

**HB**

**359**

**HFIN**

**FILE**



# FISCAL NOTE

STATE OF ALASKA  
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 359(JUD)  
(H) Publish Date: 2/21/2008

Identifier (file name): HB359 Dept. Affected: None  
Title Probation & Minor Consuming RDU \_\_\_\_\_  
Component \_\_\_\_\_  
Sponsor House Judiciary Committee  
Requester House Judiciary Committee Component Number \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** *(Attach a separate page if necessary)*

Prepared by: Jane Pierson, Committee Aide Phone 907-465-4990  
Division House Judiciary Committee Date/Time 2/21/2008 at 8:50 AM  
Approved by: Representative Ramras Date 2/21/2008  
Chairman

# FISCAL NOTE

STATE OF ALASKA  
2008 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB 359(JUD) Correct.  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: Alaska Court System  
Title: Probation and Minor Consuming RDU: Trial Courts  
Component: Trial Courts  
Sponsor: House Judiciary Committee  
Requester: House Judiciary Committee Component Number: 768

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services	29.8	29.8	16.9	16.9	16.9	16.9	16.9	16.9
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>29.8</b>	<b>29.8</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	29.8	29.8	16.9	16.9	16.9	16.9	16.9	16.9
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>29.8</b>	<b>29.8</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>	<b>16.9</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

**ANALYSIS:** (Attach a separate page if necessary)

CSHB 359 allows those on probation for minor consuming and repeat minor consuming convictions to petition the court to have their probation lifted.

Although there are currently 3,500 people on probation who would come under the terms of this bill, this note assumes that the majority of those coming to court will be aged 17 and older. There are approximately 2,500 probationers in this category. Once the current backlog of offenders is dealt with, our statistics show an average of 1,400 new offenders moving into this age category each year.

Continued on page 2.

Prepared by: Doug Wooliver, Administrative Attorney for the Alaska Court System  
Division: Alaska Court System  
Approved by: Stephanie Colu, Administrative Director for the Alaska Court System

Phone: 907-463-4750  
Date/Time: 3/4/08 2:48 PM  
Date: 3/4/2008

**ANALYSIS CONTINUATION**

This note estimates that of the 2,500 probationers aged 17 and older who would fall under the terms of this bill in FY 09, and the 1,400 new probationers each year thereafter, 25% will petition the court to have their probation lifted. This means that CSHB 359(JUD) will result in 625 hearings in FY 09 and 350 hearings each year thereafter. This note further estimates that each hearing will last an average of 20 minutes.

This note reflects the additional judicial and clerical time necessary to handle these hearings.

3/13/08

adopted

AMENDMENT 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE HAWKER

TO: CS HB 359 ( ), Version 25-LS1377L

- 1 Page 2, line 11
- 2 After "AS 12.55.051;"
- 3 Insert "and"
- 4
- 5 Page 2, line 13
- 6 After "probation"
- 7 Delete "; and"
- 8 Insert ","
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- 10 Page 2, line 14-15
- 11 Delete "(5) continuance of the probation would interfere with the
- 12 rehabilitation and growth of the person."
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3/13/08 passed 5/3

25-LS1377L.4  
Luckhaupt  
3/10/08

AMENDMENT 2

OFFERED IN THE HOUSE

TO: CSHB 359( ), Draft Version "L"

Rep. Thomas  
+ Gara

1 Page 1, line 1, following "Act":

2 Insert "relating to the term of probation for persons convicted of minor  
3 consuming or in possession or control of alcohol or repeat minor consuming or in  
4 possession or control of alcohol; and"

5

6 Page 1, following line 4:

7 Insert new bill sections to read:

8 **\*\* Section 1.** AS 04.16.050(b) is amended to read:

9 (b) A person who violates (a) of this section and who has not been previously  
10 convicted or received a suspended imposition of sentence under (1) of this subsection  
11 is guilty of minor consuming or in possession or control. Upon conviction in the  
12 district court, the court

13 (1) may grant a suspended imposition of sentence under AS 12.55.085  
14 and place the person on probation for up to one year [OR UNTIL THE PERSON IS  
15 21 YEARS OF AGE, WHICHEVER IS LATER,] if the person has not been convicted  
16 of a violation of this section previously; among the conditions of probation, the court  
17 shall, with the consent of a community diversion panel, refer the person to the panel,  
18 and require the person to comply with conditions set by the panel, including  
19 counseling, education, treatment, community work, and payment of fees; in this  
20 paragraph, "community diversion panel" means a youth court or other group selected  
21 by the court to serve as a sentencing option for a person convicted under this section;  
22 or

23 (2) shall impose a fine of at least \$200 but not more than \$600, shall

1 require the person to attend alcohol information school if the school is available, and  
 2 shall place the person on probation for up to one year under (e) of this section; the  
 3 court may suspend a portion of the fine imposed under this paragraph that exceeds  
 4 \$200 if the person is required to pay for education or treatment required under (e) of  
 5 this section.

6 \* Sec. 2. AS 04.16.050(c) is amended to read:

7 (c) A person is guilty of repeat minor consuming or in possession or control if  
 8 the person was placed on probation under (b)(1) [(b)] of this section or has been  
 9 previously convicted once, and the person violates (a) of this section. Upon conviction  
 10 in the district court, the court shall

11 (1) impose a fine of \$1,000 and require at least 48 hours of community  
 12 work;

13 (2) revoke the person's driver's license for three months;

14 (3) take possession of the person's driver's license; and

15 (4) suspend up to \$500 of the fine and place the person on probation  
 16 for up to one year under (e) of this section.

17 \* Sec. 3. AS 04.16.050(d) is amended to read:

18 (d) A person is guilty of habitual minor consuming or in possession or control  
 19 if the person was placed on probation under (e) of this section, or has been previously  
 20 convicted twice, and the person violates (a) of this section. Habitual minor consuming  
 21 or in possession or control is a class B misdemeanor. Upon conviction, the court may  
 22 impose an appropriate period of imprisonment and fine and place the person on  
 23 probation under (e) of this section for one year, or until the person is 21 years of  
 24 age, whichever is later, and shall

25 (1) impose at least 96 hours of community work;

26 (2) revoke the person's driver's license for six months;

27 (3) within five working days, notify the agency responsible for the  
 28 administration of motor vehicle laws of the revocation; and

29 (4) take possession of the person's driver's license.

30 \* Sec. 4. AS 04.16.050(e) is amended to read:

31 (e) The court shall place a person sentenced under (b)(2) [(b)], (c), or (d) of

1 this section on probation for the appropriate period [ONE YEAR, OR UNTIL THE  
2 PERSON IS 21 YEARS OF AGE, WHICHEVER IS LATER]. The person may not  
3 refuse probation. The court may require the person to pay for and enroll in a juvenile  
4 alcohol safety action program, if one is available. The court shall impose the following  
5 conditions of probation:

6 (1) the person shall pay for and successfully complete any education or  
7 treatment recommended;

8 (2) the person may not consume inhalants or possess or consume  
9 controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

10 (3) the person shall timely complete any community work ordered, as  
11 provided in (f) of this section; and

12 (4) other conditions the court considers appropriate."  
13

14 Page 1, line 5:

15 Delete "Section 1"

16 Insert "Sec. 5"

17  
18 Page 1, lines 8 - 9:

19 Delete "(b) or (c) of this section"

20 Insert "those subsections"

*adopted  
3/5*

25-LS1377\L  
Luckhaupt  
2/22/08

**CS FOR HOUSE BILL NO. 359( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): HOUSE JUDICIARY COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to termination of probation for certain persons convicted of minor**  
2 **consuming or in possession or control of alcohol or repeat minor consuming or in**  
3 **possession or control of alcohol."**

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

5 **\* Section 1. AS 04.16.050 is amended by adding a new subsection to read:**

6 **(f) Notwithstanding (b), (c), and (e) of this section, a person sentenced under**  
7 **(b) or (c) of this section may make a motion to the court to terminate probation of that**  
8 **person before the end of the probationary period required under (b) or (c) of this**  
9 **section. The court may grant the motion if the court finds, by clear and convincing**  
10 **evidence, that**

11 **(1) the person completed any community work ordered under (f) of**  
12 **this section;**

13 **(2) the person has successfully completed any education or treatment**  
14 **program ordered by the court and, if required by the court, has either**

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(A) paid for the programs; or

(B) made a good faith effort to pay for the programs, agreed to have the debt reduced to a civil judgment, entered into a repayment plan with the provider or the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051;

(3) the person has either

(A) paid the fine; or

(B) made a good faith effort to pay the fine, agreed to have the remaining fine amount reduced to a civil judgment, entered into a plan with the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051;

(4) the person has substantially complied with the other conditions of probation; and

(5) continuance of the probation would interfere with the rehabilitation and growth of the person.

# 2007 HOUSE FINANCE COMMITTEE VOTE SHEET

DATE: 3/13/08

Amendment: 2 / 359

MEMBER

Favor

Oppose

THOMAS	X	
CRAWFORD	X	
<del>ROSE</del> HARRIS	X	
GARA	X	
HAWKER	X	
JOULE —		
KELLY		X
NELSON —		
STOLTZE —		
CHENAULT		X
MEYER		

Yea \_\_\_\_\_

Nay 3

# ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras  
Chairman  
(907) 465-3004

Fax: (907) 465-2070

Representative\_Jay\_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324  
Fairbanks, AK 99701



**Committee Members:**  
Representative Nancy Dahlstrom,  
Vice-Chairman  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

State Capitol, Room 120  
Juneau, Alaska 99801-1182

## Sponsor Statement HB 359

**“An Act relating to probation and the offense of a minor consuming or in possession or control of alcohol.”**

Joining the military is one of the best ways for young Alaskans to gain self-confidence, and learn respect and discipline; skills that will serve them well throughout their adult lives. Unfortunately, making the mistake of underage drinking can prevent a person from enlisting in the armed services, due to probation restrictions. Although being barred from military service seems to be the largest issue, some who are convicted of minor consuming also face issues when filling out college or job applications and even when crossing the border to participate in college sporting events.

Under current Alaska law the court is required to place a person convicted of minor consuming on probation for one year from the date of conviction, or until the person is 21 years of age, whichever is later. There is no authority under the minor consuming statute for termination or modification of probation. This is contrary to authority granted to the court under Title 12. Under AS 12.55.090(b), “the court may revoke or modify any condition of probation, or may change the period of probation”.

HB 359 would grant the courts similar authority to change the period of probation given under Title 12. By doing so, the courts would have the discretion to remove a person who has been convicted of minor consuming from probation, if the person has met the conditions of probation set forth by the court and the continuance of their probation would interfere with their rehabilitation or growth.

There are often good, young Alaskans who make mistakes. HB359 would offer those youth the opportunities to learn from their mistakes and work toward becoming stronger, more disciplined, law-abiding individuals.

ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE

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Chairman  
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Juneau, Alaska 99801-1182

**Proposed changes in HB 359 Version "L"**

**Section 1: AS 04.16.050**

**Page 1, lines 7-10:** change would remove petition language and replace it with motions to the court. This keeps the language consistent with what is used by the courts.

**Page 2, lines 12-15:** change would establish two distinct requirements, (4) and (5) where there was previously only one under subsection 4 in version "K".

ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE

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State Capitol, Room 120  
Juneau, Alaska 99801-1182

Changes in Judiciary CS for HB 359 (JUD)

**Title Change:** The title was narrowed to more specifically address probation relating to minor consuming statutes rather than probations as a whole.

**Section 1: AS 04.16.050**

**Page 1, lines 6 - 10:** more language was added which clarifies the process for termination of probation.

**Page 1, line 8:** section (b) was added to include probation under (b) (1) which does not fall under probation requirements set forth in (e).

**Page 1, line 11 thru page 2, line 13:** Provides specific requirements to be met before termination of probation may be granted by the court. This language was added at the request of Department of Law.

**Page 2, lines 1-4 & lines 7-10:** Language was added to require a person convicted of minor consuming to pay the remainder of their fine after their probation has been terminated. Without this language the fine would not be collectable once probation was terminated.



DEPARTMENTS OF THE ARMY AND THE AIR FORCE  
ALASKA ARMY NATIONAL GUARD ELEMENT, JOINT FORCES HEADQUARTERS  
PO BOX 5800  
FORT RICHARDSON AK 99505-0800

3/5/08

February 6, 2008

Office of the Commanding General

Rep. Jay Ramras  
State Capitol, Room 118  
Juneau, AK 99801-1182

Dear Rep. Ramras:

The Alaska Army National Guard is in support of allowing youth, who have made a mistake by drinking alcohol underage, to receive the leniency from the court system to join the Army, or any United States military service branch.

If a teenager receives a minor-consuming-alcohol conviction they are not eligible for enlistment in the armed services, due to their probation restriction until the age of 21. I would like to see the court system remove this probation term, if and only if, the teen presents a letter from a United States military recruiter stating that this is the only factor keeping the teen from joining the military.

We have good kids in Alaska who sometimes make mistakes. Joining the military gives young people a sense of confidence and discipline that will demand a respect for the law as adults.

Sincerely,

Thomas H. Katkus  
Brigadier General, AKARNG  
Commanding

3/5/08

**Sec. 04.16.050. Possession, control, or consumption by persons under the age of 21.**

(a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051 (b).

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for one year or until the person is 21 years of age, whichever is later, if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation under (c) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds \$200 if the person is required to pay for education or treatment required under (c) of this section.

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b) of this section or has been previously convicted, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of \$1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to \$500 of the fine and place the person on probation under (c) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (c) of this section and shall

- (1) impose at least 96 hours of community work;
- (2) revoke the person's driver's license for six months;
- (3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and
- (4) take possession of the person's driver's license.

(e) The court shall place a person sentenced under (b), (c), or (d) of this section on probation for one year, or until the person is 21 years of age, whichever is later. The person may not refuse probation. The court may require the person to pay for and enroll in a juvenile alcohol safety action program, if one is available. The court shall impose the following conditions of probation:

- (1) the person shall pay for and successfully complete any education or treatment recommended;
- (2) the person may not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);
- (3) the person shall timely complete any community work ordered, as provided in (f) of this section; and
- (4) other conditions the court considers appropriate.

(f) A person ordered to perform community work under this section shall perform the work within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, the court shall, within 30 days, schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program for a person placed on probation under (e) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. A person shall make a request for review within seven days after the recommendation and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to complete successfully any education or treatment recommended. If the court finds that the person has failed to perform community work as ordered, to submit to evaluation, or to complete successfully the education or treatment recommended, the court may impose the suspended fine, and may impose any period of suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this subsection shall notify the agency responsible for the administration of motor vehicle laws of the revocation within five working days.

(i) When considering the financial resources of a minor for purposes of determining eligibility for court-appointed counsel under this section, the court shall consider the resources of both the defendant and the defendant's parent or guardian, unless the court finds good cause to treat the defendant's or the defendant's parent's or guardian's resources as being unavailable to the defendant.

(j) A driver's license revocation under this section is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under another provision of law based on a prior conviction, adjudication of delinquency, or informal adjustment under AS 47.12.060 .

(k) In this section,

(1) "driver's license" has the meaning given in AS 28.90.990 ;

(2) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030 , 28.35.032, 28.35.280 - 28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.

**Sec. 12.55.090. Granting of probation.**

(a) Probation may be granted whether the crime is punishable by fine or imprisonment or both. If a crime is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

(b) The court may revoke or modify any condition of probation, or may change the period of probation.

(c) The period of probation, together with any extension, may not exceed

(1) 25 years for a felony sex offense; or

(2) 10 years for any other offense.