

H B
657

HOUSE

(5)

FURTHER: JUDICIARY

1/12/82

Date: 3/12

Mr. Speaker:

HEALTH, EDUCATION &
SOCIAL SERVICES

The Committee on _____ has had HB 657

"An Act making miscellaneous amendments to the statutes pertaining to the crime of driving while intoxicated; and providing for an effective date."

under consideration and (~~a majority of the committee~~) (~~the committee~~) reports it back with the following recommendations:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 657 same title
 new title

and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

D. Smith

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Paula...
no rec.
Long...

Paula...
CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST Proposed
 Bill/Resolution No. CS for House Bill No. 657 (HESS)
 Title "An Act relating to penalties for driving while intoxicated . . ."
 Requested by _____ Date January 29, 1982

II. FISCAL DETAIL
 Agency Affected Dept. of 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			1,487.0	1,591.1	1,702.4	1,821.6
200 TRAVEL		3.0	24.0	26.2	28.5	31.1
300 CONTRACTUAL		50.0	357.9	390.1	425.2	463.5
400 COMMODITIES		135.6	593.6	647.0	705.3	768.7
500 EQUIPMENT			30.0			
600 LAND & STRUCTURES		180.0				
700 GRANTS, CLAIMS, ETC.			142.3	155.1	169.1	184.3
TOTAL		15,368.6	2,634.8	2,809.5	3,030.5	3,269.2

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		15,368.6	2,634.8	2,809.5	3,030.5	3,269.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		-0-	64	64	64	64
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 tenfold (from 3 days to 30 days); second offenders sentences are increased eighteenfold (from 10 days to 180 days); and third time, and subsequent, offenders are increased from 10 days (minimum) to 5 years.

IV. DATE February 3, 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)

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 for House Bill No. 657 (HESS) 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 offenses.
 - c. The number of repeat offenders will decline significantly under the proposed legislation and will stabilize at approximately one-half of the present number of offenders (approximately 265 per year). Of the repeat offenders, it is estimated that 255 would be second offenders, the remaining 10 would be for third and subsequent offenses.
 - 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. The best guess for needs resulting from amending Section 28.15.291 is 10 beds.

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

First offenders - 22.5 days (30-day minimum sentence, no suspension, no probation until minimum sentence served. Good time of one day for three served was considered applicable in all cases).

Second/Subsequent offenders - 6 months (8 months average minimum sentence length, no suspension, no probation until minimum sentence served. Good time of one day for three served was considered applicable in all cases).

- f. Additional beds required

(1.) 1,609 offenders x 22.5 days ÷ 365 equals approximately 100 beds, less 10 beds now utilized by first offenders equals 90 new beds.

- (2.) Second/Subsequent Offenders

265 offenders x 6 months ÷ 12 equals approximately 132.5 beds, less 12.6 beds now utilized by second/subsequent offenders equals 120 new beds.

(3.) Driving offenses while license suspended or revoked is estimated to be 10 new beds (see d above).

(4.) Therefore, it is estimated that 220 new beds will be needed in the state correctional system if CS for House Bill No. 657 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.

D. Estimated Costs

1. Capital Expenditures

It would be anticipated that a 100-bed minimum security facility would be constructed in the Fairbanks area and a 120-bed minimum security facility would be constructed in the Anchorage area. 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:

$$220 \times \$69,000 = \$15,180,000.$$

2. Operating costs

a. Personal Services

It is estimated that a total of 64 new positions would be required to operate the two new facilities. The numbers of positions, by class specifications, are:

<u>No. of Positions</u>	<u>Class Title</u>
2	Superintendent
2	Assistant Superintendent
2	Administrative Officer I
2	Clerk III
2	Clerk II
10	Correctional Officer III
24	Correctional Officer II
4	Probation Officer II
4	Food Services Worker/Cook
10	Nurse
<u>2</u>	Maintenance Mechanic
64	

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 two new facilities. The figures were adjusted to reflect 220 inmates as compared to the 100 inmates budgeted for continuation of the existing Palmer Correctional Center. No area differential in costs between Fairbanks and Palmer was considered. A 9% inflation factor was utilized for all fiscal years after FY 1983.

It is estimated that a minimum of an additional 100 full time equivalent inmates would be incarcerated during FY 1983. Operational costs itemized for FY 1983 are for the additional food, clothing, and medical costs related to the increased inmate population.

Since medical costs are not budget in the Palmer Correctional Center component, \$500 per inmate was included in the cost estimate over and above the Palmer basic costs. This results in \$50,000 costs for FY 1983 and \$119,900 for FY 1984, with subsequent years increased by 9% per year for inflation.

POSITION PAPER

HOUSE BILL NO. 657

"An Act making miscellaneous amendments to the Statutes pertaining to the crime of driving while intoxicated, and providing for an effective date".

Although the primary concern of HB 657 is public safety, the department of Health and Social Services is highly supportive of the passage of this bill.

Driving while intoxicated is one of the most dangerous behaviors Alaskans undertake resulting in an annual financial cost estimated at \$22,532,000 related to death, injury, and property damage. Passage of HB 657 would clarify existing language to make the present statute more workable thus aiding in the prevention of this most serious offense.

The bill will have no workload or fiscal impact on the Department of Health and Social Services responsibilities.

Recommended By: Robert L. Cole
Robert L. Cole
Coordinator
Office of Alcoholism/
Drug Abuse

Date: 1/18/82

Approved By: Helen D. Beirne
for Helen D. Beirne
Commissioner
Dept. of Health &
Social Services

Date: 1/19/82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 657

Title An Act making miscellaneous amendments to the OMVI Statute

Requested by The Rules Committee by Request of Date 1/12/82
the Governor

II. FISCAL DETAIL

Agency Affected Health & Social Services

Program Category Affected Office of Alcoholism/Drug Abuse

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		-0-	-0-	-0-	-0-	-0-
200 TRAVEL		-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
400 COMMODITIES		-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.		-0-	-0-	-0-	-0-	-0-
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

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

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

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

IV. DATE January 15, 1892 PREPARED BY Robert L. Cole
AGENCY Office of Alcoholism/Drug Abuse
Original: Legislative Finance PHONE 586-6201
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

January 11, 1982

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making miscellaneous amendments to the statutes pertaining to the crime of driving while intoxicated.

The former crime of driving while under the influence of intoxicating liquor was redesignated as "driving while intoxicated," by ch. 129, SLA 1980. This bill makes the same redesignation in other statutes which refer to the same offense, in order to avoid any ambiguity in the reference.

Section 2 of the bill also resolves another possible ambiguity in existing law. It amends AS 28.35.032(a) to provide that the prohibition in the "implied consent" statute against administering other chemical tests after a person refuses to take a breathalyzer examination does not apply when the person is arrested for an assault or homicide committed while he was driving a motor vehicle.

The constitutionality of requiring a defendant to submit to a blood test incident to an arrest for an offense committed while driving while intoxicated has been recognized by the United States Supreme Court in Schmerber v. California, 384 U.S. 757 (1966), and by the Alaska Supreme Court in Leyland v. State, 535 P.2d 1043 (Alaska 1975). However, in the more recent opinion of Anchorage v. Gerber, 592 P.2d 1187 (Alaska 1979), the Alaska Supreme Court held that language in the implied consent law prohibited the administration of all tests once a breathalyzer had been refused after a person had been arrested for driving while intoxicated.

While the court in Gerber did not apply its holding to offenses outside AS 28, an extension of the holding in that case to homicide and assault offenses would have serious implications. When an intoxicated driver, for example,

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 657 (HESS)
Title "An Act relating to penalties for driving while intoxicated.."
Requested by House HESS Committee Date February 5, 1982

II. FISCAL DETAIL

Agency Affected Dept. of 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			1313.8	1405.7	1504.1	1609.4
200 TRAVEL		1.5	9.8	10.7	11.7	12.7
300 CONTRACTUAL		22.5	146.4	159.6	174.0	189.6
400 COMMODITIES		82.1	242.8	264.7	288.5	314.5
500 EQUIPMENT			15.0			
600 LAND & STRUCTURES		6210.0				
700 GRANTS, CLAIMS, ETC.		27.2	58.2	63.5	69.2	75.4
TOTAL		6343.3	1786.0	1904.2	2047.5	2201.6

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		6343.3	1786.0	1904.2	2047.5	2201.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	32	32	32	32
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 to 5 days; second offenders sentences are increased from 10 days to 90 days; and third time, and subsequent, offenders are increased from 10 days (minimum) to 5 years.

IV. DATE February 8, 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)

- 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 for House Bill No. 657 (HESS) 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 significantly under the proposed legislation and will stabilize at approximately 56% of the present number of offenders (approximately 300 per year). Of the repeat offenders, it is estimated that 290 would be second offenders, the remaining 10 would be for third and subsequent offenses.
 - 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 - 5 days (5 day minimum sentence, no suspension, no probation until minimum sentence is served).

Second offenders - 67.5 days (90 day minimum sentence length, 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 - 3.75 years (5 year 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).

- f. Additional beds required

(1.) 1,609 offenders x 5 days ÷ 365 equals approximately 22 beds, less 10 beds now utilized by first offenders equals 12 new beds.

(2.) Second offenders - 290 offenders X 67.5 days ÷ 365 equals approximately 53.6 beds, less 12.6 beds now utilized by second offenders equals 41 new-beds.

(3.) Third/Subsequent offenders - 10 offenders x 3.75 years equals 37.5 new beds.

(4.) Therefore, it is estimated that 90 new beds will be needed in the state correctional system if CS for House Bill No. 657 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.

D. Estimated Costs

1. Capital Expenditures

It would be anticipated that a 90 bed minimum to medium security facility would be constructed in the Anchorage area. 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:

$$90 \times \$69,000 = \$6,210,000.$$

2. Operating costs

a. Personal Services

It is estimated that a total of 32 new positions would be required to operate the two new facilities. The numbers of positions, by class specifications, are:

<u>No. of Positions</u>	<u>Class Title</u>
1	Superintendent
1	Assistant Superintendent
1	Administrative Officer I
1	Clerk III
1	Clerk II
5	Correctional Officer III
12	Correctional Officer II
2	Probation Officer II
2	Food Services Worker/Cook
5	Nurse
1	Maintenance Mechanic

32

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 90 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.

It is estimated that a minimum of an additional 45 full time equivalent inmates would be incarcerated during FY 1983. Operational costs itemized for FY 1983 are for the additional food, clothing, and medical costs related to the increased inmate population.

Since medical costs are not budget in the Palmer Correctional Center component, \$500 per inmate was included in the cost estimate over and above the Palmer basic costs. This results in \$22,500 costs for FY 1983 and \$45,000 for FY 1984, with subsequent years increased by 9% per year for inflation.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 29, 1982

SUBJECT: Penalties for driving while intoxicated
(CSHB 657)

TO: Representative Michael F. Beirne
Chairman, Health, Education and
Social Services Committee

FROM: Diane T. Colvin *DTC*
Legislative Counsel

Enclosed please find the committee substitute you requested increasing penalties for the offense of driving while intoxicated. We should like to point out that the bill, while defensible on policy grounds, is open to challenge on legal grounds. For example, the penalties, and in particular the consecutive penalties for multiple convictions, are subject to challenge as excessive, particularly since they exceed current penalties for the most violent, serious crimes and for habitual offenders as well.

In addition, the vehicle confiscation concept is vulnerable to challenge. As a general rule, forfeiture proceedings are disfavored by the law, and such statutes are strictly construed against the government. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980). The usual justification for confiscation and forfeiture, which applies in fish and game matters and in narcotics cases, is to prevent possible use of the property in further illegal acts. This purpose is not served here, since under the provisions of the bill the driver is confined to jail and his privilege to drive suspended -- he would be unable to use the vehicle in any event.

We point out these problems in the hope that the information will be of assistance to you in committee deliberations. If you wish further information, please do not hesitate to contact us.

DTC:ljb

Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 657
 Title "An Act...pertaining to driving while intoxicated..."
 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)						
POSITIONS	-0-	-0-	-0-	-0-	-0-	-0-

	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 is anticipated.

IV. DATE January 20, 1982

PREPARED BY Francis C. Allan
 AGENCY Department of Public Safety
 PHONE 269-5691

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

- 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 1991. 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 for House Bill No. 657 (HESS) 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 significantly under the proposed legislation and will stabilize at approximately 56% of the present number of offenders (approximately 300 per year). Of the repeat offenders, it is estimated that 290 would be second offenders, the remaining 10 would be for third and subsequent offenses.
 - a. 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 - 5 days (5 day minimum sentence, no suspension, no probation until minimum sentence is served).

Second offenders - 67.5 days (90 day minimum sentence length, 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 - 3.75 years (5 year 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).

- f. Additional beds required

- (1.) 1,609 offenders x 5 days ÷ 365 equals approximately 22 beds, less 10 beds now utilized by first offenders equals 12 new beds.
- (2.) Second offenders - 290 offenders X 67.5 days ÷ 365 equals approximately 53.6 beds, less 12.6 beds now utilized by second offenders equals 41 new-beds.
- (3.) Third/Subsequent offenders - 10 offenders x 3.75 years equals 37.5 new beds.
- (4.) Therefore, it is estimated that 90 new beds will be needed in the state correctional system if CS for House Bill No. 657 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.

D. Estimated Costs

1. Capital Expenditures

It would be anticipated that a 90 bed minimum to medium security facility would be constructed in the Anchorage area. 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:

$$90 \times \$69,000 = \$6,210,000.$$

2. Operating costs

a. Personal Services

It is estimated that a total of 32 new positions would be required to operate the two new facilities. The numbers of positions, by class specifications, are:

<u>No. of Positions</u>	<u>Class Title</u>
1	Superintendent
1	Assistant Superintendent
1	Administrative Officer I
1	Clerk III
1	Clerk II
5	Correctional Officer III
12	Correctional Officer II
2	Probation Officer II
2	Food Services Worker/Cook
5	Nurse
1	Maintenance Mechanic

32

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 90 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.

It is estimated that a minimum of an additional 45 full time equivalent inmates would be incarcerated during FY 1983. Operational costs itemized for FY 1983 are for the additional food, clothing, and medical costs related to the increased inmate population.

Since medical costs are not budget in the Palmer Correctional Center component, \$500 per inmate was included in the cost estimate over and above the Palmer basic costs. This results in \$22,500 costs for FY 1983 and \$45,000 for FY 1984, with subsequent years increased by 9% per year for inflation.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST Proposed
 Bill/Resolution No. CS for House Bill No. 657 (HESS)
 Title "An Act relating to penalties for driving while intoxicated . . ."
 Requested by _____ Date January 29, 1982

II. FISCAL DETAIL
 Agency Affected Dept. of 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			1,487.0	1,591.1	1,702.4	1,821.6
200 TRAVEL		3.0	24.0	26.2	28.5	31.1
300 CONTRACTUAL		50.0	357.9	390.1	425.2	463.5
400 COMMODITIES		135.6	593.6	647.0	705.3	768.7
500 EQUIPMENT			30.0			
600 LAND & STRUCTURES		5,180.0				
700 GRANTS, CLAIMS, ETC.			142.3	155.1	169.1	184.3
TOTAL		15,368.6	2,634.8	2,809.5	3,030.5	3,269.2

FUNDING (Thousands of Dollars)

GENERAL FUND		15,368.6	2,634.8	2,809.5	3,030.5	3,269.2
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		-0-	64	64	64	64
PART TIME						
TEMPORARY						

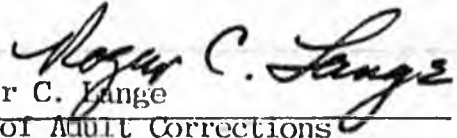
III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

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 tenfold (from 3 days to 30 days); second offenders sentences are increased eighteenfold (from 10 days to 180 days); and third time, and subsequent, offenders are increased from 10 days (minimum) to 5 years.

IV. DATE February 3, 1982


 PREPARED BY Roger C. Lange
 AGENCY Division of Adult Corrections
 PHONE 465-3376

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

FISCAL NOTE

CS for House Bill No. 657 (HESS)

Page 2

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 for House Bill No. 657 (HESS) 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 offenses.
 - c. The number of repeat offenders will decline significantly under the proposed legislation and will stabilize at approximately one-half of the present number of offenders (approximately 265 per year). Of the repeat offenders, it is estimated that 255 would be second offenders, the remaining 10 would be for third and subsequent offenses.
 - 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. The best guess for needs resulting from amending Section 28.15.291 is 10 beds.

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

First offenders - 22.5 days (30-day minimum sentence, no suspension, no probation until minimum sentence served. Good time of one day for three served was considered applicable in all cases).

Second/Subsequent offenders - 6 months (8 months average minimum sentence length, no suspension, no probation until minimum sentence served. Good time of one day for three served was considered applicable in all cases).

- f. Additional beds required

(1.) 1,609 offenders x 22.5 days ÷ 365 equals approximately 100 beds, less 10 beds now utilized by first offenders equals 90 new beds.

- (2.) Second/Subsequent Offenders

265 offenders x 6 months ÷ 12 equals approximately 132.5 beds, less 12.6 beds now utilized by second/subsequent offenders equals 120 new beds.

(3.) Driving offenses while license suspended or revoked is estimated to be 10 new beds (see d above).

(4.) Therefore, it is estimated that 220 new beds will be needed in the state correctional system if CS for House Bill No. 657 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.

D. Estimated Costs

1. Capital Expenditures

It would be anticipated that a 100-bed minimum security facility would be constructed in the Fairbanks area and a 120-bed minimum security facility would be constructed in the Anchorage area. 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:

$$220 \times \$69,000 = \$15,180,000.$$

2. Operating costs

a. Personal Services

It is estimated that a total of 64 new positions would be required to operate the two new facilities. The numbers of positions, by class specifications, are:

<u>No. of Positions</u>	<u>Class Title</u>
2	Superintendent
2	Assistant Superintendent
2	Administrative Officer I
2	Clerk III
2	Clerk II
10	Correctional Officer III
24	Correctional Officer II
4	Probation Officer II
4	Food Services Worker/Cook
10	Nurse
2	Maintenance Mechanic
<hr/>	
64	

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 two new facilities. The figures were adjusted to reflect 220 inmates as compared to the 100 inmates budgeted for continuation of the existing Palmer Correctional Center. No area differential in costs between Fairbanks and Palmer was considered. A 9% inflation factor was utilized for all fiscal years after FY 1983.

It is estimated that a minimum of an additional 100 full time equivalent inmates would be incarcerated during FY 1983. Operational costs itemized for FY 1983 are for the additional food, clothing, and medical costs related to the increased inmate population.

Since medical costs are not budget in the Palmer Correctional Center component, \$500 per inmate was included in the cost estimate over and above the Palmer basic costs. This results in \$50,000 costs for FY 1983 and \$119,900 for FY 1984, with subsequent years increased by 9% per year for inflation.



Official Business

Alaska State Legislature

House of Representatives

Committee on

Health, Education & Social Services

Pouch V
State Capitol
Juneau, Alaska 99811

February 4, 1982

The Honorable Joe Hayes
Speaker, House of Representatives
Pouch V
Juneau, Ak 99811

Dear Mr. Speaker:

The House Health, Education and Social Services Committee passed out CS HB 657 February 4, 1982. The original HB 657 had no projected fiscal impact. As amended, however, fiscal effects are involved. Due to this, the H.E.S.S. Committee requests that the House Finance Committee be added as the final committee of referral.

Sincerely,

Handwritten signature of Terry Martin in cursive script.

Rep. Terry Martin
Vice Chairman
House H.E.S.S.

REPRESENTATIVE SALLY SMITH
321 CHURCH STREET • FAIRBANKS, ALASKA 99701

POUCH V • JUNEAU, ALASKA 99811

Mike -

Attached is the
alcohol (drunk
driving bill) I
mentioned in
Committee. Hope
you may be willing
for a Conte intro.

Sally

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 9, 1981

SUBJECT: Penalties for driving while intoxicated
(Work Order No. 12-2044)

TO: Representative Sally Smith

FROM: Diane T. Colvin *DC*
Legislative Counsel

Enclosed please find the bill draft you requested increasing penalties for the offense of driving while intoxicated. The bill incorporates the proposals you submitted to us with certain exceptions. Some features were deleted or modified for legal reasons; these are discussed below.

1. Mandatory breathalyzer -- refusal constitutes a felony. We do not find a problem with making refusal to submit to a chemical test a separate crime. In fact, such a provision was enacted in Nebraska and withstood a court challenge. See State v. Manley, 202 N.W.2d 831 (1972).

It is questionable, however, to make refusal to submit to a test a felony. This would mean that refusal would carry a heavier penalty than conviction of the offense of drunk driving itself. The offender could argue that he was left with no choice but to submit; that the statute compelled him to take the test. Because of this, the statute could be challenged on Fifth Amendment grounds (privilege against self incrimination) and due process grounds.

Since such a challenge could likely succeed, we have drafted the bill making refusal to submit a misdemeanor. This would subject an offender to a possible penalty of one year imprisonment and a \$5,000 fine for the separate crime of refusing to submit. This should be sufficient to accomplish your purpose of decreasing the incidence of refusal, and yet not risk the potential legal problems discussed above.

2. Special license plates for persons convicted of driving while intoxicated. We have eliminated this proposal because it almost certainly would not withstand court challenge. A similar provision was struck down by the U.S. Supreme Court in Wisconsin v. Constantineau, 91 S.Ct. 507 (1971). The statute in question in that case, enacted in Wisconsin, allowed notices to be posted in retail liquor outlets forbidding sales or gifts of liquor to certain individuals. The Court held the act unconstitutional, finding that such a posting not only denied a person the ability to purchase alcohol but exposed a person to disgrace and public ridicule as well. The Court stated that before a state could impose such a stigma on a person, notice and an opportunity to be heard must be given.

This means that in order to issue special license plates, procedural due process requirements would have to be met. This would be administratively unwieldy, and difficult to draft as well, since standards would have to be developed to satisfy due process requirements.

In addition, the statute could still be challenged on equal protection grounds. The state would have to show why drunk drivers are more dangerous and deserve "marking" more than any other class of driver such as reckless drivers, negligent drivers, hit and run drivers or even inattentive drivers. This would be impossible to do.

For these reasons, we have not incorporated the special license plate proposal into the draft bill.

3. Confiscation of vehicle -- owner maintaining financial responsibility to lienholder. We have included the vehicle confiscation idea in the draft, although we would caution that it is certainly open to legal challenge. As a general rule, forfeiture proceedings are disfavored by the law, and such statutes are strictly construed against the government. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980). The usual justification for confiscation and forfeiture, which applies in fish and game matters and in narcotics cases, is to prevent possible use of the property in further illegal acts. This purpose is not served here, since under the proposed scheme the driver is confined to jail and his privilege to drive suspended -- he would be unable to use the vehicle in any event.

Representative Sally Smith

Page 3

December 9, 1981

Despite the potential problems, we have included a forfeiture procedure in the bill, based on present fish and game proceedings. We have not required the owner/driver to maintain financial responsibility -- this may be impossible in many cases with the owner confined to jail for lengthy periods of time. Rather, we have included the usual confiscation and forfeiture procedures, providing for an opportunity for a remission hearing in court, thus allowing an innocent lienholder opportunity to be reimbursed for its interest in a forfeited vehicle.

4. Accidents occurring while license suspended for drunk driving -- attempted murder charge. You indicated that a person involved in an accident during a period of license suspension for drunk driving should be charged with attempted murder, and if convicted, should be sentenced to twenty years imprisonment. We have not included this proposal because in order to be convicted of murder, either in the first degree or in the second degree, the person must act with intent. Intoxication could be used to show that the person could not have acted with the requisite intent.

However, the district attorney can now, if the necessary elements are present, charge a person involved in an accident with manslaughter or criminally negligent homicide. If convicted, the defendant would be sentenced under present statutory provisions (manslaughter is a class A felony; criminally negligent homicide is a class C felony).

Finally, we should caution that, in addition to the legal problems discussed above, any of the penalties and especially the consecutive penalties included in the draft bill are subject to challenge as excessive, particularly since they exceed current penalties for the most violent, serious crimes and for habitual offenders as well. We have included the penalties as suggested, however, in accordance with your request.

DTC:ljb

Enclosure

PROPOSED CS FOR HB 657 (HESS)

"An Act relating to penalties for driving while intoxicated"

Sec. 1 AS 28.15.181(b) amended

Proposed CS eliminates (a)(s)"driving or operating a motor vehicle while under the influence of alcohol or another drug" from the coverage of present section (b) scheme relating to court suspensions, revocations and limitations of driver's licenses.

SEC. 2 AS 28.15.181 "Court suspensions, revocations, and limitation" is amended by adding new subsection (c).

An individual convicted of DWI (a)(s) above shall have his driver's license revoked for at least 90 days on the first conviction; 2 years upon second conviction; and 5 years upon the third or subsequent conviction. No limited license privilege (ex. may drive to work, etc.) may be granted. No restoration of driving privileges until expiration of the revocation period.

SEC. 3 AS 28.15.291 amended

(a) Should an individual drive while his license is suspended from DWI charges, a minimum imprisonment penalty of 120 consecutive hours is imposed. If license was revoked for 5 years, minimum sentence shall be 5 years imprisonment.

(b) When a person's license is cancelled, limited, suspended, or revoked he shall be informed of the penalties for violating such; including the new DWI penalties when such is the violation.

SEC. 4 AS 28.35.030 (b) amended

(b) DWI is changed from a class A misdemeanor to a class A felony.

Sec. 5 AS 28.35.030(c) amended

Upon the first DWI conviction, minimum sentence shall be 30 consecutive days rather than 3. Second conviction- 180 days rather than 10. Upon a 3rd conviction- 5 years. Fourth or subsequent conviction- 5 years per conviction plus 5 years if last offense committed while license revoked. Alcohol education or rehabilitation shall be imposed by the court.

Sec. 6 AS 28.35.030 New subsection

(e) In DWI cases, motor vehicle may be seized. Upon conviction, such vehicle is forfeited to the state and shall be disposed of as the court directs. Unless the court orders such vehicle forfeited, it shall be returned to its owner after the case is complete, fines paid and sentence served.

(f) An encumbered motor vehicle is taken by the state subject to that encumbrance provided the secured party neither had knowledge nor consented to the offense.

Sec. 7 AS 28.35.032(a) Amended

(a) Officer must advise motorist refusing to submit to a chemical test of his breath that such refusal is a misdemeanor.

SEC. 8 AS 28.35.032 New subsection (a) refusal to submit to a chemical test is a Class A misdemeanor.