques, methods, and standards of training approved by the Department of Public Safety, there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary.

(e) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of the person's own choosing administer a chemical test in addition to the test administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer; the fact that the person under arrest sought to obtain such an additional test, and failed or was unable so to do, is likewise admissible in evidence. The person who administers the chemical test shall clearly and expressly inform the person tested of that person's right to an independent test described under this subsection, and, if the person being tested requests an independent test, the department shall make reasonable and good-faith efforts to assist the person being tested in contacting a person qualified to perform an independent chemical test of the person's breath or blood.

(f) Upon the request of the person who submits to a chemical test at the request of a law enforcement officer, full information concerning the test, including the results of it, shall be made available to the person or the person's attorney.

Sec. 28.35.034. Surrender of license or permit

A person whose license or permit to operate or drive a motor vehicle has been revoked under AS 28.15.165 or 28.15.181 shall surrender the license or permit to the department on receipt of notice of the revocation. After the period of revocation has expired, the person may make application for a new license as provided by law.

Sec. 28.35.035. Administration of chemical tests without consent

(a) If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood or to determine the presence of controlled substances in that person's blood and urine.

(b) A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under AS 28.33.031(a) or AS 28.35.031(a) or (g) and a chemical test may be administered to determine the amount of alcohol in that person's breath or blood or to determine the presence of controlled substances in that person's blood and urine. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test may be administered.

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032.

Sec. 28.35.036. Forfeiture of vehicle, aircraft, or watercraft

(a) After conviction of an offense under AS 28.15.291(b), AS 28.35.030, or 28.35.032, a motor vehicle, aircraft, or watercraft involved in the commission of the offense is subject to forfeiture as provided under AS 28.15.291(b), AS 28.35.030, and 28.35.032.

(b) Before forfeiture of a motor vehicle, aircraft, or watercraft, the court shall schedule a hearing on the matter and shall notify the state and the convicted person of the time and place set for the hearing. Except for a motor vehicle, aircraft, or watercraft that is required to be forfeited under AS 28.35.030 or 28.35.032, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines, by a preponderance of the evidence, that the forfeiture of the motor vehicle, aircraft, or watercraft will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under AS 28.15.291(b), AS 28.35.030, or 28.35.032;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under AS 28.15.291(b), AS 28.35.030, or 28.35.032; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

(c) Upon forfeiture of a motor vehicle, aircraft, or watercraft, the court shall require the

(1) surrender of the registration and certificate of title of that motor vehicle; the registration and certificate of title shall be delivered to the department;

(2) convicted person to pay all administrative costs incurred by the state in forfeiting the motor vehicle, aircraft, or watercraft, including costs incurred by the department, law enforcement personnel, or the court system.

(d) If not released under AS 28.35.037, a motor vehicle, aircraft, or watercraft forfeited under this section may be disposed of at the discretion of the Department of Public Safety.

(e) Disposal under this subsection includes, by way of example and not of limitation,

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

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

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

(4) being destroyed; or

(5) transfer to a charitable organization; in this paragraph, "charitable organization" means a charity that is exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code).

Sec. 28.35.037. Remission of forfeitures

(a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle, aircraft, or watercraft written notice that includes

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

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

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

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

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle, aircraft, or watercraft, must establish by a preponderance of the evidence that

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

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, aircraft, or watercraft, the petitioner did not know or have reasonable cause

to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle, aircraft, or watercraft be paid to the petitioner, or the court shall order that the motor vehicle, aircraft, or watercraft be released to the petitioner together with title to the motor vehicle, aircraft or watercraft.

(d) Forfeiture of a motor vehicle, aircraft, or watercraft under AS 28.35.036 is without prejudice to the rights and does not extinguish the claims of a creditor with an interest in the motor vehicle, aircraft, or watercraft.