

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 21  
 Bill Version: CSHB 4(FIN)  
 (H) Publish Date: 4/28/01

Revision Date/Time: 4/13/01: 2:00 pm Dept. Affected: Corrections  
 Title: An Act relating to offenses involving operating a BRU: Administration & Operations  
motor vehicle, aircraft, or watercraft while under the influence... Component: All  
 Sponsor: Representative Rokeberg  
 Requester: House Finance 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	780.0	875.0	970.0	1,065.0	1,160.0	1,160.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	2,804.7	3,335.8	4,081.9	4,785.2	5,447.9	5,447.9
<b>TOTAL OPERATING</b>	<b>3,584.7</b>	<b>4,210.8</b>	<b>5,051.9</b>	<b>5,850.2</b>	<b>6,607.9</b>	<b>6,607.9</b>

CAPITAL EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
<b>CHANGE IN REVENUES ( )</b>	<b>436.1</b>	<b>454.1</b>	<b>474.1</b>	<b>492.1</b>	<b>512.0</b>	<b>512.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3,148.6	3,756.7	4,577.8	5,358.1	6,095.9	6,095.9
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.	316.1	316.1	316.1	316.1	316.0	316.0
<b>TOTAL</b>	<b>3,584.7</b>	<b>4,210.8</b>	<b>5,051.9</b>	<b>5,850.2</b>	<b>6,607.9</b>	<b>6,607.9</b>

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.

Prepared by: Candace Brower Phone 465-4652  
 Division: Commissioner's Office Date/Time 4/05/01/4:30 pm  
 Approved by: Margaret Pugh Date 4/5/01  
 Agency: 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, inhalant, 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. The increase will begin in the 4<sup>th</sup> year of the sentence. The 5 offenders would serve an additional 244 days the 4<sup>th</sup> year and an additional 237 days the 5<sup>th</sup> year. In the 5<sup>th</sup> 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. 28.** Reduces the threshold for presumption of DWI from .10 to .08. It is estimated by the Department of Law that although this may not result in a significantly large increase in arrests, 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**

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<b>FY02</b>	<b>FY03</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	
1,211,134	1,211,134	1,211,134	1,211,134	1,211,134	1,211,134	Cost of Incarceration
<u>0</u>	<u>33,967</u>	<u>67,934</u>	<u>101,901</u>	<u>101,901</u>	<u>101,901</u>	Probation Costs
<b>1,211,134</b>	<b>1,245,101</b>	<b>1,279,068</b>	<b>1,313,035</b>	<b>1,313,035</b>	<b>1,313,035</b>	Subtotal
<u>0</u>	<u>-61,320</u>	<u>-61,320</u>	<u>-61,320</u>	<u>-61,320</u>	<u>-61,320</u>	less savings for homicide.
1,211,134	1,183,781	1,217,748	1,251,715	1,251,715	1,251,715	Total

If we multiply 413 misdemeanants (10% of total) by the percentages reflected in DMV 2000 statistics for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> time offenders, we come up with an estimate of how many of those offenders might be newly convicted under a .08 law. All 1<sup>st</sup> and 2<sup>nd</sup> 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 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> time non-felony 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 2<sup>nd</sup> 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. 29.** This section increases the sentence for 2<sup>nd</sup> time offenders from 20 days to 30 days unless the court orders the person to perform 10 days community service as authorized under AS 12.55.055. In FY00 there were an estimated 824 second time DWI offenders. We assume that one-half will be ordered to complete 10 days community work service in lieu of jail time. 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. 31.** 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 currently, 11 felony DWI offenders a year receive residential treatment through our therapeutic community at Wildwood Correctional Center. Another 21 receive intensive outpatient treatment. Wildwood Correctional Center has the capacity to facilitate another therapeutic community that would accommodate another 60 offenders per year at a cost of \$380,000. Another \$30,000 would be needed for transitional funding. If we back out the felony DWI offenders currently receiving treatment (32) and subtract the 60

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offenders who could be treated at an additional therapeutic community, the remaining 148 felony DWI offenders would need intensive outpatient treatment at a cost of \$2500 per offender for a total of \$375,000. The total treatment component to accommodate the felony DWI offender population would be \$780,000. This amount is reflected in the contractual section of the fiscal note since all substance abuse treatment is contracted out to private providers.

This section also requires that offenders pay for their cost of treatment up to \$10,000 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(s) during which they serve their sentence. It is estimated that perhaps 25% of the felony offenders would be able to pay \$2,000 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 year and levels off at \$196,000 the fifth year.

**Sec. 32.** 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 the 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. 33.** 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 prior DWI convictions within the preceding 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 180 day minimum sentence proposed in this legislation, and presuming they receive their good time, they would each serve 120 days of incarceration. This would total \$401,280 for the first year phase-in. We will then assume that each new year of the phase-in will add an additional 38 new felons until the 10 year look-back is satisfied. In FY03 the number of new felons will be 76 at a cost of \$802,560. In FY04 there will be 114 for a cost of \$1,203,840, FY05 will include 152 new felons for a cost of \$1,605,120 and FY06 reaches full look-back for 190 new felons at a cost of \$2,006,400.

In addition, this section increases the minimum sentences for felony DWI 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 40 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 \$675,840. Estimating the 15% will be 4<sup>th</sup> time offenders, that would result in 36 offenders serving an additional 80 days, the cost for fourth time offenders is \$253,440. The remaining 5% (12 offenders) will serve an additional 53 days for the cost of \$55,968. The total cost of this provision for the first fiscal year will be \$985,248. Utilizing the same formula and filling in the number of felons each year, the increased cost of higher penalties is as follows: FY03 \$1,142,416 FY04 \$1,289,024 FY05 \$1,449,712 and in FY06 \$1,599,840.

**Sec. 34.** This section takes away the language in the current statute that provides a 10 year look-back for second time offenders. It is estimate that 3% of the 824 second time offenders will be affected by this removal. The result will be an 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/andy and

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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 for this provision is **\$22,464**.

The changes in revenues reflected in the fiscal note include:

**\$120,000** in FY02 for inmate payment for treatment;

**\$316,128** (\$200,768 for .08 legislation and **\$115,360** for increased sentencing for 2<sup>nd</sup> time offenders.