

POSITION PAPER

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 438

The Department of Health & Social Services and Division of Public Health agree with the concept of this bill, although it appears that certain language may in effect nullify its original intent. Our specific concerns are found on page 12 lines 9 through 14. "To be considered valid under the provision of this section the chemical analysis of the person's blood shall be performed according to recognized medical practices, and if it is established at trial that a chemical analysis of blood was performed according to such methods there is a presumption that the test results are valid and further foundation for introduction of the evidence is unnecessary". It is the Department's position that the wording "recognized medical practices" is vague in that it does not specifically state the standards under which the analysis of a person's blood should be performed.

Considering the rapid advances that are occurring in the field of forensic medicine it may be inadvisable to specifically name the type of test procedure that should be used in a chemical analysis. The current language in CSSHB 438 implies that any number of recognized medical procedures could be used for doing blood alcohol analysis. It is our opinion that many of these methods are not adequate for forensic use and may easily be impeached by defense attorneys during the trial proceedings.

Under the provisions of this bill it will be necessary for the prosecution to prove in each and every case that the laboratory testing methods that were used in the analysis of the blood were scientifically accurate and that they were performed in a laboratory that has the qualified personnel and expertise to perform the test. It must be emphasized that not all the tests that determine the level of alcohol in a person's blood will be accepted by the Alaska courts. It will, if this bill is passed, be possible for the defendant to refuse the breath alcohol test in which case the state or the local law enforcement agency will draw a sample of blood and have it analyzed. However, the results of that blood analysis may be in question and may be rigorously attacked by the defense as being performed by a laboratory that was not certified and by personnel that were not qualified. The expense for providing the necessary expert witness testimony at trial, as required by CSSHB 438 would be costly and could be detrimental to the state's enforcement effort. Opinions on CSSHB 438 from the national experts, in the blood alcohol testing field have been requested, and are attached for your review.

Our Department at the present time has the statutory responsibility for establishing testing standards in instrument certification for field breath alcohol equipment used by law enforcement officers both at the state and local level. The standards that have been established for breath alcohol testing equipment have been recognized by Alaskan courts as adequate to protect the defendant's rights when accused of driving while intoxicated. We suggest that a similar certification

program be instituted which would protect the defendant's rights and allow prosecutors to efficiently introduce evidence related to the analysis of blood. We feel that the standards for the analysis of blood alcohol should at least be equivalent to those that have been accepted by the Alaska courts for the analysis of breath.

The following changes are suggested:

Page 12 Line 10 Delete: analysis
Add: test

Page 12 Line 11 Delete: recognized medical practices, and if
Add: laboratory methods approved by the Department of Health & Social Services and in a laboratory certified by the Department to perform blood tests for alcohol if

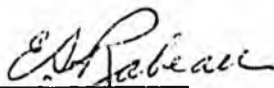
Line 12 Delete: according to such

Line 12 Add: in a certified laboratory by approved


These changes will establish the necessary certification program to protect the defendant's rights and provide for prosecution by the Alaska courts. The cost for this activity will be 60.7 for FY '83 and will require the addition of a 1/2 time position.

In addition to our concern for the blood alcohol methods certification, we believe serious consideration should be given to screening drugs as well as alcohol. The definition of driving while intoxicated includes driving under the influence of intoxicating liquors, depressants, hallucinogenics, stimulant or narcotic drugs as defined in AS 17.10.230(13) and 17.12.150(3). A provision for drug screening could be added to this bill for a relatively small additional cost and would allow our law enforcement officers to prosecute those under the influence of a combination of drugs and alcohol. It is recognized that this is a very complex and difficult area but it appears that the necessary technical information for addressing drug screening as well as screening for blood alcohol is available.

Recommended by:


E.S. Rabeau, M.D.
Director
Division of Public Health
Date: March 18, 1982

Approved by:


Helen D. Beirne
Commissioner
Department of Health
& Social Services
Date: 3/18/82

3/18/82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

I. REQUEST
 Bill/Resolution No. CSSSHB 438
 Title _____
 Requested by Health & Social Services Date: 3/4/82

II. FISCAL DETAIL
 Agency Affected Health & Social Services
 Program Category Affected Public Health
 BRU, Program, Or Subprogram(s) Affected Laboratories
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

CSSSHB 438 implies no involvement by the Department of Health and Social Services in determining the methods of analysis for alcohol content in blood or the accuracy of the test results. Blood alcohol tests unless performed according to approved methods may not provide sufficient evidence for conviction.

IV. DATE March 4, 1982 PREPARED BY Harry J. Colvin, Ph.D.
 AGENCY Health & Social Services
 Original: Legislative Finance PHONE 465-3077
 cc: Budget and Management

Harry Colvin

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST (Judiciary)
Bill/Resolution No. CS for Sponsor Substitute for House Bill No. 438
Title "An Act revising laws relating to ...driving while intoxicated.."
Requested by House Judiciary Committee Date March 9, 1982

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Offender Confinement Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES			256.2	274.2	293.3	313.9
200 TRAVEL		.5	2.8	3.1	3.3	3.6
300 CONTRACTUAL		13.0	41.1	44.8	48.8	53.2
400 COMMODITIES		33.9	67.2	73.2	79.8	87.0
500 EQUIPMENT						
600 LAND & STRUCTURES		1794.0				
700 GRANTS, CLAIMS, ETC.		7.7	16.8	18.3	20.0	21.8
TOTAL	-0-	1849.1	384.1	413.6	445.2	479.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	1849.1	384.1	413.6	445.2	479.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	6	6	6	6
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

A. Enactment of this bill will have a significant fiscal impact on the Division of Adult Corrections. The major thrust of this proposed legislation is to lengthen the minimum sentences for persons convicted of driving while intoxicated. Amendments to the section of the statute addressing driving with a cancelled, suspended, or revoked license will result in a fiscal impact, also.

Minimum sentence length for first time drunk driving offenders is increased from 3 consecutive days to 120 consecutive hours. Second time drunk drivers will receive minimum sentences based on the time between their first and second offense. If the second offense is within one year of the first offense, the minimum sentence will increase from 10 consecutive days to 60 consecutive days. If the second offense occurs within five years, the minimum sentence will

IV. DATE March 16, 1982 PREPARED BY Roger C. Lange *Roger C. Lange*
AGENCY Division of Adult Corrections

Original: Legislative Finance PHONE 465-3376

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

FISCAL NOTE

CS for Sponsor Substitute for House Bill No. 438 (Judiciary)

Page 2

increase from 10 consecutive days to 20 consecutive days. The proposed statute does not address second offenses taking place after five years from the first offense, so it is assumed that these offenders would receive a minimum sentence of 120 consecutive hours. Upon a third conviction for driving while intoxicated, the minimum sentence would increase from 10 consecutive days to 120 consecutive days.

- B. The data used in estimating numbers of offenders for driving while intoxicated is from the master plan data base and current commitment cards. There were an estimated 18,000 admissions into the Alaska correctional system during 1981. The commitment cards give the offenses for which the persons were charged and average length of sentences. Estimates used in computing this fiscal note are as follows:
1. 21.7% of all admissions into state correctional centers are for driving while intoxicated.
 2. There are approximately 18,000 admissions per year into state correctional centers. This results in approximately 3,900 DWI admissions.
 3. Of the 18,000 admissions, approximately 45% are second admissions for the same offense. Subsequent admissions would include circumstances such as transfer to another state correctional center, readmission of a person who was previously released on his own recognizance or bail, etc. Therefore, there are approximately 55% unduplicated admissions for persons arrested for DWI. This results in 2,145 individual unduplicated cases per year.
 4. Approximately 75% of the DWI arrests are for first time offenders, 25% are repeat offenders. Therefore, there are 1,609 first time offenders and 536 repeat offenders annually for driving while intoxicated.
 5. First time offenders now serve an average of 55 hours in confinement. This is equal to approximately 10 person-years of confinement. Repeat offenders now serve an average of 206 hours in confinement. This is equal to approximately 12.6 person-years of confinement. Therefore, approximately 22.6 beds are currently occupied full time by DWI offenders.
- C. Fiscal Impact if CS Sponsor Substitute for House Bill No. 438 (Judiciary) is enacted:
1. Assumptions
 - a. There will be no significant change in the length of time presentenced DWI offenders spend in confinement.
 - b. There will be no significant change in the number of persons arrested for first time DWI offences.
 - c. The number of repeat offenders will decline somewhat under the proposed legislation and will stabilize at approximately 75% of the present number of offenders (approximately 400 per year). Of the repeat offenders, it is estimated that 350 would be second offenders, the remaining 50 would be for third and subsequent offenses.

It is also estimated that of the 350 second offenders, 300 would be convicted for offenses at least one year after the first offense and 50 would be convicted for a second offense within one year of the first conviction.

FISCAL NOTE

CS for Sponsor Substitute for Bill No. 438 (Judiciary)

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- d. Additional time served for convictions of traffic offenses while a person's driving license is suspended or revoked due to prior DWI offense is not amenable to accurate forecasting, but is assumed to result in a modest increase in confinement beds. However, due to the uncertainty in the deterrent effect percentage for repeat offenders, no additional beds are included in this fiscal note specifically for this section of the bill.
- e. The average sentence length for offenders are estimated to be:

First offenders - 96 hours (120 hour minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day was considered applicable in all cases.)

Second offenders -

(1) Second offense after one year from first conviction - 15 days (20 days minimum sentence, no suspension, no probation until minimum sentence served. Good time of one day for three served was considered applicable in all cases.)

(2) Second offense within one year of first conviction - 45 days (60 days minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day for three served was considered applicable in all cases.)

Third/Subsequent offenders - 90 days (120 days minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day for three was considered applicable in all cases).

f. Additional beds required -

(1) 1,609 offenders X 96 Hours ÷ 365 ÷ 24 equals approximately 17.6 beds, less 10 beds now utilized by first offenders equals 7.6 new beds.

(2) Second offenders -

(a) Within one year -

50 offenders X 45 days ÷ 365 = 6.2 beds

(b) After one year

300 offenders X 15 days ÷ 365 = 12.3 beds

(c) Total beds = 6.2 + 12.3 less 12.6 beds now utilized by second offenders = 5.9 new beds.

(3) Third/Subsequent offenders - 50 offenders X 90 days ÷ 365 days = 12.3 new beds.

(4) Therefore, it is estimated that 26 new beds will be needed in the state correctional system if this proposed legislation is enacted.

(5) A significant impact will be experienced during the first year that this law is in force. This will result in overcrowded conditions within the existing state facilities if a temporary alternative cannot be provided.

FISCAL NOTE

CS for Sponsor Substitute for Bill No. 438 (Judiciary)

Page 4

- g. No statistics are available regarding the number of persons who now refuse to take chemical breath tests. Therefore, no fiscal impact can be estimated for Sec. 28.35.032(g) which requires a consecutive 72 hour sentence for imprisonment for refusal to submit to a chemical test of breath.

D. Estimated Costs - If traditional incarceration methods are mandated or envisioned in the act. (These costs are displayed on page 1 of this fiscal note.)

1. Capital Expenditures

It would be anticipated that a 26 minimum to medium security beds would need to be constructed. Based on the fast track construction method utilized and cost per bed at the Palmer Addition, and considering one year of inflation at 15%, it is estimated that the cost will be \$69,000 per bed. Therefore, capital expenditures are estimated to be:

$$26 \times \$69,000 = \$1,794,000$$

It is assumed that the 26 beds identified would be incorporated into a new facility which would take into consideration the new bed needs resulting from legislation passed this session.

2. Operating Costs

a. Personal Services -

It is estimated that a total of 6 new Correctional Officer II positions would be needed to provide security and supervision for the additional inmates. It is noted that the identified positions would not include any support functions such as administration, food service, maintenance, or nursing.

Estimated cost for FY 1984 was computed using the 1982 negotiated salary schedule with 7% inflation added for all subsequent fiscal years.

b. All other expenditure Categories -

The continuation budget for Palmer Correctional Center was used as a basis for estimating operational costs, since it serves the approximate classification of inmates as would be served in the new facility. The figures were adjusted to reflect 26 inmates as compared to the 100 inmates budgeted for continuation of the existing Palmer Correctional Center. A 9% inflation factor was utilized for all fiscal years after FY 1983. Operational costs itemized for FY 1983 are for the additional food, clothing, and medical costs related to the increased inmate population.

- c. No expenditures are shown for FY 1982, as it is assumed the new law would go into effect July 1, 1982.

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- E. Estimate of Cost - If a Community Based Program oriented method of confinement is envisioned.

The additional bed requirement would be met through contracts with local agencies at approximately \$50.00 per bed per day.

Cost = 26 beds X \$50.00 per day X 365

FY 1983 =	\$474,500
FY 1984 =	517,200
FY 1985 =	563,800
FY 1986 =	614,500
FY 1987 =	669,800

9% inflation per year was used for fiscal years after 1983.

Advantages to this method of confinement are numerous. There is no Capital expenditure necessary. The contractor will provide alcohol abuse education programs. For persons with longer sentences, work release would be available, with earnings used partially to offset above identified costs, make restitution when indicated, support family, etc. The individuals would still be under supervision 24 hours per day, and in a closed setting while not on work release.

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GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
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	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
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CSSSHB 438 implies no involvement by the Department of Health and Social Services in determining the methods of analysis for alcohol content in blood or the accuracy of the test results. Blood alcohol tests unless performed according to approved methods may not provide sufficient evidence for conviction.

IV. DATE March 4, 1982

Harry Colvin
 PREPARED BY Harry J. Colvin, Ph.D
 AGENCY Health & Social Services

Original: Legislative Finance
 cc: Budget and Management

PHONE 465-3077

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 438

"An act relating to the administration of chemical blood tests to persons arrested for certain offenses involving motor vehicles."

Overview:

SSHB No. 438 requires a blood test for alcohol content for persons arrested for an alleged crime while driving under the influence of intoxicating liquor if the crime is a homicide or assault. If enacted, SSHB No. 438 would tend to increase the number of OMVI convictions in Alaska in instances when death or injury resulted from the drinking and driving behavior. It would also increase the subsequent referral to programs for alcohol screening and diagnosis of persons who are involved in accidents and deaths when driving a motor vehicle while under the influence of alcohol.

Presently many persons charged with an OMVI offense are refusing to take a breathalyzer test. Lack of blood alcohol content (BAC) as evidence in OMVI trial has contributed to many not guilty verdicts being returned by juries even though substantial other evidence may have been presented in the case.

Division of Public Health Laboratory Program Impact:

Including blood testing for alcohol as an addition to the alcohol breath testing program would have an impact on the Division of Public Health laboratory program. Regulations governing techniques, methods, and standards would have to be promulgated, non-state laboratories and technicians certified, and a proficiency program, and a records system established. This program would be designed to be under central state control to ensure state-wide consistency and accuracy.

Department's Position:

The Department of Health and Social Services supports legislation which would tend to prevent this most dangerous behavior with its significant cost to the state in terms of death, injury, and property damage.

Recommended by:

Robert L. Cole

Robert L. Cole
Coordinator
Office of Alcoholism
and Drug Abuse

Date:

1-22-82

Recommended by:

E. S. Rabeau

E. S. Rabeau, M.D.
Director
Division of Public Health

Date:

1-22-82

Approved by:

Helen D. Beirne

Helen D. Beirne
Commissioner
Department of Health and
Social Services

Date:

1-23-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SSHB 438 DWI
 Title Administration of blood tests to persons arrested for offenses involving
 Requested by Health & Social Services Date 1/19/82

II. FISCAL DETAIL

Agency Affected Health & Social Services
 Program Category Affected Public Health
 BRU, Program, Or Subprogram(s) Affected Laboratories
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-0-	16.9	18.0	19.3	20.7	22.1
200 TRAVEL	-0-	4.8	5.8	6.9	8.3	10.0
300 CONTRACTUAL	-0-	9.0	9.9	10.9	12.0	13.2
400 COMMODITIES	-0-	5.0	6.0	7.2	8.6	10.4
500 EQUIPMENT	-0-	25.0	2.5	2.5	2.5	2.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	60.7	42.2	46.8	52.1	58.2

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	60.7	42.2	46.8	52.1	58.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	.5	.5	.5	.5	.5
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

A chemist will be required to perform proficiency testing and on-site inspections of an estimated five laboratories requesting certification. Travel funds are provided for both training of laboratory personnel and on-site inspections conducted annually. Gas chromatographic equipment and supplies for its operation are necessary for validation of proficiency test samples and training programs.

Harry Colvin

IV. DATE 1/22/82 PREPARED BY Harry J. Colvin, Ph.D.
 AGENCY Health & Social Services/Laboratories
 Original: Legislative Finance PHONE 465-3077
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

22

I. REQUEST
Bill/Resolution No. CSSSHB 438 No. 1
Title _____
Requested by Health & Social Services Date: 3/4/82

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Public Health
BRU, Program, Or Subprogram(s) Affected Laboratories
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

CSSSHB 438 implies no involvement by the Department of Health and Social Services in determining the methods of analysis for alcohol content in blood or the accuracy of the test results. Blood alcohol tests unless performed according to approved methods may not provide sufficient evidence for conviction.

Harry Colvin

IV. DATE March 4, 1982 PREPARED BY Harry J. Colvin, Ph.D
AGENCY Health & Social Services
PHONE 465-3077
Original: Legislative Finance
cc: Budget and Management

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSSSHB 438(Jud) No. 2. (Page 1 of 5)
 Title "An Act revising laws relating to ...driving while intoxicated.."
 Requested by House Judiciary Committee Date February 17, 1982

II. FISCAL DETAIL
 Agency Affected Health & Social Services
 Program Category Affected Offender Confinement Reformation & Supervision
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES			256.2	274.2	293.3	313.9
200 TRAVEL		.5	2.8	3.1	3.3	3.6
300 CONTRACTUAL		13.0	41.1	44.8	48.8	53.2
400 COMMODITIES		33.9	67.2	73.2	79.8	87.0
500 EQUIPMENT						
600 LAND & STRUCTURES		1794.0				
700 GRANTS, CLAIMS, ETC.		7.7	16.8	18.3	20.0	21.8
TOTAL	-0-	1849.1	384.1	413.6	445.2	479.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	1849.1	384.1	413.6	445.2	279.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	6	6	6	6
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

A. Enactment of this bill will have a significant fiscal impact on the Division of Adult Corrections. The major thrust of this proposed legislation is to lengthen the minimum sentences for persons convicted of driving while intoxicated. Amendments to the section of the statute addressing driving with a cancelled, suspended, or revoked license will result in a fiscal impact, also.

Minimum sentence length for first time drunk driving offenders is increased from 3 consecutive days to 120 consecutive hours. Second time drunk drivers will receive minimum sentences based on the time between their first and second offense. If the second offense is within one year of the first offense, the minimum sentence will increase from 10 consecutive days to 60 consecutive days. If the second offense occurs within five years, the minimum sentence will

IV. DATE February 19, 1982 PREPARED BY Roger C. Lange
 AGENCY Division of Adult Corrections

Original: Legislative Finance PHONE 465-3376
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

CS for Sponsor Substitute for House Bill No. 438 (Judiciary) No. 2
Page 2 of 5:

increase from 10 consecutive days to 20 consecutive days. The proposed statute does not address second offenses taking place after five years from the first offense, so it is assumed that these offenders would receive a minimum sentence of 120 consecutive hours. Upon a third conviction for driving while intoxicated, the minimum sentence would increase from 10 consecutive days to 120 consecutive days.

B. The data used in estimating numbers of offenders for driving while intoxicated is from the master plan data base and current commitment cards. There were an estimated 18,000 admissions into the Alaska correctional system during 1981. The commitment cards give the offenses for which the persons were charged and average length of sentences. Estimates used in computing this fiscal note are as follows:

1. 21.7% of all admissions into state correctional centers are for driving while intoxicated.
2. There are approximately 18,000 admissions per year into state correctional centers. This results in approximately 3,900 DWI admissions.
3. Of the 18,000 admissions, approximately 45% are second admissions for the same offense. Subsequent admissions would include circumstances such as transfer to another state correctional center, readmission of a person who was previously released on his own recognizance or bail, etc. Therefore, there are approximately 55% unduplicated admissions for persons arrested for DWI. This results in 2,145 individual unduplicated cases per year.
4. Approximately 75% of the DWI arrests are for first time offenders, 25% are repeat offenders. Therefore, there are 1,609 first time offenders and 536 repeat offenders annually for driving while intoxicated.
5. First time offenders now serve an average of 55 hours in confinement. This is equal to approximately 10 person-years of confinement. Repeat offenders now serve an average of 206 hours in confinement. This is equal to approximately 12.6 person-years of confinement. Therefore, approximately 22.6 beds are currently occupied full time by DWI offenders.

C. Fiscal Impact if CS Sponsor Substitute for House Bill No. 438 (Judiciary) is enacted:

1. Assumptions
 - a. There will be no significant change in the length of time presentenced DWI offenders spend in confinement.
 - b. There will be no significant change in the number of persons arrested for first time DWI offences.
 - c. The number of repeat offenders will decline somewhat under the proposed legislation and will stabilize at approximately 75% of the present number of offenders (approximately 400 per year). Of the repeat offenders, it is estimated that 350 would be second offenders, the remaining 50 would be for third and subsequent offenses.

It is also estimated that of the 350 second offenders, 300 would be convicted for offenses at least one year after the first offense and 50 would be convicted for a second offense within one year of the first conviction.

d. Additional time served for convictions of traffic offenses while a person's driving license is suspended or revoked due to prior DWI offense is not amenable to accurate forecasting, but is assumed to result in a modest increase in confinement beds. However, due to the uncertainty in the deterrent effect percentage for repeat offenders, no additional beds are included in this fiscal note specifically for this section of the bill.

e. The average sentence length for offenders are estimated to be:

First offenders - 96 hours (120 hour minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day was considered applicable in all cases.)

Second offenders -

(1) Second offense after one year from first conviction - 15 days (20 days minimum sentence, no suspension, no probation until minimum sentence served. Good time of one day for three served was considered applicable in all cases.)

(2) Second offense within one year of first conviction - 45 days (60 days minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day for three served was considered applicable in all cases.)

Third/Subsequent offenders - 90 days (120 days minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day for three was considered applicable in all cases).

f. Additional beds required -

(1) 1,609 offenders X 96 Hours ÷ 365 ÷ 24 equals approximately 17.6 beds, less 10 beds now utilized by first offenders equals 7.6 new beds.

(2) Second offenders -

(a) Within one year -

50 offenders X 45 days ÷ 365 = 6.2 beds

(b) After one year

300 offenders X 15 days ÷ 365 = 12.3 beds

(c) Total beds = 6.2 + 12.3 less 12.6 beds now utilized by second offenders = 5.9 new beds.

(3) Third/Subsequent offenders - 50 offenders X 90 days ÷ 365 days = 12.3 new beds.

(4) Therefore, it is estimated that 26 new beds will be needed in the state correctional system if this proposed legislation is enacted.

(5) A significant impact will be experienced during the first year that this law is in force. This will result in overcrowded conditions within the existing state facilities if a temporary alternative cannot be provided.

FISCAL NOTE

CS for Sponsor Substitute for Bill No. 438 (Judiciary)

Page 4 of 5

- g. No statistics are available regarding the number of persons who now refuse to take chemical breath tests. Therefore, no fiscal impact can be estimated for Sec. 28.35.032(g) which requires a consecutive 72 hour sentence for imprisonment for refusal to submit to a chemical test of breath.

D. Estimated Costs - If traditional incarceration methods are mandated or envisioned in the act. (These costs are displayed on page 1 of this fiscal note.)

1. Capital Expenditures

It would be anticipated that a 26 minimum to medium security beds would need to be constructed. Based on the fast track construction method utilized and cost per bed at the Palmer Addition, and considering one year of inflation at 15%, it is estimated that the cost will be \$69,000 per bed. Therefore, capital expenditures are estimated to be:

$$26 \times \$69,000 = \$1,794,000$$

It is assumed that the 26 beds identified would be incorporated into a new facility which would take into consideration the new bed needs resulting from legislation passed this session.

2. Operating Costs

a. Personal Services -

It is estimated that a total of 6 new Correctional Officer II positions would be needed to provide security and supervision for the additional inmates. It is noted that the identified positions would not include any support functions such as administration, food service, maintenance, or nursing.

Estimated cost for FY 1984 was computed using the 1982 negotiated salary schedule with 7% inflation added for all subsequent fiscal years.

b. All other expenditure Categories -

The continuation budget for Palmer Correctional Center was used as a basis for estimating operational costs, since it serves the approximate classification of inmates as would be served in the new facility. The figures were adjusted to reflect 26 inmates as compared to the 100 inmates budgeted for continuation of the existing Palmer Correctional Center. A 9% inflation factor was utilized for all fiscal years after FY 1983. Operational costs itemized for FY 1983 are for the additional food, clothing, and medical costs related to the increased inmate population.

c. No expenditures are shown for FY 1982, as it is assumed the new law would go into effect July 1, 1982.

FISCAL NOTE

CS for Sponsor Substitute for Bill No. 438 (Judiciary)

Page 5 of 5

- E. Estimate of Cost - If a Community Based Program oriented method of confinement is envisioned.

The additional bed requirement would be met through contracts with local agencies at approximately \$50.00 per bed per day.

Cost = 26 beds X \$50.00 per day X 365

FY 1983 = \$474,500

FY 1984 = 517,200

FY 1985 = 563,800

FY 1986 = 614,500

FY 1987 = 669,800

9% inflation per year was used for fiscal years after 1983.

Advantages to this method of confinement are numerous. There is no Capital expenditure necessary. The contractor will provide alcohol abuse education programs. For persons with longer sentences, work release would be available, with earnings used partially to offset above identified costs, make restitution when indicated, support family, etc. The individuals would still be under supervision 24 hours per day, and in a closed setting while not on work release.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 438 No. 3
 Title Administration of Chemical Blood Tests
 Requested by House Judiciary Committee Date 2/9/82

II. FISCAL DETAIL

Agency Affected Alaska Court System
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 2/11/82 PREPARED BY Richard P. Barrier
 AGENCY Alaska Court System
 Original: Legislative Finance PHONE 264-0545
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSS HB 438 (Judiciary) No. 4
 Title Driving or Operating a Motor Vehicle While Intoxicated
 Requested by House Judiciary Committee Date 02-02-82

II. FISCAL DETAIL

Agency Affected Law
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Prosecution
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill makes several significant amendments to the state laws pertaining to driving while intoxicated, including making it a class B misdemeanor to refuse a breathalyzer and authorizing the forcible taking of blood after a person refuses a breathalyzer. It can be expected that these and other provisions in the bill will result in additional appeals testing the constitutionality of these sections. Additionally, there is the distinct possibility that the number of guilty pleas for Driving While Intoxicated will decrease in view of the generally more severe penalties specified, and that with the corresponding increase in trials a need for additional attorney positions may arise. While this possibility is speculative and consequently no additional positions have been requested at this time, any legislative action diminishing the resources available to the department in FY 83, coupled with the enactment of this and other crime bills requiring a greater prosecution effort will severely hamper the department's overall ability to prosecute criminal offenses.

IV. DATE 02-03-82 PREPARED BY Dan Hickey, Chief Prosecutor
 AGENCY Department of Law
 PHONE 465-3429

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Sponsor Substitute for House Bill No. 438 No. 5

Title "An Act relating to...chemical blood tests..."

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Alaska State Troopers

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No Fiscal Impact.

IV. DATE February 2, 1982

PREPARED BY Francis C. Allan

AGENCY Department of Public Safety

Original: Legislative Finance

PHONE 264-5693

cc: Budget and Management

Prime Sponsor First Legislator Named

12-11 11 82

Introduced: 4/10/81
Referred: Judiciary

1 IN THE HOUSE

BY MEEKINS

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 438

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the administration of chemical
7 blood tests to persons arrested for certain offenses
8 involving motor vehicles."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 09.65.095(a) is amended to read:

11 (a) No civil or criminal action arising out of battery may be
12 brought against a health care provider for the act of taking a blood
13 sample if the sample is taken

14 (1) at the request of a police officer under the circum-
15 stances specified in AS 28.35.032(a) or 28.35.035 when a chemical test
16 of his blood may be administered without a person's consent or when the
17 arresting officer has a search warrant or court order authorizing the
18 taking of the blood sample; and

19 (2) without the use of excessive or unreasonable force.

20 * Sec. 2. AS 28.35.032(a) is amended to read:

21 (a) If a person under arrest refuses the request of a law enforce-
22 ment officer to submit to a chemical test of his breath as provided in
23 AS 28.35.031, after being advised by the officer that his refusal will
24 result in the suspension, denial or revocation of his license and that
25 the refusal may be used against him in a civil or criminal action or
26 proceeding arising out of an act alleged to have been committed by him
27 while operating or driving a vehicle under the influence of intoxicat-
28 ing liquor, a chemical test may [SHALL] not be given except under (f)
29 of this section.

1 * Sec. 3. AS 28.35.032(b) is amended to read:

2 (b) Upon receipt of a sworn report of a law enforcement officer
3 that a person has refused to submit to a chemical breath test authorized
4 under AS 28.35.031, containing a statement of the circumstances sur-
5 rounding the arrest and the grounds upon which his belief was based
6 that the person was operating or driving a motor vehicle in violation
7 of AS 28.35.030, the Department of Public Safety, regardless of whether
8 a chemical test of blood has been subsequently administered to the
9 person, shall notify the person that his license or nonresident privi-
10 lege to drive or operate a motor vehicle in the state is revoked or
11 suspended, or that no original license or permit will be issued for
12 three months. In the same notice the department shall inform the person
13 that he may initiate a proceeding in the district court to rescind the
14 department's action. The court proceeding shall be without jury and
15 shall be limited to the issues of whether

16 (1) the arresting officer had reasonable grounds to believe
17 the arrested person had been operating or driving a motor vehicle in
18 the state while under the influence of intoxicating liquor;

19 (2) the arrested person refused to submit to the breath test
20 upon request of the officer after being advised that his refusal would
21 result in the suspension, revocation, or denial of his license; and

22 (3) the accused defendant was informed fairly of the nature
23 of the tests, the accuracy of the methods, machines, equipment involved,
24 the experience of the person administering the tests, or operator of the
25 machines, and the accused given such other reasonable information as
26 may be requested by him.

27 * Sec. 4. AS 28.35.032(d) is amended to read:

28 (d) If the person who refuses to submit to the chemical test of
29 his breath authorized by AS 28.35.031, within two years previous to his

1 arrest, has been convicted in this or any other state of operating or
2 driving a motor vehicle while intoxicated, the period of suspension for
3 his license, nonresident privilege to drive, or denial of original
4 license shall be one year.

5 * Sec. 5. AS 28.35.032 is amended by adding a new subsection to read:

6 (f) If a person is arrested for a crime alleged to have been
7 committed by him while operating or driving a vehicle under the influ-
8 ence of intoxicating liquor and the crime is a homicide under AS 11.41.-
9 120(a)(1) or 11.41.130 or an assault under AS 11.41.210(a)(3) or 11.41.-
10 230(a)(1) or (2), a chemical test of his blood may be administered
11 without his consent if the taking of the blood sample occurs after or
12 substantially contemporaneously with his arrest and in a manner which
13 does not violate the constitutional rights of the accused.

14 * Sec. 6. AS 28.35.033(d) is amended to read:

15 (d) To be considered valid under the provisions of this section
16 the chemical analysis of the person's breath or blood shall have been
17 performed according to methods approved by the Department of Health and
18 Social Services. The Department of Health and Social Services is
19 authorized to approve satisfactory techniques, methods, and standards
20 of training necessary to ascertain the qualifications of individuals to
21 conduct the analysis. If it is established at trial that a chemical
22 analysis of breath or blood was performed according to approved methods
23 by a person trained according to techniques, methods and standards of
24 training approved by the Department of Health and Social Services,
25 there is a presumption that the test results are valid and further
26 foundation for introduction of the evidence is unnecessary.

27 * Sec. 7. AS 28.35 is amended by adding a new section to read:

28 Sec. 28.35.035. PERSONS INCAPABLE OF REFUSING OR TAKING TESTS. A
29 person who is unconscious or otherwise in a condition rendering him

1 incapable of refusing a chemical test of breath is considered not to
2 have withdrawn the consent furnished under AS 28.35.031 if lawfully
3 arrested for an offense arising out of acts alleged to have been com-
4 mitted while the person was operating the vehicle under the influence
5 of intoxicating liquor, and a chemical test of the breath may be admin-
6 istered. A person who is in a condition rendering him incapable of
7 being administered a chemical test of his breath may be administered a
8 chemical test of his blood without his consent if lawfully arrested ~~for~~
9 an offense arising out of acts alleged to have been committed while the
10 person was operating a vehicle under the influence of intoxicating
11 liquor.

12 * Sec. 8. AS 28.35.260(a) is amended by adding a new paragraph to read:

13 (19) "chemical test" means a test administered to determine
14 the amount of alcohol in a person's blood.

Original sponsor: Meekins

Offered: 3/8/82
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 438 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act revising laws relating to revocation of drivers'
7 licenses for certain offenses, including driving while
8 intoxicated, and for refusal to take a chemical breath
9 test for alcohol, and revising the driving while intoxi-
10 cated law, and specifying procedures for chemical tests
11 of blood for alcohol."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 * Section 1. AS 09.65.095(a) is amended to read:

14 (a) No civil or criminal action arising out of battery may be
15 brought against a health care provider for the act of taking a blood
16 sample if the sample is taken

17 (1) at the request of a police officer under the circum-
18 stances specified in AS 28.35.032 or 28.35.035 when a chemical test of
19 blood may be administered without a person's consent or when the arrest-
20 ing officer has a search warrant or court order authorizing the taking
21 of the blood sample; and

22 (2) without the use of excessive or unreasonable force.

23 * Sec. 2. AS 12.30.020(b) is amended by adding a new paragraph to read:

24 (7) require the person to surrender his driver's license to
25 the peace officer or to the court for a specified period of hours in
26 order to enable the arrested person to become sufficiently sober to
27 operate a motor vehicle, if the person is charged with an offense involv-
28 ing driving while intoxicated; however, if the judicial officer finds
29 probable cause to believe that the person has been convicted of an

1 offense involving driving while intoxicated within the three years
2 before his appearance, the judicial officer shall order the license held
3 by the officer or the court until the conclusion of the case charged,
4 and shall order the person not to operate any motor vehicle.

5 * Sec. 3. AS 12.30.020 is amended by adding new subsections to read:

6 (i) A person who is required to surrender his driver's license
7 under (b)(7) of this section may move the court at his next court ap-
8 pearance to review that requirement.

9 (j) "Danger to other persons and the community", as used in this
10 section, includes danger that may result from offenses against the
11 person, offenses against property, offenses against public order, and
12 offenses relating to operation of aircraft or a motor vehicle, as de-
13 fined by AS 28.35.260(a)(7).

14 * Sec. 4. AS 28.15.181 is repealed and reenacted to read:

15 Sec. 28.15.181. COURT REVOCATIONS AND LIMITATIONS. (a) The
16 following are grounds for the immediate revocation of an operator's or
17 driver's license or a nonresident privilege to drive:

18 (1) conviction of a crime under AS 11.41.100 - 11.41.250 if
19 the crime was committed while operating or driving a motor vehicle;

20 (2) a felony in the commission of which the person convicted
21 was operating or driving a motor vehicle;

22 (3) failure to stop and give aid as required under the laws
23 of this state when a motor vehicle accident results in the death or
24 personal injury of another;

25 (4) perjury or committing the crime of unsworn falsification
26 under a law relating to motor vehicles;

27 (5) operating or driving a motor vehicle while intoxicated;

28 (6) reckless driving; or

29 (7) using a motor vehicle in unlawful flight to avoid arrest

1 by a peace officer.

2 (b) A court convicting a person of an offense under (a) of this
3 section shall revoke that person's driver's license or nonresident
4 privilege to drive or shall order the denial of issuance of a driver's
5 license or permit for a period of not less than 30 days nor more than 10
6 years, except as provided in (c) and (d) of this section.

7 (c) If the person was convicted of an offense under (a) of this
8 section within five years previous to the present offense, the court
9 shall order revocation or denial of issuance of a license or permit for
10 a period of not less than one year, except as provided in (d) of this
11 section.

12 (d) If the person was convicted of an offense under (a) of this
13 section within one year previous to the present offense or if the person
14 was convicted of two or more of these offenses within the five years
15 previous to the present offense, the court shall order revocation or
16 denial of issuance of a license or a permit for not less than three
17 years.

18 (e) If the person has no prior convictions under (a) of this
19 section within five years previous to the present offense, the court
20 may, after the license has been revoked or issuance denied, issue a
21 certificate of limited driving privilege to him. The certificate may
22 restrict the person to operation of a motor vehicle only at certain
23 times, on certain days, and on certain highways and vehicular ways or
24 areas. The court may not issue a certificate of limited driving privi-
25 leges under this section unless it finds, by a preponderance of the
26 evidence, that the person's ability to earn a livelihood would be
27 severely impaired or that the availability of presently necessary health
28 care to the person or a member of his immediate family would be severely
29 impaired. If the court issues a certificate of limited driving privi-

1 leges, the revocation or denial period and the period of certification
2 shall be for not less than 60 days. Any certificate of limited driving
3 privileges may, for good cause, be cancelled by the issuing court during
4 the revocation or denial period.

5 (f) A court revoking or denying issuance of a license under (b),
6 (c), or (d) of this section shall consider a prior conviction for an
7 offense committed in another jurisdiction if that offense has elements
8 substantially identical to those of a comparable offense under (a) of
9 this section.

10 (g) A period of revocation imposed on a person by a court under
11 (a) of this section shall run consecutive to any other period of license
12 revocation or suspension imposed on that person by the court or by the
13 department.

14 * Sec. 5. AS 28.15.191(c) is amended to read:

15 (c) A court which [SUSPENDS,] revokes [,] or limits a driver's
16 license shall require the surrender of the license, and shall immediately
17 forward it to the department with the record of conviction and notifica-
18 tion of the effective date of the [SUSPENSION,] revocation or limitation
19 of driving privileges as determined under AS 28.15.181 and 28.15.211
20 [AS 28.15.211(b)].

21 * Sec. 6. AS 28.15.191(d) is repealed and reenacted to read:

22 (d) A court which issues a certificate of limited driving privi-
23 leges shall specify the period of 60 days or longer prescribed by AS 28-
24 15.181, and shall specify limitations on days, hours, routes, and pur-
25 poses of driving under the certificate. A copy of the certificate of
26 limited driving privileges shall be forwarded to the department imme-
27 diately.

28 * Sec. 7. AS 28.15.201 is amended by adding a new subsection to read:

29 (d) This section does not apply to cases in which the driver's

1 license or nonresident privilege to drive has been revoked or denial of
2 issuance of a driver's license has been ordered and a certificate of
3 limited driving privileges has been issued after revocation or denial
4 under AS 28.15.181.

5 * Sec. 8. AS 28.15.211 is repealed and reenacted to read:

6 Sec. 28.15.211. PERIODS OF SUSPENSION OR REVOCATION; OPPORTUNITY
7 FOR HEARING AND SURRENDER OF LICENSE. (a) Except for a point system
8 suspension or revocation under AS 28.15.221 - 28.15.261 and unless
9 provided otherwise by law, and unless the suspension or revocation was
10 for a cause which has been removed, a person whose driver's license or
11 privilege to drive a motor vehicle in this state has been suspended or
12 revoked may not apply for a new license nor may his driving privilege be
13 restored until the expiration of the period specified by the court or
14 the department in accordance with this title.

15 (b) A suspension or revocation of a driver's license imposed by a
16 court takes effect on the date of final judgment, except that if another
17 suspension or revocation of license is in effect on the date of final
18 judgment, the effective date of the last imposed suspension or revoca-
19 tion is at the end of the last day of the previous suspension or revoca-
20 tion.

21 (c) At the end of a period of suspension, the person whose license
22 has been suspended may apply to the department and, upon payment of the
23 proper fee, be issued a duplicate driver's license if he is otherwise
24 entitled to the license under this title.

25 (d) At the end of a period of revocation, a person whose driver's
26 license has been revoked may apply to the department for the issuance of
27 a new license, but shall submit to reexamination and pay all required
28 fees.

29 (e) At the end of a period of suspension or revocation under this

1 chapter, the department may not issue a driver's license or a duplicate
2 driver's license to the licensee until he has complied with AS 28.20
3 relating to proof of financial responsibility.

4 * Sec. 9. AS 28.35.030 is repealed and reenacted to read:

5 Sec. 28.35.030. DRIVING WHILE INTOXICATED. (a) A person commits
6 the crime of driving while intoxicated if he operates or drives a motor
7 vehicle

8 (1) while under the influence of intoxicating liquor,
9 depressant, hallucinogenic, stimulant, or narcotic drugs, as defined in
10 AS 17.10.230(13) and AS 17.12.150(3);

11 (2) when there is 0.10 percent or more by weight of alcohol
12 in his blood or 100 milligrams or more of alcohol per 100 milliliters of
13 his blood, or when there is 0.10 grams or more of alcohol per 210 liters
14 of his breath; or

15 (3) while he is under the combined influence of intoxicating
16 liquor and another substance.

17 (b) Driving while intoxicated is a class A misdemeanor, except
18 that the third or subsequent conviction under this section shall be a
19 class C felony and be punished according to (e) of this section.

20 (c) Upon the first conviction under this section, the court shall
21 impose a minimum sentence of imprisonment for not less than 120 consecu-
22 tive hours. Upon a subsequent offense within five years after a con-
23 viction under this section, except as provided in (d) and (e) of this
24 section, the court shall impose a minimum sentence of imprisonment of
25 not less than 20 consecutive days.

26 (d) Upon a subsequent offense within one year after a conviction
27 under this section, except as provided in (e) of this section, the court
28 shall impose a minimum sentence of imprisonment of not less than 60
29 consecutive days.

1 (e) Upon the third conviction under this section, regardless of
2 the period between convictions, the person shall be guilty of a class C
3 felony and the court shall impose a definite term of imprisonment of not
4 less than 120 consecutive days.

5 (f) The execution of sentence may not be suspended nor may proba-
6 tion be granted until the minimum imprisonment provided in this section
7 has been served. Imposition of sentence may not be suspended, except
8 upon the condition that the defendant be imprisoned for not less than
9 the minimum period provided in this section.

10 (g) A person convicted under this section shall have his operator's
11 license or nonresident privilege to drive revoked or shall be denied
12 issuance of a license, in accordance with AS 28.15.181. In addition, a
13 person convicted under this section shall undertake, for a term speci-
14 fied by the court, that program of alcohol education or rehabilitation
15 which the court, after consideration of any information compiled under
16 (j) of this section, finds appropriate.

17 (h) A court imposing a sentence of imprisonment under (c), (d), or
18 (e) of this section shall consider a prior out-of-state conviction for
19 operating or driving a motor vehicle while intoxicated if the prior
20 offense upon which the conviction is based would have been a violation
21 of this section if committed in this state.

22 (i) A person who is imprisoned for 120 consecutive hours upon a
23 first conviction under (c) of this section and who is not released from
24 imprisonment within 120 hours may not bring an action against the state
25 or a municipality or its agents, officers, or employees for damages
26 resulting from an additional period of confinement if

27 (1) the employee or employees who released the person exer-
28 cised due care and, in releasing the person, followed the standard re-
29 lease procedures of the prison facility; and

1 (2) the additional period of confinement did not exceed 12
2 hours.

3 (j) Except as prohibited by federal law or regulation, every
4 provider of treatment programs to which persons are ordered under (g) of
5 this section shall supply the Alaska court system with the information
6 regarding the condition and treatment of those persons as the supreme
7 court may require by rule. Information compiled under this subsection
8 is confidential and may only be used by a court in sentencing a person
9 convicted under (g) of this section, or by an officer of the court in
10 preparing a presentence report for the use of the court in sentencing
11 a person convicted under (g) of this section.

12 * Sec. 10. AS 28.35.032(a) is amended to read:

13 (a) If a person under arrest refuses the request of a law enforce-
14 ment officer to submit to a chemical test of his breath as provided in
15 AS 28.35.031, after being advised by the officer that his refusal will
16 result in the [SUSPENSION,] denial or revocation of his license or his
17 nonresident privilege to drive, [AND] that the refusal may be used
18 against him in a civil or criminal action or proceeding arising out of
19 an act alleged to have been committed by him while operating or driving
20 a motor vehicle while intoxicated [UNDER THE INFLUENCE OF INTOXICATING
21 LIQUOR], and that the refusal is a misdemeanor, a chemical test may
22 [SHALL NOT] be given in accordance with (i) of this section.

23 * Sec. 11. AS 28.35.032(b) is amended to read:

24 (b) Upon receipt of a sworn report of a law enforcement officer
25 that a person has refused to submit to a chemical breath test authorized
26 under AS 28.35.031, containing a statement of the circumstances sur-
27 rounding the arrest and the grounds upon which his belief was based that
28 the person was operating or driving a motor vehicle in violation of
29 AS 28.35.030, the Department of Public Safety, regardless of whether

1 a chemical test of blood has been subsequently administered to the
2 person, shall notify the person that his license or nonresident privi-
3 lege to drive or operate a motor vehicle in the state is revoked [OR
4 SUSPENDED], or that no original license or permit will be issued for
5 one year, except as provided in (d) of this section [THREE MONTHS]. In
6 the same notice the department shall inform the person that he may
7 initiate a proceeding in the district court to rescind the department's
8 action. The court proceeding shall be without jury and shall be limited
9 to the issues of whether

10 (1) the arresting officer had reasonable grounds to believe
11 the arrested person had been operating or driving a motor vehicle in the
12 state while intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR];

13 (2) the arrested person refused to submit to the breath test
14 upon request of the officer after being advised that his refusal would
15 result in the [SUSPENSION,] revocation [,] or denial of his license or
16 nonresident privilege to drive and that the refusal is a misdemeanor;

17 and

18 (3) the accused defendant was informed fairly of the nature
19 of the tests, the accuracy of the methods, machines, equipment involved,
20 the expertise of the person administering the tests, or operator of the
21 machines, and the accused given such other reasonable information as may
22 be requested by him.

23 * Sec. 12. AS 28.35.032(d) is amended to read:

24 (d) If the person who refuses to submit to the chemical test of
25 his breath authorized by AS 28.35.031, within two years previous to his
26 arrest, has been convicted in this or any other state of operating or
27 driving a motor vehicle while intoxicated, the period of revocation
28 [SUSPENSION] for his license, nonresident privilege to drive, or denial
29 of original license shall be two years [ONE YEAR].

1 * Sec. 13. AS 28.35.032(e) is amended to read:

2 (e) The refusal of a person to submit to a chemical test of his
3 breath under (a) of this section is admissible evidence in a civil or
4 criminal action or proceeding arising out of an act alleged to have been
5 committed by the person while operating or driving a motor vehicle while
6 intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR].

7 * Sec. 14. AS 28.35.032 is amended by adding new subsections to read:

8 (f) Refusal to submit to a chemical test of breath under (a) of
9 this section is a class B misdemeanor but it shall be a bar to prosecu-
10 tion for this offense if the person agrees and submits to a chemical
11 test of blood.

12 (g) Upon conviction of a person under (f) of this section, the
13 court shall impose a minimum sentence of imprisonment of not less than
14 72 consecutive hours. The sentence imposed by the court under this
15 subsection shall run consecutive to any other sentence of imprisonment
16 imposed on that person. The execution of sentence may not be suspended
17 nor may probation be granted until the minimum imprisonment provided in
18 this section has been served. Imposition of sentence may not be sus-
19 pended, except upon the condition that the defendant be imprisoned for
20 not less than the minimum period provided in this section.

21 (h) A person who is sentenced to imprisonment for 72 consecutive
22 hours under (g) of this section and who is not released from imprisonment
23 after 72 hours may not bring an action against the state or a municipal-
24 ity or its agents, officers, or employees for damages resulting from the
25 additional period of confinement if

26 (1) the employee or employees who released the person exer-
27 cised due care and, in releasing the person, followed the standard
28 release procedures of the prison facility; and

29 (2) the additional period of confinement did not exceed 12

1 hours.

2 (i) If a person is arrested for a crime alleged to have been
3 committed by him while operating or driving a motor vehicle while intox-
4 icated, a chemical test of his blood may be administered without his
5 consent.

6 * Sec. 15. AS 28.35.033(a) is amended to read:

7 (a) Upon the trial of a civil or criminal action or proceeding
8 arising out of acts alleged to have been committed by a person while
9 operating or driving a motor vehicle while intoxicated [UNDER THE INFLU-
10 ENCE OF INTOXICATING LIQUOR], the amount of alcohol in the person's
11 blood or breath at the time alleged shall give rise to the following
12 presumptions:

13 (1) If there was 0.05 percent or less by weight of alcohol in
14 the person's blood, or 50 milligrams or less of alcohol per 100 milli-
15 liters of his blood, or 0.05 grams or less of alcohol per 210 liters of
16 his breath, it shall be presumed that the person was not under the
17 influence of intoxicating liquor.

18 (2) If there was in excess of 0.05 percent but less than 0.10
19 percent by weight of alcohol in the person's blood, or in excess of 50
20 but less than 100 milligrams of alcohol per 100 milliliters of his
21 blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol
22 per 210 liters of his breath, that fact does not give rise to any pre-
23 sumption that the person was or was not under the influence of intoxicat-
24 ing liquor, but that fact may be considered with other competent evidence
25 in determining whether the person was under the influence of intoxicating
26 liquor.

27 (3) (repealed)

28 (4) If there was 0.10 percent or more by weight of alcohol
29 in the person's blood, or 100 milligrams or more of alcohol per 100 mil-

1 liliters of his blood, or 0.10 grams or more of alcohol per 210 liters
2 of his breath it shall be presumed that the person was under the influ-
3 ence of intoxicating liquor.

4 * Sec. 16. AS 28.35.033(b) is amended to read:

5 (b) For purposes of this chapter [SECTION], percent by weight of
6 alcohol in the blood shall be based upon milligrams of alcohol per 100
7 cubic centimeters of blood.

8 * Sec. 17. AS 28.35.033 is amended by adding a new subsection to read:

9 (g) To be considered valid under the provisions of this section
10 the chemical analysis of the person's blood shall be performed according
11 to recognized medical practices, and if it is established at trial that
12 a chemical analysis of blood was performed according to such methods
13 there is a presumption that the test results are valid and further
14 foundation for introduction of the evidence is unnecessary.

15 * Sec. 18. AS 28.35.034 is amended to read:

16 Sec. 28.35.034. PERIOD OF REVOCATION. A person whose license or
17 permit to operate or drive a motor vehicle has been [SUSPENDED OR]
18 revoked under the provisions of AS 28.35.032 shall surrender his license
19 or permit to the department on receipt of notice of the revocation.
20 Such a person is ineligible for an operator's license or permit for
21 one year [THREE MONTHS] following the date on which the license or
22 permit was received by the department, except that if AS 28.35.032(d)
23 applies, the period of ineligibility is two years [, UNLESS THE DISTRICT
24 COURT FINDS THAT EXTENUATING CIRCUMSTANCES EXIST WHICH WOULD CAUSE
25 EXTREME HARDSHIP, IN WHICH CASE THE SUSPENSION OR REVOCATION MAY BE
26 MODIFIED OR NULLIFIED]. After the [THREE MONTHS'] period of ineligi-
27 bility has expired the person may make application for a new license as
28 provided by law. During the period of ineligibility no certificate of
29 limited driving privileges may be issued and no court may order a modi-

1 fication or nullification of the revocation.

2 * Sec. 19. AS 28.35 is amended by adding a new section to read:

3 Sec. 28.35.035. PERSONS INCAPABLE OF REFUSING OR TAKING TESTS. A
4 person who is unconscious or otherwise in a condition rendering him
5 incapable of refusing a chemical test of breath, if arrested for an
6 offense arising out of acts alleged to have been committed while the
7 person was operating or driving a motor vehicle while intoxicated, is
8 nonetheless subject to a chemical test of his blood.

9 * Sec. 20. AS 28.35.260(a) is amended by adding a new paragraph to read:

10 (19) "chemical test" means a test administered to determine
11 the amount of alcohol in a person's breath or blood.

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COMMITTEE REPORT
HOUSE

11:16 3/8
Finance

4/10/81

FURTHER:

(7)

Date:

Apr 4, 82

Mr. Speaker:

The Committee on JUDICIARY has had SSHB 438

"An Act relating to the administration of chemical blood tests to persons arrested for certain offenses involving motor vehicles."

under consideration and reports it back as follows:

- do pass [] do not pass
- [] do pass with attached amendments(s)
- replace with CS for SSHB 438 (Judiciary) same title new title
- and recommends it do pass
- [] AND attaches a "Letter of Intent" New Fiscal Notes
- [] reports it back without recommendation
- [] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Meekins

[Signature]

Samora & Barnes

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Roll F. [Signature] No Rec.

Freeman No Rec

[Signature]
CHAIRMAN

Original sponsor: Meekins

Offered: 3/8/82
Referred: Finance

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 438 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act revising laws relating to revocation of drivers'
7 licenses for certain offenses, including driving while
8 intoxicated, and for refusal to take a chemical breath
9 test for alcohol, and revising the driving while intoxi-
10 cated law, and specifying procedures for chemical tests
11 of blood for alcohol."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 * Section 1. AS 09.65.095(a) is amended to read:

14 (a) No civil or criminal action arising out of battery may be
15 brought against a health care provider for the act of taking a blood
16 sample if the sample is taken

17 (1) at the request of a police officer under the circum-
18 stances specified in AS 28.35.032 or 28.35.035 when a chemical test of
19 blood may be administered without a person's consent or when the arrest-
20 ing officer has a search warrant or court order authorizing the taking
21 of the blood sample; and

22 (2) without the use of excessive or unreasonable force.

23 * Sec. 2. AS 12.30.020(b) is amended by adding a new paragraph to read:

24 (7) require the person to surrender his driver's license to
25 the peace officer or to the court for a specified period of hours in
26 order to enable the arrested person to become sufficiently sober to
27 operate a motor vehicle, if the person is charged with an offense involv-
28 ing driving while intoxicated; however, if the judicial officer finds
29 probable cause to believe that the person has been convicted of an

COMMITTEE COPY

Fiscal Notes

1 offense involving driving while intoxicated within the three years
2 before his appearance, the judicial officer shall order the license held
3 by the officer or the court until the conclusion of the case charged,
4 and shall order the person not to operate any motor vehicle.

5 * Sec. 3. AS 12.30.020 is amended by adding new subsections to read:

6 (i) A person who is required to surrender his driver's license
7 under (b)(7) of this section may move the court at his next court ap-
8 pearance to review that requirement.

9 (j) "Danger to other persons and the community", as used in this
10 section, includes danger that may result from offenses against the
11 person, offenses against property, offenses against public order, and
12 offenses relating to operation of aircraft or a motor vehicle, as de-
13 fined by AS 28.35.260(a)(7).

14 * Sec. 4. AS 28.15.181 is repealed and reenacted to read:

15 Sec. 28.15.181. COURT REVOCATIONS AND LIMITATIONS. (a) The
16 following are grounds for the immediate revocation of an operator's or
17 driver's license or a nonresident privilege to drive:

18 (1) conviction of a crime under AS 11.41.100 - 11.41.250 if
19 the crime was committed while operating or driving a motor vehicle;

20 (2) a felony in the commission of which the person convicted
21 was operating or driving a motor vehicle;

22 (3) failure to stop and give aid as required under the laws
23 of this state when a motor vehicle accident results in the death or
24 personal injury of another;

25 (4) perjury or committing the crime of unsworn falsification
26 under a law relating to motor vehicles;

27 (5) operating or driving a motor vehicle while intoxicated;

28 (6) reckless driving; or

29 (7) using a motor vehicle in unlawful flight to avoid arrest

1 by a peace officer.

2 (b) A court convicting a person of an offense under (a) of this
3 section shall revoke that person's driver's license or nonresident
4 privilege to drive or shall order the denial of issuance of a driver's
5 license or permit for a period of not less than 30 days nor more than 10
6 years, except as provided in (c) and (d) of this section.

7 (c) If the person was convicted of an offense under (a) of this
8 section within five years previous to the present offense, the court
9 shall order revocation or denial of issuance of a license or permit for
10 a period of not less than one year, except as provided in (d) of this
11 section.

12 (d) If the person was convicted of an offense under (a) of this
13 section within one year previous to the present offense or if the person
14 was convicted of two or more of these offenses within the five years
15 previous to the present offense, the court shall order revocation or
16 denial of issuance of a license or a permit for not less than three
17 years.

18 (e) If the person has no prior convictions under (a) of this
19 section within five years previous to the present offense, the court
20 may, after the license has been revoked or issuance denied, issue a
21 certificate of limited driving privileges to him. The certificate may
22 restrict the person to operation of a motor vehicle only at certain
23 times, on certain days, and on certain highways and vehicular ways or
24 areas. The court may not issue a certificate of limited driving privi-
25 leges under this section unless it finds, by a preponderance of the
26 evidence, that the person's ability to earn a livelihood would be
27 severely impaired or that the availability of presently necessary health
28 care to the person or a member of his immediate family would be severely
29 impaired. If the court issues a certificate of limited driving privi-

1 leges, the revocation or denial period and the period of certification
2 shall be for not less than 60 days. Any certificate of limited driving
3 privileges may, for good cause, be cancelled by the issuing court during
4 the revocation or denial period.

5 (f) A court revoking or denying issuance of a license under (b),
6 (c), or (d) of this section shall consider a prior conviction for an
7 offense committed in another jurisdiction if that offense has elements
8 substantially identical to those of a comparable offense under (a) of
9 this section.

10 (g) A period of revocation imposed on a person by a court under
11 (a) of this section shall run consecutive to any other period of license
12 revocation or suspension imposed on that person by the court or by the
13 department.

14 * Sec. 5. AS 28.15.191(c) is amended to read:

15 (c) A court which [SUSPENDS,] revokes [,] or limits a driver's
16 license shall require the surrender of the license, and shall immediately
17 forward it to the department with the record of conviction and notifica-
18 tion of the effective date of the [SUSPENSION,] revocation or limitation
19 of driving privileges as determined under AS 28.15.181 and 28.15.211
20 [AS 28.15.211(b)].

21 * Sec. 6. AS 28.15.191(d) is repealed and reenacted to read:

22 (d) A court which issues a certificate of limited driving privi-
23 leges shall specify the period of 60 days or longer prescribed by AS 28-
24 15.181, and shall specify limitations on days, hours, routes, and pur-
25 poses of driving under the certificate. A copy of the certificate of
26 limited driving privileges shall be forwarded to the department imme-
27 diately.

28 * Sec. 7. AS 28.15.201 is amended by adding a new subsection to read:

29 (d) This section does not apply to cases in which the driver's

1 license or nonresident privilege to drive has been revoked or denial of
2 issuance of a driver's license has been ordered and a certificate of
3 limited driving privileges has been issued after revocation or denial
4 under AS 28.15.181.

5 * Sec. 8. AS 28.15.211 is repealed and reenacted to read:

6 Sec. 28.15.211. PERIODS OF SUSPENSION OR REVOCATION; OPPORTUNITY
7 FOR HEARING AND SURRENDER OF LICENSE. (a) Except for a point system
8 suspension or revocation under AS 28.15.221 - 28.15.261 and unless
9 provided otherwise by law, and unless the suspension or revocation was
10 for a cause which has been removed, a person whose driver's license or
11 privilege to drive a motor vehicle in this state has been suspended or
12 revoked may not apply for a new license nor may his driving privilege be
13 restored until the expiration of the period specified by the court or
14 the department in accordance with this title.

15 (b) A suspension or revocation of a driver's license imposed by a
16 court takes effect on the date of final judgment, except that if another
17 suspension or revocation of license is in effect on the date of final
18 judgment, the effective date of the last imposed suspension or revoca-
19 tion is at the end of the last day of the previous suspension or revoca-
20 tion.

21 (c) At the end of a period of suspension, the person whose license
22 has been suspended may apply to the department and, upon payment of the
23 proper fee, be issued a duplicate driver's license if he is otherwise
24 entitled to the license under this title.

25 (d) At the end of a period of revocation, a person whose driver's
26 license has been revoked may apply to the department for the issuance of
27 a new license, but shall submit to reexamination and pay all required
28 fees.

29 (e) At the end of a period of suspension or revocation under this

1 chapter, the department may not issue a driver's license or a duplicate
2 driver's license to the licensee until he has complied with AS 28.20
3 relating to proof of financial responsibility.

4 * Sec. 9. AS 28.35.030 is repealed and reenacted to read:

5 Sec. 28.35.030. DRIVING WHILE INTOXICATED. (a) A person commits
6 the crime of driving while intoxicated if he operates or drives a motor
7 vehicle

8 (1) while under the influence of intoxicating liquor,
9 depressant, hallucinogenic, stimulant, or narcotic drugs, as defined in
10 AS 17.10.230(13) and AS 17.12.150(3);

11 (2) when there is 0.10 percent or more by weight of alcohol
12 in his blood or 100 milligrams or more of alcohol per 100 milliliters of
13 his blood, or when there is 0.10 grams or more of alcohol per 210 liters
14 of his breath; or

15 (3) while he is under the combined influence of intoxicating
16 liquor and another substance.

17 (b) Driving while intoxicated is a class A misdemeanor, except
18 that the third or subsequent conviction under this section shall be a
19 class C felony and be punished according to (e) of this section.

20 (c) Upon the first conviction under this section, the court shall
21 impose a minimum sentence of imprisonment for not less than 120 consecu-
22 tive hours. Upon a subsequent offense within five years after a con-
23 viction under this section, except as provided in (d) and (e) of this
24 section, the court shall impose a minimum sentence of imprisonment of
25 not less than 20 consecutive days.

26 (d) Upon a subsequent offense within one year after a conviction
27 under this section, except as provided in (e) of this section, the court
28 shall impose a minimum sentence of imprisonment of not less than 60
29 consecutive days.

1 (e) Upon the third conviction under this section, regardless of
2 the period between convictions, the person shall be guilty of a class C
3 felony and the court shall impose a definite term of imprisonment of not
4 less than 120 consecutive days.

5 (f) The execution of sentence may not be suspended nor may proba-
6 tion be granted until the minimum imprisonment provided in this section
7 has been served. Imposition of sentence may not be suspended, except
8 upon the condition that the defendant be imprisoned for not less than
9 the minimum period provided in this section.

10 (g) A person convicted under this section shall have his operator's
11 license or nonresident privilege to drive revoked or shall be denied
12 issuance of a license, in accordance with AS 28.15.181. In addition, a
13 person convicted under this section shall undertake, for a term speci-
14 fied by the court, that program of alcohol education or rehabilitation
15 which the court, after consideration of any information compiled under
16 (j) of this section, finds appropriate.

17 (h) A court imposing a sentence of imprisonment under (c), (d), or
18 (e) of this section shall consider a prior out-of-state conviction for
19 operating or driving a motor vehicle while intoxicated if the prior
20 offense upon which the conviction is based would have been a violation
21 of this section if committed in this state.

22 (i) A person who is imprisoned for 120 consecutive hours upon a
23 first conviction under (c) of this section and who is not released from
24 imprisonment within 120 hours may not bring an action against the state
25 or a municipality or its agents, officers, or employees for damages
26 resulting from an additional period of confinement if

27 (1) the employee or employees who released the person exer-
28 cised due care and, in releasing the person, followed the standard re-
29 lease procedures of the prison facility; and

1 (2) the additional period of confinement did not exceed 12
2 hours.

3 (j) Except as prohibited by federal law or regulation, every
4 provider of treatment programs to which persons are ordered under (g) of
5 this section shall supply the Alaska court system with the information
6 regarding the condition and treatment of those persons as the supreme
7 court may require by rule. Information compiled under this subsection
8 is confidential and may only be used by a court in sentencing a person
9 convicted under (g) of this section, or by an officer of the court in
10 preparing a presentence report for the use of the court in sentencing
11 a person convicted under (g) of this section.

12 * Sec. 10. AS 28.35.032(a) is amended to read:

13 (a) If a person under arrest refuses the request of a law enforce-
14 ment officer to submit to a chemical test of his breath as provided in
15 AS 28.35.031, after being advised by the officer that his refusal will
16 result in the [SUSPENSION,] denial or revocation of his license or his
17 nonresident privilege to drive, [AND] that the refusal may be used
18 against him in a civil or criminal action or proceeding arising out of
19 an act alleged to have been committed by him while operating or driving
20 a motor vehicle while intoxicated [UNDER THE INFLUENCE OF INTOXICATING
21 LIQUOR], and that the refusal is a misdemeanor, a chemical test may
22 [SHALL NOT] be given in accordance with (i) of this section.

23 * Sec. 11. AS 28.35.032(b) is amended to read:

24 (b) Upon receipt of a sworn report of a law enforcement officer
25 that a person has refused to submit to a chemical breath test authorized
26 under AS 28.35.031, containing a statement of the circumstances sur-
27 rounding the arrest and the grounds upon which his belief was based that
28 the person was operating or driving a motor vehicle in violation of
29 AS 28.35.030, the Department of Public Safety, regardless of whether

1 a chemical test of blood has been subsequently administered to the
2 person, shall notify the person that his license or nonresident privi-
3 lege to drive or operate a motor vehicle in the state is revoked [OR
4 SUSPENDED], or that no original license or permit will be issued for
5 one year, except as provided in (d) of this section [THREE MONTHS]. In
6 the same notice the department shall inform the person that he may
7 initiate a proceeding in the district court to rescind the department's
8 action. The court proceeding shall be without jury and shall be limited
9 to the issues of whether

10 (1) the arresting officer had reasonable grounds to believe
11 the arrested person had been operating or driving a motor vehicle in the
12 state while intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR];

13 (2) the arrested person refused to submit to the breath test
14 upon request of the officer after being advised that his refusal would
15 result in the [SUSPENSION,] revocation [,] or denial of his license or
16 nonresident privilege to drive and that the refusal is a misdemeanor;
17 and

18 (3) the accused defendant was informed fairly of the nature
19 of the tests, the accuracy of the methods, machines, equipment involved,
20 the expertise of the person administering the tests, or operator of the
21 machines, and the accused given such other reasonable information as may
22 be requested by him.

23 * Sec. 12. AS 28.35.032(d) is amended to read:

24 (d) If the person who refuses to submit to the chemical test of
25 his breath authorized by AS 28.35.031, within two years previous to his
26 arrest, has been convicted in this or any other state of operating or
27 driving a motor vehicle while intoxicated, the period of revocation
28 [SUSPENSION] for his license, nonresident privilege to drive, or denial
29 of original license shall be two years [ONE YEAR].

1 * Sec. 13. AS 28.35.032(e) is amended to read:

2 (e) The refusal of a person to submit to a chemical test of his
3 breath under (a) of this section is admissible evidence in a civil or
4 criminal action or proceeding arising out of an act alleged to have been
5 committed by the person while operating or driving a motor vehicle while
6 intoxicated [UNDER THE INFLUENCE OF INTOXICATING LIQUOR].

7 * Sec. 14. AS 28.35.032 is amended by adding new subsections to read:

8 (f) Refusal to submit to a chemical test of breath under (a) of
9 this section is a class B misdemeanor but it shall be a bar to prosecu-
10 tion for this offense if the person agrees and submits to a chemical
11 test of blood.

12 (g) Upon conviction of a person under (f) of this section, the
13 court shall impose a minimum sentence of imprisonment of not less than
14 72 consecutive hours. The sentence imposed by the court under this
15 subsection shall run consecutive to any other sentence of imprisonment
16 imposed on that person. The execution of sentence may not be suspended
17 nor may probation be granted until the minimum imprisonment provided in
18 this section has been served. Imposition of sentence may not be sus-
19 pended, except upon the condition that the defendant be imprisoned for
20 not less than the minimum period provided in this section.

21 (h) A person who is sentenced to imprisonment for 72 consecutive
22 hours under (g) of this section and who is not released from imprisonment
23 after 72 hours may not bring an action against the state or a municipal-
24 ity or its agents, officers, or employees for damages resulting from the
25 additional period of confinement if

26 (1) the employee or employees who released the person exer-
27 cised due care and, in releasing the person, followed the standard
28 release procedures of the prison facility; and

29 (2) the additional period of confinement did not exceed 12

1 hours.

2 (i) If a person is arrested for a crime alleged to have been
3 committed by him while operating or driving a motor vehicle while intox-
4 icated, a chemical test of his blood may be administered without his
5 consent.

6 * Sec. 15. AS 28.35.033(a) is amended to read:

7 (a) Upon the trial of a civil or criminal action or proceeding
8 arising out of acts alleged to have been committed by a person while
9 operating or driving a motor vehicle while intoxicated [UNDER THE INFLU-
10 ENCE OF INTOXICATING LIQUOR], the amount of alcohol in the person's
11 blood or breath at the time alleged shall give rise to the following
12 presumptions:

13 (1) If there was 0.05 percent or less by weight of alcohol in
14 the person's blood, or 50 milligrams or less of alcohol per 100 milli-
15 liters of his blood, or 0.05 grams or less of alcohol per 210 liters of
16 his breath, it shall be presumed that the person was not under the
17 influence of intoxicating liquor.

18 (2) If there was in excess of 0.05 percent but less than 0.10
19 percent by weight of alcohol in the person's blood, or in excess of 50
20 but less than 100 milligrams of alcohol per 100 milliliters of his
21 blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol
22 per 210 liters of his breath, that fact does not give rise to any pre-
23 sumption that the person was or was not under the influence of intoxicat-
24 ing liquor, but that fact may be considered with other competent evidence
25 in determining whether the person was under the influence of intoxicating
26 liquor.

27 (3) (repealed)

28 (4) If there was 0.10 percent or more by weight of alcohol
29 in the person's blood, or 100 milligrams or more of alcohol per 100 mil-

1 liliters of his blood, or 0.10 grams or more of alcohol per 210 liters
2 of his breath it shall be presumed that the person was under the influ-
3 ence of intoxicating liquor.

4 * Sec. 16. AS 28.35.033(b) is amended to read:

5 (b) For purposes of this chapter [SECTION], percent by weight of
6 alcohol in the blood shall be based upon milligrams of alcohol per 100
7 cubic centimeters of blood.

8 * Sec. 17. AS 28.35.033 is amended by adding a new subsection to read:

9 (g) To be considered valid under the provisions of this section
10 the chemical analysis of the person's blood shall be performed according
11 to recognized medical practices, and if it is established at trial that
12 a chemical analysis of blood was performed according to such methods
13 there is a presumption that the test results are valid and further
14 foundation for introduction of the evidence is unnecessary.

15 * Sec. 18. AS 28.35.034 is amended to read:

16 Sec. 28.35.034. PERIOD OF REVOCATION. A person whose license or
17 permit to operate or drive a motor vehicle has been [SUSPENDED OR]
18 revoked under the provisions of AS 28.35.032 shall surrender his license
19 or permit to the department on receipt of notice of the revocation.
20 Such a person is ineligible for an operator's license or permit for
21 one year [THREE MONTHS] following the date on which the license or
22 permit was received by the department, except that if AS 28.35.032(d)
23 applies, the period of ineligibility is two years [, UNLESS THE DISTRICT
24 COURT FINDS THAT EXTENUATING CIRCUMSTANCES EXIST WHICH WOULD CAUSE
25 EXTREME HARDSHIP, IN WHICH CASE THE SUSPENSION OR REVOCATION MAY BE
26 MODIFIED OR NULLIFIED]. After the [THREE MONTHS'] period of ineli-
27 gibility has expired the person may make application for a new license as
28 provided by law. During the period of ineligibility no certificate of
29 limited driving privileges may be issued and no court may order a modi-

1 fication or nullification of the revocation.

2 * Sec. 19. AS 28.35 is amended by adding a new section to read:

3 Sec. 28.35.035. PERSONS INCAPABLE OF REFUSING OR TAKING TESTS. A
4 person who is unconscious or otherwise in a condition rendering him
5 incapable of refusing a chemical test of breath, if arrested for an
6 offense arising out of acts alleged to have been committed while the
7 person was operating or driving a motor vehicle while intoxicated, is
8 nonetheless subject to a chemical test of his blood.

9 * Sec. 20. AS 28.35.260(a) is amended by adding a new paragraph to read:

10 (19) "chemical test" means a test administered to determine
11 the amount of alcohol in a person's breath or blood.

Guthrie/Levy
12-1084

Introduced: 4/10/81
Referred: Judiciary

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IN THE HOUSE

BY MEEKINS

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 438

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the administration of chemical blood tests to persons arrested for certain offenses involving motor vehicles."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.65.095(a) is amended to read:

(a) No civil or criminal action arising out of battery may be brought against a health care provider for the act of taking a blood sample if the sample is taken

(1) at the request of a police officer under the circumstances specified in AS 28.35.032(a) or 28.35.035 when a chemical test of his blood may be administered without a person's consent or when the arresting officer has a search warrant or court order authorizing the taking of the blood sample; and

(2) without the use of excessive or unreasonable force.

* Sec. 2. AS 28.35.032(a) is amended to read:

(a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test of his breath as provided in AS 28.35.031, after being advised by the officer that his refusal will result in the suspension, denial or revocation of his license and that the refusal may be used against him in a civil or criminal action or proceeding arising out of an act alleged to have been committed by him while operating or driving a vehicle under the influence of intoxicating liquor, a chemical test may [SHALL] not be given except under (f) of this section.

COMMITTEE COPY

-1-

SSHB 438

1 * Sec. 3. AS 28.35.032(b) is amended to read:

2 (b) Upon receipt of a sworn report of a law enforcement officer
3 that a person has refused to submit to a chemical breath test authorized
4 under AS 28.35.031, containing a statement of the circumstances sur-
5 rounding the arrest and the grounds upon which his belief was based
6 that the person was operating or driving a motor vehicle in violation
7 of AS 28.35.030, the Department of Public Safety, regardless of whether
8 a chemical test of blood has been subsequently administered to the
9 person, shall notify the person that his license or nonresident privi-
10 lege to drive or operate a motor vehicle in the state is revoked or
11 suspended, or that no original license or permit will be issued for
12 three months. In the same notice the department shall inform the person
13 that he may initiate a proceeding in the district court to rescind the
14 department's action. The court proceeding shall be without jury and
15 shall be limited to the issues of whether

16 (1) the arresting officer had reasonable grounds to believe
17 the arrested person had been operating or driving a motor vehicle in
18 the state while under the influence of intoxicating liquor;

19 (2) the arrested person refused to submit to the breath test
20 upon request of the officer after being advised that his refusal would
21 result in the suspension, revocation, or denial of his license; and

22 (3) the accused defendant was informed fairly of the nature
23 of the tests, the accuracy of the methods, machines, equipment involved,
24 the expertise of the person administering the tests, or operator of the
25 machines, and the accused given such other reasonable information as
26 may be requested by him.

27 * Sec. 4. AS 28.35.032(d) is amended to read:

28 (d) If the person who ~~refuses~~ to submit to the chemical test of
29 his breath authorized by AS 28.35.031, within two years previous to his

1 arrest, has been convicted in this or any other state of operating or
2 driving a motor vehicle while intoxicated, the period of suspension for
3 his license, nonresident privilege to drive, or denial of original
4 license shall be one year.

5 * Sec. 5. AS 28.35.032 is amended by adding a new subsection to read:

6 (f) If a person is arrested for a crime alleged to have been
7 committed by him while operating or driving a vehicle under the influ-
8 ence of intoxicating liquor and the crime is a homicide under AS 11.41.-
9 120(a)(1) or 11.41.130 or an assault under AS 11.41.210(a)(3) or 11.41.-
10 230(a)(1) or (2), a chemical test of his blood may be administered
11 without his consent if the taking of the blood sample occurs after or
12 substantially contemporaneously with his arrest and in a manner which
13 does not violate the constitutional rights of the accused.

14 * Sec. 6. AS 28.35.033(d) is amended to read:

15 (d) To be considered valid under the provisions of this section
16 the chemical analysis of the person's breath or blood shall have been
17 performed according to methods approved by the Department of Health and
18 Social Services. The Department of Health and Social Services is
19 authorized to approve satisfactory techniques, methods, and standards
20 of training necessary to ascertain the qualifications of individuals to
21 conduct the analysis. If it is established at trial that a chemical
22 analysis of breath or blood was performed according to approved methods
23 by a person trained according to techniques, methods and standards of
24 training approved by the Department of Health and Social Services,
25 there is a presumption that the test results are valid and further
26 foundation for introduction of the evidence is unnecessary.

27 * Sec. 7. AS 28.35 is amended by adding a new section to read:

28 Sec. 28.35.035. PERSONS INCAPABLE OF REFUSING OR TAKING TESTS. A
29 person who is unconscious or otherwise in a condition rendering him

1 incapable of refusing a chemical test of breath is considered not to
2 have withdrawn the consent furnished under AS 28.35.031 if lawfully
3 arrested for an offense arising out of acts alleged to have been com-
4 mitted while the person was operating the vehicle under the influence
5 of intoxicating liquor, and a chemical test of the breath may be admin-
6 istered. A person who is in a condition rendering him incapable of
7 being administered a chemical test of his breath may be administered a
8 chemical test of his blood without his consent if lawfully arrested for
9 an offense arising out of acts alleged to have been committed while the
10 person was operating a vehicle under the influence of intoxicating
11 liquor.

12 * Sec. 3. AS 28.35.260(a) is amended by adding a new paragraph to read:

13 (19) "chemical test" means a test administered to determine
14 the amount of alcohol in a person's blood.
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1. REQUEST
 Bill/Resolution No. CSSSHB 438 No. 1
 Title _____
 Requested by Health & Social Services Date: 3/4/82

II. FISCAL DETAIL
 Agency Affected Health & Social Services
 Program Category Affected Public Health
 BRU, Program, Or Subprogram(s) Affected Laboratories
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

CSSSHB 438 implies no involvement by the Department of Health and Social Services in determining the methods of analysis for alcohol content in blood or the accuracy of the test results. Blood alcohol tests unless performed according to approved methods may not provide sufficient evidence for conviction.

IV. DATE March 4, 1982 PREPARED BY Harry J. Colvin, Ph.D
 AGENCY Health & Social Services
 PHONE 465-3077
 Original: Legislative Finance
 cc: Budget and Management

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSSSHB 438(Jud) No. 2. (Page 1 of 5)
Title "An Act revising laws relating to ...driving while intoxicated.."
Requested by House Judiciary Committee Date February 17, 1982

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Offender Confinement Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES			256.2	274.2	293.3	313.9
200 TRAVEL		.5	2.8	3.1	3.3	3.6
300 CONTRACTUAL		13.0	41.1	44.8	48.8	53.2
400 COMMODITIES		33.9	67.2	73.2	79.8	87.0
500 EQUIPMENT						
600 LAND & STRUCTURES		1794.0				
700 GRANTS, CLAIMS, ETC.		7.7	16.8	18.3	20.0	21.8
TOTAL	-0-	1849.1	384.1	413.6	445.2	479.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	1849.1	384.1	413.6	445.2	279.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	6	6	6	6
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

A. Enactment of this bill will have a significant fiscal impact on the Division of Adult Corrections. The major thrust of this proposed legislation is to lengthen the minimum sentences for persons convicted of driving while intoxicated. Amendments to the section of the statute addressing driving with a cancelled, suspended, or revoked license will result in a fiscal impact, also.

Minimum sentence length for first time drunk driving offenders is increased from 3 consecutive days to 120 consecutive hours. Second time drunk drivers will receive minimum sentences based on the time between their first and second offense. If the second offense is within one year of the first offense, the minimum sentence will increase from 10 consecutive days to 60 consecutive days. If the second offense occurs within five years, the minimum sentence will

IV. DATE February 19, 1982 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections

Original: Legislative Finance PHONE 465-3376

cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

FISCAL NOTE

CS for Sponsor Substitute for House Bill No. 438 (Judiciary) No. 2
Page 2 of 5

increase from 10 consecutive days to 20 consecutive days. The proposed statute does not address second offenses taking place after five years from the first offense, so it is assumed that these offenders would receive a minimum sentence of 120 consecutive hours. Upon a third conviction for driving while intoxicated, the minimum sentence would increase from 10 consecutive days to 120 consecutive days.

- B. The data used in estimating numbers of offenders for driving while intoxicated is from the master plan data base and current commitment cards. There were an estimated 18,000 admissions into the Alaska correctional system during 1981. The commitment cards give the offenses for which the persons were charged and average length of sentences. Estimates used in computing this fiscal note are as follows:
1. 21.7% of all admissions into state correctional centers are for driving while intoxicated.
 2. There are approximately 18,000 admissions per year into state correctional centers. This results in approximately 3,900 DWI admissions.
 3. Of the 18,000 admissions, approximately 45% are second admissions for the same offense. Subsequent admissions would include circumstances such as transfer to another state correctional center, readmission of a person who was previously released on his own recognizance or bail, etc. Therefore, there are approximately 55% unduplicated admissions for persons arrested for DWI. This results in 2,145 individual unduplicated cases per year.
 4. Approximately 75% of the DWI arrests are for first time offenders, 25% are repeat offenders. Therefore, there are 1,609 first time offenders and 536 repeat offenders annually for driving while intoxicated.
 5. First time offenders now serve an average of 55 hours in confinement. This is equal to approximately 10 person-years of confinement. Repeat offenders now serve an average of 206 hours in confinement. This is equal to approximately 12.6 person-years of confinement. Therefore, approximately 22.6 beds are currently occupied full time by DWI offenders.

C. Fiscal Impact if CS Sponsor Substitute for House Bill No. 438 (Judiciary) is enacted:

1. Assumptions
 - a. There will be no significant change in the length of time presentenced DWI offenders spend in confinement.
 - b. There will be no significant change in the number of persons arrested for first time DWI offences.
 - c. The number of repeat offenders will decline somewhat under the proposed legislation and will stabilize at approximately 75% of the present number of offenders (approximately 400 per year). Of the repeat offenders, it is estimated that 350 would be second offenders, the remaining 50 would be for third and subsequent offenses.

It is also estimated that of the 350 second offenders, 300 would be convicted for offenses at least one year after the first offense and 50 would be convicted for a second offense within one year of the first conviction.

d. Additional time served for convictions of traffic offenses while a person's driving license is suspended or revoked due to prior DWI offense is not amenable to accurate forecasting, but is assumed to result in a modest increase in confinement beds. However, due to the uncertainty in the deterrent effect percentage for repeat offenders, no additional beds are included in this fiscal note specifically for this section of the bill.

e. The average sentence length for offenders are estimated to be:

First offenders - 96 hours (120 hour minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day was considered applicable in all cases.)

Second offenders -

(1) Second offense after one year from first conviction - 15 days (20 days minimum sentence, no suspension, no probation until minimum sentence served. Good time of one day for three served was considered applicable in all cases.)

(2) Second offense within one year of first conviction - 45 days (60 days minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day for three served was considered applicable in all cases.)

Third/Subsequent offenders - 90 days (120 days minimum sentence, no suspension, no probation until minimum sentence is served. Good time of one day for three was considered applicable in all cases).

f. Additional beds required -

(1) $1,609 \text{ offenders} \times 96 \text{ Hours} \div 365 \div 24$ equals approximately 17.6 beds, less 10 beds now utilized by first offenders equals 7.6 new beds.

(2) Second offenders -

(a) Within one year -
 $50 \text{ offenders} \times 45 \text{ days} \div 365 = 6.2 \text{ beds}$

(b) After one year
 $300 \text{ offenders} \times 15 \text{ days} \div 365 = 12.3 \text{ beds}$

(c) Total beds = $6.2 + 12.3$ less 12.6 beds now utilized by second offenders = 5.9 new beds.

(3) Third/Subsequent offenders - $50 \text{ offenders} \times 90 \text{ days} \div 365 \text{ days} = \underline{12.3 \text{ new beds}}$.

(4) Therefore, it is estimated that 26 new beds will be needed in the state correctional system if this proposed legislation is enacted.

(5) A significant impact will be experienced during the first year that this law is in force. This will result in overcrowded conditions within the existing state facilities if a temporary alternative cannot be provided.

FISCAL NOTE

CS for Sponsor Substitute for Bill No. 438 (Judiciary)

Page 4 of 5

- g. No statistics are available regarding the number of persons who now refuse to take chemical breath tests. Therefore, no fiscal impact can be estimated for Sec. 28.35.032(g) which requires a consecutive 72 hour sentence for imprisonment for refusal to submit to a chemical test of breath.

D. Estimated Costs - If traditional incarceration methods are mandated or envisioned in the act. (These costs are displayed on page 1 of this fiscal note.)

1. Capital Expenditures

It would be anticipated that a 26 minimum to medium security beds would need to be constructed. Based on the fast track construction method utilized and cost per bed at the Palmer Addition, and considering one year of inflation at 15%, it is estimated that the cost will be \$69,000 per bed. Therefore, capital expenditures are estimated to be:

$$26 \times \$69,000 = \$1,794,000$$

It is assumed that the 26 beds identified would be incorporated into a new facility which would take into consideration the new bed needs resulting from legislation passed this session.

2. Operating Costs

a. Personal Services -

It is estimated that a total of 6 new Correctional Officer II positions would be needed to provide security and supervision for the additional inmates. It is noted that the identified positions would not include any support functions such as administration, food service, maintenance, or nursing.

Estimated cost for FY 1984 was computed using the 1982 negotiated salary schedule with 7% inflation added for all subsequent fiscal years.

b. All other expenditure Categories -

The continuation budget for Palmer Correctional Center was used as a basis for estimating operational costs, since it serves the approximate classification of inmates as would be served in the new facility. The figures were adjusted to reflect 26 inmates as compared to the 100 inmates budgeted for continuation of the existing Palmer Correctional Center. A 9% inflation factor was utilized for all fiscal years after FY 1983. Operational costs itemized for FY 1983 are for the additional food, clothing, and medical costs related to the increased inmate population.

c. No expenditures are shown for FY 1982, as it is assumed the new law would go into effect July 1, 1982.

FISCAL NOTE

CS for Sponsor Substitute for Bill No. 438 (Judiciary)

Page 5 of 5

- E. Estimate of Cost - If a Community Based Program oriented method of confinement is envisioned.

The additional bed requirement would be met through contracts with local agencies at approximately \$50.00 per bed per day.

Cost = 26 beds X \$50.00 per day X 365

FY 1983 =	\$474,500
FY 1984 =	517,200
FY 1985 =	563,800
FY 1986 =	614,500
FY 1987 =	669,800

9% inflation per year was used for fiscal years after 1983.

Advantages to this method of confinement are numerous. There is no Capital expenditure necessary. The contractor will provide alcohol abuse education programs. For persons with longer sentences, work release would be available, with earnings used partially to offset above identified costs, make restitution when indicated, support family, etc. The individuals would still be under supervision 24 hours per day, and in a closed setting while not on work release.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 438 No. 3
 Title Administration of Chemical Blood Tests
 Requested by House Judiciary Committee Date 2/9/82

II. FISCAL DETAIL
 Agency Affected Alaska Court System
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 2/11/82 PREPARED BY Richard P. Barrier
 AGENCY Alaska Court System
 PHONE 264-0545
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF CALIFORNIA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSSS HB 438 (Judiciary) No. 4
 Title Driving or Operating a Motor Vehicle While Intoxicated
 Requested by House Judiciary Committee Date 02-02-82

II. FISCAL DETAIL
 Agency Affected Law
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Prosecution
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill makes several significant amendments to the state laws pertaining to driving while intoxicated, including making it a class B misdemeanor to refuse a breathalyzer and authorizing the forcible taking of blood after a person refuses a breathalyzer. It can be expected that these and other provisions in the bill will result in additional appeals testing the constitutionality of these sections. Additionally, there is the distinct possibility that the number of guilty pleas for Driving While Intoxicated will decrease in view of the generally more severe penalties specified, and that with the corresponding increase in trials a need for additional attorney positions may arise. While this possibility is speculative and consequently no additional positions have been requested at this time, any legislative action diminishing the resources available to the department in FY 83, coupled with the enactment of this and other crime bills requiring a greater prosecution effort will severely hamper the department's overall ability to prosecute criminal offenses.

IV. DATE 02-03-82 PREPARED BY Dan Hickey, Chief Prosecutor
 AGENCY Department of Law
 PHONE 465-3429

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Sponsor Substitute for House Bill No. 438 No. 5

Title "An Act relating to....chemical blood tests...."

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Alaska State Troopers

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No Fiscal Impact.

IV. DATE February 2, 1982

PREPARED BY Francis C. Allan

AGENCY Department of Public Safety

Original: Legislative Finance

PHONE 264-5601

cc: Budget and Management

Prime Sponsor First Legislator Named

11-11 11 11

ALASKA STATE LEGISLATURE

TWELFTH. Legislature FIRST... Session

SPONSOR SUBSTITUTE FOR
HOUSE BILL..... NO. ...438.

By ...MEEKINS.....

"An Act relating to the administration of chemical blood tests to persons arrested for certain offenses involving motor vehicles."

Blood tests/persons arrested for certain offenses/motor vehicles

Introduced in the House ... 4/10., 19...81

HISTORY IN THE HOUSE

19	81	Read first time and referred to Committee on Judiciary										
Apr	10	Reported back with recommendation that										
		Read second time and										
		Read third time and										
		<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
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		Reconsideration										
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PASS	Effective Date											
Yeas	Yeas											
Nays	Nays											
Absent	Absent											
Excused	Excused											
		Reported correctly engrossed										
		Signed by Speaker										
		Sent to Senate										
CHIEF CLERK OF THE HOUSE												

HISTORY IN THE SENATE

19		Read first time and referred to Committee on										
		Reported back with recommendation that										
		Read second time and										
		Read third time and										
		<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
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PASS	Effective Date											
Yeas	Yeas											
Nays	Nays											
Absent	Absent											
Excused	Excused											
		Reported correctly engrossed										
		Signed by President										
		Returned to House										
SECRETARY OF THE SENATE												

HISTORY IN THE HOUSE

19		Received from Senate
		Concurred in Senate amendment thus adopting: VOTE
		Failed to concur in Senate amendment; asked Senate to recede VOTE
		Senate receded from amendment VOTE
		Senate failed to recede from amendment VOTE
		CC appointed by House
		CC appointed by Senate
		CC adopted by House VOTE
		CC adopted by Senate VOTE
		To enrolling Reported correctly enrolled Sent to Governor by Governor
		Filed with Lt. Governor
		Chapter No.