

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 179(JUD)
 (H) Publish Date: 4/20/01
 Dept. Affected: Administration
 BRU: Legal & Advocacy Services
 Component: Public Defender Agency
 Component Number: 1631

Revision Date/Time (Note if correction): _____
 Title: "An Act relating to underage drinking and drug offenses; and providing for..."
 Sponsor: House Judiciary Committee
 Requester: House Judiciary Committee

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	273.1	273.1	502.6	502.6	502.6	502.6
Travel	9.3	9.3	16.8	16.8	16.8	16.8
Contractual	68.9	68.9	124.6	124.6	124.6	124.6
Supplies	5.8	5.8	10.6	10.6	10.6	10.6
Equipment	22.8	2.2	21.7	4.1	4.1	4.1
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	379.9	359.3	676.3	658.7	658.7	658.7

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	379.9	359.3	676.3	658.7	658.7	658.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	379.9	359.3	676.3	658.7	658.7	658.7

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	3	3	6	6	6	6
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the penalties for the offense of Minor Consuming or in Possession of Alcohol (MCA). Under current law, MCA is a violation punishable by a \$100 fine. A minor cited for MCA was also subject to an administrative drivers license revocation under AS 28.15.183 (the "use it, lose it" law). However, in a recent Alaska Supreme Court case, State v. Niedermeyer, the "use it, lose it" law was found to violate due process. The court decided that a minor has a right to a jury trial and court-appointed counsel before a license can be revoked for MCA.

Under this bill, for a first offense, the fine would be increased from a mandatory minimum of \$100 to \$200-\$600. A mandatory minimum of at least 24 hours of community work service would also be imposed.

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 Division: Public Defender Agency Date/Time 03/28/01
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 Agency: Department of Administration

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For a second offense, the mandatory minimum fine is \$500. (The maximum fine would be \$1,000.) The mandatory minimum community work service is 48 hours.

A third offense (habitual MCA) would be a class B misdemeanor. A mandatory minimum of at least 96 hours of community work service would also need to be imposed. The court also must revoke a minor's drivers license or privilege to drive for six months.

The juvenile delinquency statutes would be amended so that habitual (third offense) MCA would be handled by the Division of Juvenile Justice and juvenile courts.

The Public Defender Agency will have a major fiscal impact from this bill the way it is currently drafted. The Alaska Court of Appeals in *Booth v. State*, 903 P.2d 1079 (Alaska App. 1995) decided that before community work service can be imposed a defendant has a right to a jury trial and court-appointed counsel. Therefore, because minors convicted of first and second offense MCA would have to perform community work service as part of their sentence, the Public Defender Agency would be appointed in these cases as well as the habitual (third offense) MCA's.

Another factor that must be taken into account is whether minors who have prior convictions under the current law would be subject to prosecution under the second offense or habitual MCA provisions should this bill become law. The Public Defender Agency does not believe that this would happen because the prior convictions would have been obtained without minors being advised that they had a right to court-appointed counsel.

The Division of Motor Vehicles reported that prior to the Niedermeyer decision, about 4,800 driver's licenses were revoked under the "use it, lose it" statutes. This figure is about the same as the number of court cases noted in a recent needs assessment study done by the Department of Health and Social Services (DHSS). According to the DHSS study, 4300 MCA cases were filed in 1998 and 4983 were filed in 1999. Therefore, the Public Defender Agency estimates there will be 4,800 new cases filed per year.

It is difficult to estimate how many of these cases the Public Defender Agency will be appointed to. In the initial year (FY 2002), there will probably be mostly first offenses, although some minors will accumulate second and third offenses as the year goes on. The penalties are not as great, but, with a prospect of a \$200 mandatory minimum fine and 24 hours of community work service, there will be a significant percentage of minors who will request an attorney. Even if only 30% of the minors request an attorney, the Public Defender Agency will have 1440 new cases. Under national standards, a Public Defender attorney should handle no more than 400 new misdemeanor cases per year. These cases will be less difficult than the average misdemeanor, so we will increase this number to 600 new first and second offense MCA's per year per attorney. To handle this caseload, the Public Defender Agency will need two full-time attorneys and one half-time attorney. According to the DHSS report, the majority of these cases are filed in Anchorage, Fairbanks, and Palmer. We would place the half-time attorney in Anchorage because it would be easier to hire a part-time attorney for Anchorage. The other two attorneys would be placed in Fairbanks and Palmer.

By FY 2004, we can expect that a greater percentage of the cases will be third-offense habitual MCA's. We will be appointed in more of these cases, and our lawyers will be able to handle fewer of these more difficult cases. Assuming Public Defender Agency appointment in 50% of 4800 cases, we will have 2400 new cases. If each attorney can handle 500 new cases per year, we will need two additional lawyers, for a total of four full-time and one half-time attorney. We would place the two additional attorneys in our Anchorage and Bethel offices.

The cost per attorney includes clerical support and one-time equipment costs in the initial year.