

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: 7
 Bill Version: CSHB 132(2d RLS)
 (H) Publish Date: 4/29/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "...the possession or distribution of alcohol in BRU Criminal Division; Civil Division
a local option area; ...operating a motor vehicle...intoxicated" Component Third Jud District: Anchorage; 4th
 Sponsor House Judiciary Committee by Request Jud District; Collections & Support
 Requester House Rules Committee Component No. 2201; 2261; 2210

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	115.4	259.6	259.6	380.7	380.7	380.7
Travel	0.3	0.8	0.8	1.2	1.2	1.2
Contractual	21.4	44.4	44.4	63.1	63.1	63.1
Supplies	2.2	4.2	4.2	5.8	5.8	5.8
Equipment	13.0	6.5	0.0	6.5	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	152.3	315.5	309.0	457.3	450.8	450.8

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	124.7	290.1	283.6	431.9	425.4	425.4
1005 GF/Program Receipts	27.7	25.4	25.4	25.4	25.4	25.4
1037 GF/Mental Health						
1007 Interagency Receipts						
TOTAL	152.3	315.5	309.0	457.3	450.8	450.8

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	1	2	2	3	3	3
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 132 (2nd RLS) strengthens enforcement laws for importation of alcoholic beverages in municipalities and villages that have elected to restrict the sale, importation, or possession of alcohol in their communities. First, it reduces by half the amount of distilled spirits that a person may possess in a restricted community for the application of the presumption that the person possesses the alcohol with intent to sell it. The bill also reduces by half the amount of distilled spirits a package store may send in a calendar month to a person in a restricted community, and changes the penalty for the illegal sale or transportation of alcohol to a restricted community by reducing by half the amount of alcohol illegally sent to the community that qualifies for a C felony. The bill also allows the state, municipality, or established village to designate a delivery site for alcoholic beverages in municipalities or villages that have adopted a local option that permits importation.

Reducing the amount of alcohol sold or transported that qualifies as a C felony will increase felony prosecutions, which are more complicated and time consuming than misdemeanors, often involving jury trials. We have no way to estimate what the

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 Agency: Department of Law

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ANALYSIS CONTINUATION

increase in workload might be; however, any increase in costs in state FY02 will be covered by part of a recent federal appropriation to Alaska for law enforcement and prosecution relating to alcohol offenses.

For FY 02, the costs of operating state delivery sites will come from non-GF funds.

The bill also amends AS 28.35.030(a) by lowering the blood alcohol limit from 0.10 to 0.08 percent by weight of alcohol in a person's blood (and a corresponding change in the limit for alcohol in a person's breath) for the offense of driving while intoxicated (DWI), a class A misdemeanor. The bill also changes the presumptions in AS 28.35.033(a) in a civil or criminal action from 0.05 - 0.10 to 0.04 - 0.08 percent by weight of alcohol in the person's blood (and a similar change for breath alcohol), as the area where there is no presumption about the person being under the influence of alcohol. Under this bill, a person who measures 0.04 and below is presumed not under the influence, and a person who measures 0.08 and above is presumed to be under the influence of intoxicating liquor. The bill will result in an increased number of DWI cases being prosecuted by the Department of Law.

In FY00, the Criminal Division accepted for prosecution 3,250 misdemeanor and 213 felony DWI cases throughout the state. Experience has varied in other states that have reduced from 0.10 to 0.08 the limit for driving while intoxicated. Although some states have experienced a 20-40% increase in DWI cases upon adoption of the 0.08% standard, this fiscal note is based on a more conservative estimate of 10% increase. Recently received statistics from around the state indicate that, even if present enforcement practices do not change at all, there are an additional 6 percent of DWI cases that fall between 0.08 and 0.099%, which are not now being considered as DWI cases. In addition, there are many cases right now with blood-alcohol levels of 0.10 to 0.11% that are reduced to reckless driving or some other non-DWI offense because juries are often reluctant to convict with those blood-alcohol levels. We assume these cases will now result in DWI convictions, thus adding another 2 percent of cases. Finally, we believe that it is inevitable that the new blood-alcohol level will cause some increase in arrests, conservatively estimated at another 2 percent. Thus we believe that the 10% increase used in this fiscal note (6%+2%+2%) is reasonable. This would result in 325 additional misdemeanor and 21 felony DWI cases, which are much more time-consuming to prosecute than misdemeanors. The Department of Law assumes that municipalities which presently prosecute misdemeanor DWI 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 attorney position to the 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 DWI offenders, and cost of court appointed counsel. The change to 0.08 as the threshold for DWI 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, and 280 judgments for the cost of incarceration. 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 780 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.

The bill also amends the felony DWI statute. Under current law, for the purposes of charging an offender with felony DWI, 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. CSHB 132 (2nd RLS) will phase in a 10-year look back period for felony DWI, 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 DWI will result in approximately 240 new felony DWI 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.

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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, so are included separately. The standard cost does not include one-time new equipment purchases, and \$6,500 per position is added for this purpose. The effective date of for implementation of the 0.08 threshold for DWI is September 1, 2001, so only ten months of funding is required in FY02. A summary of line-item costs by position for each section of CSHB 132 (2nd RLS) narrated above follows.

Component	Position	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
<u>Felony Importation</u>							
Criminal Division							
	Total Unknown	*****	*****	*****	*****	*****	*****
<u>0.08 BAC</u>							
Criminal Division: 3rd Judicial District: Anchorage (2261)							
	100 1 FTE Attorney	100.9	121.1	121.1	121.1	121.1	121.1
	200	0.3	0.4	0.4	0.4	0.4	0.4
	300	15.6	18.7	18.7	18.7	18.7	18.7
	400	1.3	1.6	1.6	1.6	1.6	1.6
	500	6.5					
	Total 1004 General Fund	124.7	141.8	141.8	141.8	141.8	141.8
Civil Division: Collections & Support (2210)							
	100 1 PPT Admin Clerk II	14.5	17.4	17.4	17.4	17.4	17.4
	200	0.0	0.0	0.0	0.0	0.0	0.0
	300	5.8	7.0	7.0	7.0	7.0	7.0
	400	0.8	1.0	1.0	1.0	1.0	1.0
	500	6.5					
	Total 1005 GF/Program Receipts	27.7	25.4	25.4	25.4	25.4	25.4
0.08 BAC Total		152.3	167.2	167.2	167.2	167.2	167.2
<u>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
Felony Look Back Total		0.0	148.3	141.8	290.1	283.6	283.6