

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 8
 Bill Version: CSHB 179(FIN)
 (H) Publish Date: 4/25/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act relating to underage drinking and
drug offenses; and providing for..." BRU: Legal & Advocacy Service
 Component: Public Defender Agency
 Sponsor: House Judiciary Committee
 Requester: House Finance Committee Component Number: 1631

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	128.3	128.3	128.3	128.3	128.3	128.3
Travel	5.3	5.3	5.3	5.3	5.3	5.3
Contractual	39.5	39.5	39.5	39.5	39.5	39.5
Supplies	2.9	2.9	2.9	2.9	2.9	2.9
Equipment	13.0	1.3	1.3	1.3	1.3	1.3
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	189.0	177.3	177.3	177.3	177.3	177.3

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	189.0	177.3	177.3	177.3	177.3	177.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	189.0	177.3	177.3	177.3	177.3	177.3

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	1	1	1	1	1	1
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 court can place the person on probation and refer the case to a "community diversion panel." Alternatively, the court shall impose a fine of at least \$200 but not more than \$600.

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 Division: Public Defender Agency Date/Time April 24, 2001
 Approved by: Jim Duncan, Commissioner Date 4/24/01
 Agency: Department of Administration

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For a second offense (repeat MCA), the mandatory fine is \$1,000. But \$500 can be suspended if the defendant completes probation. There is a mandatory minimum community work service of 48 hours.

A third offense (habitual MCA) would be a class B misdemeanor. A mandatory minimum of 96 hours of community work service must 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 substantial fiscal impact from this bill. As the bill is currently drafted, we would be appointed to represent people charged with both repeat and habitual MCA.

Repeat MCA (second offense) is a violation. The Public Defender Agency does not generally represent people on violations. However, 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, the Public Defender Agency would be appointed in these cases as well as the habitual (third offense) MCA's.

According to Division of Motor Vehicles and Department of Health and Social Services (DHSS) statistics, there will be about 1330 second and subsequent MCA offenses. Of these 738 will be repeat MCA and 592 will be habitual MCA.

It is difficult to estimate how many of these cases the Public Defender Agency will be appointed to. The repeat MCA is a violation. But, with the prospect of a \$500 mandatory minimum fine and 48 hours of community work service, there will be a significant percentage of defendants who will request an attorney. Even if only 40% of the repeat MCA defendants request a court-appointed attorney, the Public Defender Agency will have 295 new cases. Habitual MCA is a class B misdemeanor with a mandatory 96 hours community service and loss of a drivers license for six months. We estimate we will be appointed in 75% of these cases. The result will be 444 additional misdemeanor cases.

Under national standards, a Public Defender attorney should handle no more than 400 new misdemeanor cases per year. The repeat MCA cases will be less difficult than the average misdemeanor, so we will increase this number to 600 new repeat MCA's per year per attorney. With the addition of a half-time attorney, the Public Defender Agency will be able to handle the increased caseload due to repeat MCA. An additional full-time attorney will be needed to handle the additional caseload due to habitual MCA.

According to the DHSS statistics, 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 attorney would be placed in Palmer.

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