

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: 15
 Bill Version: CSHB 4(JUD)
 (H) Publish Date: 4/5/01

Title: An Act relating to offenses involving operating a
motor vehicle, aircraft, or watercraft while under the influence...
 Sponsor: Rep. Rokeberg
 Requester: House Judiciary Committee
 Dept. Affected: Corrections
 BRU: Commissioner
 Component: All
 Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	1,065.6	1,225.4	1,394.2	1,562.9	1,731.6	1,731.6
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	4,042.6	4,881.9	5,775.3	6,797.4	7,753.9	7,753.9
TOTAL OPERATING	5,108.2	6,107.3	7,169.5	8,360.3	9,485.5	9,485.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	414.6	432.6	452.6	470.6	490.6	490.6
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	4,693.6	5,674.7	6,716.9	7,889.7	8,994.9	8,994.9
1005 GF/Program Receipts	120.0	138.0	158.0	176.0	196.0	196.0
1037 GF/Mental Health						
Other - 1156 Receipt supported serv.	294.6	294.6	294.6	294.6	294.6	294.6
TOTAL	5,108.2	6,107.3	7,169.5	8,360.3	9,485.5	9,485.5

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 See attached summary.

Prepared by: Candace Brower Phone 465-4652
 Division: Commissioner's Office Date/Time 3/07/01/3:20 p.m.
 Approved by: Margaret Pugh Date 3/8/01
 Agency: Department of Corrections

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FISCAL NOTE #15

**STATE OF ALASKA
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DEPARTMENT OF CORRECTIONS**

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This bill will make extensive changes in the current statutes regarding driving while intoxicated (including a name change to driving while under the influence of an alcoholic beverage or controlled substance). Because of the volume of the bill, we will only address the specific sections that affect the Department of Corrections.

Sec. 4. Changes the presumptive sentencing regarding Manslaughter by adding a provision for Manslaughter as a result of DWI. It will change the presumptive sentence from 5 to 7 years. This change will result in an increased cost to DOC of \$107,360 in FY05 and \$211,640 in subsequent years. This is based on Dept. of Law's estimate that there are 9 convictions a year for Manslaughter or Criminally Negligent Homicide (as part of a DWI). They agree that it is safe to assume 5 convictions a year for Manslaughter. Offenders are currently receiving 5-year sentences. With good time, they are serving 1205 days. Increasing the sentence to 7 years will create an extended sentence for these offenders of 481 days. The increase will begin in the 4th year of the sentence. The 5 offenders would serve an additional 244 days the 4th year and an additional 237 days the 5th year. In the 5th year the 244 days and the 237 will start "stacking" as offenders convicted in FY03 begin serving their extended time.

FY05 = 244 days X 5 offenders X \$88.00/day* = \$107,360

FY06 = 244 days X 5 offenders X \$88.00/day +

the above 5 offenders remaining 237 days X 5 X \$88.00 = \$104,280 for a total of \$211,640.

FY07 = \$211,640.

Sec. 26. Reduces the threshold for presumption of DWI from .10 to .08. It is estimated by the Department of Law that although this may not increase arrests by a large amount, it will increase convictions by 10%. In FY00 there were 4118 statewide misdemeanor convictions for DWI and 200 felony convictions.

Misdemeanors

413	X	69%	=	285	X	3	X	\$64.00	=	\$54,720.00				
413	X	20%	=	83	X	20	X	\$64.00	=	\$106,240.00				
413	X	8%	=	33	X	73	X	\$64.00	+	36	X	\$112.00	=	\$287,742.00
413	X	2%	=	8	X	64	X	\$64.00	+	64	X	\$112.00	=	\$90,112
413	X	1%	=	4	X	75	X	\$64.00	+	75	X	\$112.00	=	\$52,800
Totals		100%		413										\$591,614.00

Felons

20 X 352 X \$88.00 = \$619,520.

591,614

\$1,211,134.00

FY02	FY03	FY04	FY05	FY06	FY07	
1,211,134	1,211,134	1,211,134	1,211,134	1,211,134	1,211,134	Cost of Incarceration
0	<u>33,967</u>	<u>67,934</u>	<u>101,901</u>	<u>101,901</u>	<u>101,901</u>	Probation Costs
1,211,134	1,245,101	1,279,068	1,313,035	1,313,035	1,313,035	Subtotal
0	-61,320	-61,320	-61,320	-61,320	-61,320	less savings for homicide.
-26,880	-26,880	-26,880	-26,880	-26,880	-26,880	Rep. Rokeberg Diversion
<u>-179,264</u>	<u>-179,264</u>	<u>-179,264</u>	<u>-179,264</u>	<u>-179,264</u>	<u>-179,264</u>	Inmate payment for incarceration
1,004,990	977,637	1,011,604	1,045,571	1,022,051	1,022,051	

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If we multiply 413 misdemeanants (10% of total) by the percentages reflected in DMV 2000 statistics for 1st, 2nd, 3rd, 4th, and 5th time offenders, we come up with an estimate of how many of those offenders might be newly convicted under a .08 law. All 1st and 2nd time offenders go to the CRC so we utilized that cost of care for our calculations. Utilizing a snapshot done on 10/25/00 of our DWI population, we averaged the sentences being served for 3rd, 4th and 5th time offenders and estimated proportions of time served in CRCs and hard beds to come up with a total cost.

Assuming 20 new felons convicted under this threshold, and utilizing the average sentence for DWI felons, we estimated: 20 X 352 days X \$88/day = \$619,520. The total for misdemeanants and felons then is \$1,211,134.

Felony DWI offenders are usually given an average of 3 years probation. Probation costs will not be incurred until after completion of sentence so will not be felt until the 2nd and subsequent years. The daily cost for probationers is \$5.17/day. If 18 of the 20 felons are on probation the second year, the cost would be \$33,967. It would be necessary to add \$67,934 the third year and \$101,901 the fourth year. After that it would level off as the first probationers would drop off.

The Department of Corrections expects a 15% decrease in the incarceration rate for manslaughter/negligent homicides as a result of this legislation, beginning the second year. It will take time for the public to become aware of lowered BAC and to change behaviors. That would result in an annual savings, beginning in FY03, of \$61,320 (or 1.5 persons incarcerated @ \$112/day per year.)

Sec. 27. This section creates a diversion program for 1st time DWI offenders who have a BRAC between .08 and .10. If there are no aggravating factors and they complete a year of probationary time, complete and pay for treatment and their fines then they will have their jail time suspended. Estimating 285 of the 10% increase are 1st time offenders and as many as 75 may have a .10 or greater but would be convicted because of this legislation, that leaves a pool of 210. We estimate that 70 (1/3) of those will fall off because there will be aggravators involved (non-compliance, traffic offenses, etc.) The remaining 140 will complete the diversion at 3 days. 140 X 3 X \$64.00 = a savings of \$26,880.

This section also makes the minimum sentence for second time offenders 30 days, or not less than 20 days if the person performs 10 days community work service. In FY00 there were an estimated 824 second time DWI offenders. We assume that one-half will opt to complete the 10 days Community Work Service. The other half will serve their extra 10 days in the CRC. Including statutory good time, 412 offenders will serve 7 days @ \$64.00/day for a total of \$184,576.

Sec. 29. This section requires treatment to occur as much as possible while the offender is incarcerated. This applies to felony DWI offenders. It is estimated that there will be approximately 240 felony offenders in FY02. Treatment experts indicate that someone who has reached felony status as a DWI offender will almost certainly require intensive outpatient treatment or residential treatment services. We estimate that one-half of those will require the Intensive Outpatient Treatment at \$2500 per person for a total of \$300,000. It is estimated that one-half will require Residential Treatment at a cost of \$6380 per offender for a total of \$765,600. The total cost of treatment the first year would be \$1,065,600. The second year it is estimated there will be 276 felons for a total treatment cost of \$1,225,440. The number of felons will increase each year by 38 increasing the cost of treatment for each subsequent year until FY06 when it will level off.

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This section also requires the felony offender to pay for treatment up to \$2,000 unless they are deemed indigent. For those who are deemed indigent, and those who are unable/unwilling to pay, the state shall seek reimbursement from the offenders Permanent Fund Dividend. However, felons do not receive PFDs for the qualifying year during which they serve their sentence. We estimated that 25% of the felony offenders would pay the \$2000 and the others would be indigent or unable to pay. The total revenue to the State of Alaska is estimated to be \$120,000 the first year, \$138,000 the second year, \$158,000 the third year, \$176,000 the fourth and levels off at \$196,000 the fifth year.

Sec. 30. This section increases the amount the offender is required to pay for his incarceration from up to \$1,000 to up to \$2,000. This does not make a large difference in revenue since the current minimum sentence for second time offenders is 20 days. With good time, someone would serve 13 days. This is served in a Community Residential Center @ \$64.00/day. That totals \$832. Offenders are already required to pay up to \$1,000 for cost of care. If the penalty is increased to 30 days, then the increase in cost of care will be made up for by the additional requirement. The requirement for payment is for misdemeanors only. If one half of the 824 second time offenders opt for the 30 day sentence, they would pay an additional \$280 each for a total of \$115,360.

Sec. 31. This section increases the 5-year look-back to a 10-year look-back, phasing it in over a 5-year period. Previously, in order to become a felon, an offender had to have two previous DWI convictions within the previous 5 years. This will gradually expand the look-back to 10 years, one year at a time over the next five years. This will reduce the fiscal impact that would have been felt if the system had to absorb what would be (by DMV and DOL figures) an estimated 190 new convicted felons in the first year. Utilizing Department of Law's logic, by the end of the five-year period, when the full ten-year look-back is achieved, the system will be adding the full 190 additional felons each year. These will be first time felony offenders. If they receive the 240 day minimum sentence proposed in this legislation, and presuming they receive their good time, they would each serve 160 days of incarceration. This would total \$535,040 for the first year phase-in. We will then assume (as does the Department of Law) that each new year of the phase-in will add an additional 38 new felons for a total of 76 at a cost of \$1,070,080. This will continue until it levels off in the fifth year at 190 for a total cost of \$2,675,200.

This section also doubles the minimum sentencing for felony offenders. Using 240 as the number of expected convicted DWI felons in FY02, and estimating that 80% of those will be third time offenders, 192 will serve an additional 80 days. Utilizing the cost of \$88/day (an average cost of ½ time in a CRC and ½ time in a hard bed) the cost for third time offenders will be \$1,351,680. Estimating that 15% will be 4th time offenders, that would result in 36 offenders serving an additional 160 days @ \$88/day for \$506,880. The remaining 5% (12 offenders) will serve an additional 244 days for a total of \$257,664. The total cost of this provision for the first fiscal year will be \$2,116,224. Utilizing the same formula and filling in the number of felons each year, the increased cost of higher penalties is as follows: FY03 \$2,447,808., FY04 \$2,772,352., FY05 \$3,118,016 and leveling off at \$3,435,168 in FY06.

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Sec. 32. This section takes away the language in the current statute that provides a 10 year look-back for second time offenders. It is estimated that 3% of the 824 second time offenders will be affected by this removal. The result will be additional 26 offenders serving a term for second time offense rather than first for a total of \$22,464. This is based on the assumption that 13 will serve 13 days @ \$64.00/day and 13 will serve 20 days @ \$64.00/day for a total of \$27,456. Subtracting the 3 day sentence they would have served anyway as a first time offender, (3X26X\$64 = 4992) the total is **\$22,464**.

Sec. 33. (q)This section removes the eligibility for good time deductions from a person who fails to satisfy alcoholism treatment requirements imposed by the court under (h) of this section. It is impossible to quantify the impact this will have. We have no way of knowing how many will fall into this category and how much good time they would receive. 1st time offenders, if they are sentenced to 72 hours, are not eligible for good time credits.

The changes in revenues reflected in the fiscal note include:

\$120,000 in FY02 for inmate payment of treatment

\$294,624 (\$179,264 for .08 legislation inmate payment and **\$115,360** for increased sentencing for 2nd time offenders payment)