

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 17
 Bill Version: CSHB 4(JUD)
 (H) Publish Date: 4/5/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to offenses involving operating a BRU Criminal Division; Civil Division
motor vehicle, . . . under the influence . . ." Component 3rd-4th Judicial Districts;
 Sponsor Representative Rokeberg Collections & Support
 Requester House Judiciary Committee Component No. 2201;61;79;10

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	574.4	695.5	695.5	816.6	816.6	816.6
Travel	1.6	2.0	2.0	2.4	2.4	2.4
Contractual	93.2	111.9	111.9	130.6	130.6	130.6
Supplies	8.6	10.2	10.2	11.8	11.8	11.8
Equipment	58.5	6.5	0.0	6.5	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	736.3	826.1	819.6	967.9	961.4	961.4

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	704.4	800.7	794.2	942.5	936.0	936.0
1005 GF/Program Receipts	31.9	25.4	25.4	25.4	25.4	25.4
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	736.3	826.1	819.6	967.9	961.4	961.4

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	8	9	9	10	10	10
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 4 (TRA) makes numerous changes to the state's laws relating to driving under the influence of alcoholic beverages or controlled substances. These changes include renaming driving while intoxicated (DWI) as driving while under the influence (DUI); lowering the blood alcohol threshold for DUI to .08 from 0.10; increasing administrative and criminal penalties for DUI offenses; requiring vehicle forfeiture for repeat offenders; and requiring treatment costs be reimbursed to the state.

The changes in the bill which will have a fiscal impact on the Department of Law are: reducing the blood alcohol threshold for DUI to 0.08; the phasing in of a 10-year "look back" for felony DUI in place of the current 5-year "look back"; collection of treatment costs; and requiring vehicle forfeiture for second and subsequent convictions for DUI or refusal to submit to a chemical test. Each issue is addressed separately below. The department also anticipates an increase in the number of driving with a suspended or revoked driver's license misdemeanor

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 Agency Department of Law

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FISCAL NOTE #17

STATE OF ALASKA 2001 LEGISLATIVE SESSION

BILL NO. CSHB 4(JUD)

ANALYSIS CONTINUATION

charges will occur as a result of the increased fines and license revocation penalties; however, the impact is too speculative to quantify.

Section 26: Reduce blood alcohol threshold for DUI from 1.0 to 0.08 percent by weight.

In FY00, the Criminal Division accepted for prosecution 3,218 misdemeanor and 213 felony DUI referrals by law enforcement throughout the state. Recently received statistics from the Anchorage Police Department indicate there would be about a 6 percent increase in DUI referrals due to the lowering of the blood alcohol threshold to 0.08. Experience has varied in other states that have reduced from 0.10 to 0.08 the limit for driving while intoxicated (California, Maine, Oregon, and Utah). Some states have experienced a 20 to 40 percent increase in DUI cases. We believe a conservative estimate for the increase is about 10 percent. This would result in 322 additional misdemeanor and 21 felony DUI cases, which are much more time-consuming to prosecute than misdemeanors. The Department of Law assumes that municipalities which presently prosecute misdemeanor DUI will amend their ordinances to mirror the change in state law. If this does not occur, the estimated number of misdemeanor prosecutions is understated.

Much of the anticipated increase in prosecutions will occur in southcentral Alaska. Because Anchorage is the hub from which prosecutors are sent to assist other offices in times of overload, it will be necessary to add one new full-time attorney position to the Criminal Division's Anchorage District Attorney's Office.

The Collections unit in the Civil Division's Collections and Support section collects judgments for criminal fines, cost of incarceration for DUI offenders, and cost of court appointed counsel. The change to 0.08 as the threshold for DUI offenses will increase the number of judgments the unit is required to collect annually. Assuming an 80-85 percent conviction rate, the unit anticipates receiving 280 judgments for criminal fines as a result of this change. In addition, those individuals who do not qualify for the diversion created by Section 27 of the bill will have judgments for the cost of incarceration. Based on Department of Corrections calculations, we anticipate there will be 190 of these judgments. In addition, approximately 80 percent of the offenders are expected to have judgments for the cost of court appointed counsel, 220 in all.

In order to process and collect the estimated 690 new judgments each year, Collections unit personnel must enter the judgment data into the collections data base, post payments received, prepare PFD attachment packets for the court system and Department of Revenue, enter adjustments and process refunds when necessary, respond to phone calls from defendants, court personnel, prosecutors, and other state agencies, prepare satisfactions of judgments, and prepare quarterly or annual reporting of collections data. Much of this work can be handled by existing staff. However, the additional data entry and phone calls will require an additional half-time Administrative Clerk II.

Section 29: Collection of the cost of treatment

This section requires the state to seek reimbursement from a person's permanent fund dividend if they do not pay the cost of alcohol or substance abuse treatment required under CSHB 4 (TRA) themselves. The Department of Law has a number of questions concerning this requirement that must be answered before we can quantify the fiscal impact of this provision.

Section 31: Increase "look back" for felony DUI from 5-years to 10-years

Under current law, for the purposes of charging an offender with felony DUI, the state can only "look back" 5-years for the first two offenses. If any of the prior offenses are older than 5-years, the charge remains a misdemeanor. This section will phase in a 10-year look back period for felony DUI, one year at a time, over the next five years.

Based on Division of Motor Vehicle (DMV) data, it is estimated that increasing the limit to 10-years for how old prior convictions must be in order for the third offense to be charged as felony DUI will result in approximately 240 new felony DUI referrals per year when fully phased in. The Criminal Division estimates approximately 95 percent of these will be accepted for prosecution, based on acceptance rates for current felony DWI prosecutions. This would mean approximately 225 new felony prosecutions in all. For the purposes of this fiscal note, the Department of Law assumes the new felonies will phase in evenly over the 5-year phase in period: 45 new felony prosecutions in FY02, 90 in FY03, 135 in FY04, 180 in FY05, and 225 in FY06.

Felony prosecutions are much more resource intensive than misdemeanor prosecutions. Because the penalties are so much higher, defendants are more likely to vigorously challenge the charge, and less likely to settle prior to trial. The Criminal Division anticipates it would need two new FTE attorney positions to handle these new felony cases, to both screen the referrals and prosecute those that are accepted. These positions would phase in as the number of new felony referrals increase. We anticipate that one new FTE attorney for the Anchorage DAO would be necessary in FY03, and one new FTE attorney for the Fairbanks DAO in FY 05.

FISCAL NOTE #17

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

BILL NO. CSHB 4(JUD)

ANALYSIS CONTINUATION

Section 46: Vehicle forfeiture

Upon conviction of a second or subsequent DUI or refusal to take a chemical test, this section would require the state to seek forfeiture of the motor vehicle or aircraft used in the commission of the offense. Under state law (AS 28.35.036-.037), forfeiture proceedings require a motion for forfeiture be filed with the court, and a hearing date set by the court upon receipt of the motion. Once the hearing date is set, the state must notify anyone who might have an ascertainable ownership or security interest in the vehicle or aircraft about the proceeding. A person claiming an ownership or security interest may then intervene and appear at the hearing in order to prove to the court they should be paid for their interest.

The Criminal Division estimates there will be 800 forfeiture hearings per year as a result of enactment of Section 46: approximately 100 to 150 per year in Kenai, in Palmer, and in Fairbanks, and approximately 100 per year in Anchorage. (Although the Municipality of Anchorage prosecutes misdemeanor DUI, the Department of Law prosecutes all felonies.) The remaining hearings would be spread throughout the rest of the state. Preparation for these hearings will involve research on ownership interests and paperwork. The Criminal Division estimates it will need to add four new FTE paraprofessional positions, one each in Anchorage, Kenai, Fairbanks, and Palmer, and 1 new FTE attorney position in Fairbanks to handle these cases. In addition, 2 new legal secretary positions will be necessary, one each in Anchorage and Kenai.

All position costs except the Collections unit position are based on the department's FY02 cost allocation plan, and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Collections unit positions are specialized, and are not recovered through the cost allocation plan. The standard cost does not include one-time new equipment purchases, and \$6,500 per position is included. Proportionate support position funding is included in the standard attorney and paraprofessional cost schedule at a rate of approximately one support position for every three professional positions. Position authorizations for the support positions are required, however, and the four FTE legal secretary positions discussed in the 0.16 BAC and vehicle forfeiture sections above are requested, along with \$6,500 for one-time equipment costs for each position. The remaining clerical support funding embedded in the rate will be used to reduce clerical support vacancy so that the other new attorneys' clerical burdens can be handled. A summary of line-item costs by position for each section of CSHB 4 (TRA) narrated above follows:

Component	Position	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
<u>Section 26: 0.08 BAC</u>							
Criminal Division: 3rd Judicial District: Anchorage (2261)							
	100 1 FTE Attorney	121.1	121.1	121.1	121.1	121.1	121.1
	200	0.4	0.4	0.4	0.4	0.4	0.4
	300	18.7	18.7	18.7	18.7	18.7	18.7
	400	1.6	1.6	1.6	1.6	1.6	1.6
	500	6.5					
	Total 1004 General Fund	148.3	141.8	141.8	141.8	141.8	141.8
Civil Division: Collections & Support (2210)							
	100 1 PPT Admin Clerk II	17.4	17.4	17.4	17.4	17.4	17.4
	200	0.0	0.0	0.0	0.0	0.0	0.0
	300	7.0	7.0	7.0	7.0	7.0	7.0
	400	1.0	1.0	1.0	1.0	1.0	1.0
<u>Section 29: Collection of Treatment Costs</u>							
Civil Division: Collections & Support (2210)							
	100 Unknown						
	200						
	300						
	400						
	500						
	Total 1005 GF/Program Receipts	*****	*****	*****	*****	*****	*****

FISCAL NOTE #17

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

BILL NO. CSHB 4(JUD)

ANALYSIS CONTINUATION

Component	Position	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
<u>Section 31: Phase in 10-year Look Back</u>							
Criminal Division: 3rd Judicial District: Anchorage (2261)							
	100 1 FTE Attorney		121.1	121.1	121.1	121.1	121.1
	200		0.4	0.4	0.4	0.4	0.4
	300		18.7	18.7	18.7	18.7	18.7
	400		1.6	1.6	1.6	1.6	1.6
	500		6.5				
	Total 1004 General Fund	0.0	148.3	141.8	141.8	141.8	141.8
Criminal Division: 4rd Judicial District (2201)							
	100 1 FTE Attorney				121.1	121.1	121.1
	200				0.4	0.4	0.4
	300				18.7	18.7	18.7
	400				1.6	1.6	1.6
	500				6.5		
	Total 1004 General Fund	0.0	0.0	0.0	148.3	141.8	141.8
Section 31 Total		0.0	148.3	141.8	290.1	283.6	283.6
<u>Section 46: Vehicle Forfeitures</u>							
Criminal Division: 3rd Judicial District: Anchorage (2261)							
	100 1 FTE Paraprofessional	78.7	78.7	78.7	78.7	78.7	78.7
	200 1 PFT Legal Secy	0.2	0.2	0.2	0.2	0.2	0.2
	300	12.2	12.2	12.2	12.2	12.2	12.2
	400	1.1	1.1	1.1	1.1	1.1	1.1
	500	13.0					
	Total 1004 General Fund	105.2	92.2	92.2	92.2	92.2	92.2
Criminal Division: 3rd Judicial District: Outside Anchorage (2279)							
	100 2 FTE Paraprofessional	157.4	157.4	157.4	157.4	157.4	157.4
	200 1 PFT Legal Secy	0.4	0.4	0.4	0.4	0.4	0.4
	300	24.4	24.4	24.4	24.4	24.4	24.4
	400	2.2	2.2	2.2	2.2	2.2	2.2
	500	19.5					
	Total 1004 General Fund	203.9	184.4	184.4	184.4	184.4	184.4
Criminal Division: 4rd Judicial District (2201)							
	100 1 FTE Attorney	199.8	199.8	199.8	199.8	199.8	199.8
	200 1 FTE Paraprofessional	0.6	0.6	0.6	0.6	0.6	0.6
	300	30.9	30.9	30.9	30.9	30.9	30.9
	400	2.7	2.7	2.7	2.7	2.7	2.7
	500	13.0					
	Total 1004 General Fund	247.0	234.0	234.0	234.0	234.0	234.0
Section 46 Total		556.1	510.6	510.6	510.6	510.6	510.6

FISCAL NOTE #17

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

BILL NO. CSHB 4 (JUD)

ANALYSIS CONTINUATION

Component	Position	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
<u>CSHB 4 (TRA) by component</u>							
Criminal Division: 3rd Judicial District: Anchorage (2261)							
	100	199.8	320.9	320.9	320.9	320.9	320.9
	200	0.6	1.0	1.0	1.0	1.0	1.0
	300	30.9	49.6	49.6	49.6	49.6	49.6
	400	2.7	4.3	4.3	4.3	4.3	4.3
	500	19.5	6.5	0.0	0.0	0.0	0.0
	Total 1004 General Fund	253.5	382.3	375.8	375.8	375.8	375.8
Criminal Division: 3rd Judicial District: Outside Anchorage (2279)							
	100	157.4	157.4	157.4	157.4	157.4	157.4
	200	0.4	0.4	0.4	0.4	0.4	0.4
	300	24.4	24.4	24.4	24.4	24.4	24.4
	400	2.2	2.2	2.2	2.2	2.2	2.2
	500	19.5	0.0	0.0	0.0	0.0	0.0
	Total 1004 General Fund	203.9	184.4	184.4	184.4	184.4	184.4
Criminal Division: 4rd Judicial District (2201)							
	100	199.8	199.8	199.8	320.9	320.9	320.9
	200	0.6	0.6	0.6	1.0	1.0	1.0
	300	30.9	30.9	30.9	49.6	49.6	49.6
	400	2.7	2.7	2.7	4.3	4.3	4.3
	500	13.0	0.0	0.0	6.5	0.0	0.0
	Total 1004 General Fund	247.0	234.0	234.0	382.3	375.8	375.8
CRIMINAL DIVISION TOTAL		704.4	800.7	794.2	942.5	936.0	936.0
Civil Division: Collections & Support (2210)							
	100	17.4	17.4	17.4	17.4	17.4	17.4
	200	0.0	0.0	0.0	0.0	0.0	0.0
	300	7.0	7.0	7.0	7.0	7.0	7.0
	400	1.0	1.0	1.0	1.0	1.0	1.0
	500	6.5					
	Total 1005 GF/Program Receipts	31.9	25.4	25.4	25.4	25.4	25.4
CIVIL DIVISION TOTAL		31.9	25.4	25.4	25.4	25.4	25.4
<u>CSHB 4 (TRA) SUMMARY</u>							
	100	574.4	695.5	695.5	816.6	816.6	816.6
	200	1.6	2.0	2.0	2.4	2.4	2.4
	300	93.2	111.9	111.9	130.6	130.6	130.6
	400	8.6	10.2	10.2	11.8	11.8	11.8
	500	58.5	6.5	0.0	6.5	0.0	0.0
DEPARTMENT TOTAL		736.3	826.1	819.6	967.9	961.4	961.4
	1004 GF	704.4	800.7	794.2	942.5	936.0	936.0
	1005 GF/Prgm	31.9	25.4	25.4	25.4	25.4	25.4
	PFT	8	9	9	10	10	10
	PPT	1	1	1	1	1	1