

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE

COMMITTEE FILES,

1993-1994

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SENATE CS FOR HOUSE BILL NO. 445(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to operating or driving a motor vehicle, commercial motor
2 vehicle, aircraft, or watercraft; to motor vehicle forfeiture; and providing for an
3 effective date."

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

5 * Section 1. AS 28.15.165(a) is amended to read:

6 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to
7 a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a
8 chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces
9 a result described in AS 28.35.030(a)(2); a chemical test administered under
10 AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person
11 refuses to submit to a chemical test authorized under AS 28.33.031(a) [AS 28.33.031]
12 or AS 28.35.031(a) or (g) [AS 28.35.032]. The notice must advise that

13 (1) the department intends to revoke the person's driver's license,
14 privilege to drive, or privilege to obtain a license, refuse to issue an original license

1 to the person, or disqualify the person;

2 (2) the person has the right to administrative review of the action taken
3 against the person's license or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident privilege to
5 drive, the notice itself is a temporary driver's license that expires seven days after it
6 is delivered to the person, except that if the person was operating a commercial motor
7 vehicle the person will be ordered out of service for 24 hours under AS 28.33.130;

8 (4) revocation of the person's driver's license, privilege to drive, or
9 privilege to obtain a license, a determination not to issue an original license, or a
10 disqualification of the person, takes effect seven days after delivery of the notice to the
11 person unless the person, within seven days, requests an administrative review.

12 * Sec. 2. AS 28.15.165(c) is amended to read:

13 (c) Unless the person has obtained a temporary permit or stay of a
14 departmental action under AS 28.15.166, if the chemical test administered under
15 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
16 AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized
17 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032], the
18 department shall revoke the person's license, privilege to drive, or privilege to obtain
19 a license, shall refuse to issue an original license, and, if the chemical test administered
20 under AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2) or the person
21 refused to submit to a chemical test authorized under AS 28.33.031(a)
22 [AS 28.33.031], shall disqualify the person. The department's action takes effect seven
23 days after delivery to the person of the notice required under (a) of this section, and
24 after receipt of a sworn report of a law enforcement officer

25 (1) that a chemical test administered under AS 28.33.031(a) or
26 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
27 chemical test administered under AS 28.33.031(a) produced a result described in
28 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
29 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032];

30 (2) that notice under (a) of this section was provided to the person; and

31 (3) describing the

1 (A) circumstances surrounding the arrest and the grounds for the
2 officer's belief that the person operated a motor vehicle, commercial motor
3 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or
4 AS 28.35.030; or

5 (B) grounds for the officer's belief that the person operated
6 a motor vehicle or commercial motor vehicle that was involved in an
7 accident causing death or serious physical injury to another person.

8 * Sec. 3. AS 28.15.166(g) is amended to read:

9 (g) The hearing for review of action by the department under AS 28.15.165
10 shall be limited to the issues of whether the law enforcement [ARRESTING] officer
11 had reasonable grounds to believe that the person was operating a motor vehicle or
12 commercial motor vehicle that was involved in an accident causing death or
13 serious physical injury to another person, or that the person was operating a
14 motor vehicle, commercial motor vehicle, or aircraft while intoxicated in violation of
15 AS 28.33.030 or AS 28.35.030 and whether

16 (1) the person refused to submit to a chemical test authorized under
17 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032] after being
18 advised that refusal would result in disqualification or the suspension, revocation, or
19 denial of the person's license, privilege to drive, or privilege to obtain a license, and
20 that the refusal is a misdemeanor;

21 (2) the chemical test administered [AUTHORIZED] under
22 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
23 AS 28.35.030(a)(2); or

24 (3) the chemical test administered [AUTHORIZED] under
25 AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2).

26 * Sec. 4. AS 28.15.181(a) is amended to read:

27 (a) Conviction of any of the following offenses is grounds for the immediate
28 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

29 (1) manslaughter or negligent homicide resulting from driving a motor
30 vehicle;

31 (2) a felony in the commission of which a motor vehicle is used;

1 (3) failure to stop and give aid as required by law when a motor
2 vehicle accident results in the death or personal injury of another;

3 (4) perjury or making a false affidavit or statement under oath to the
4 department under a law relating to motor vehicles;

5 (5) operating a motor vehicle or aircraft while intoxicated;

6 (6) reckless driving;

7 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
8 officer;

9 (8) refusal to submit to a chemical test authorized under
10 AS 28.33.031(a)(1), AS 28.35.031(a), or [AS 28.33.031 OR] AS 28.35.032 while
11 under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while
12 intoxicated, or as authorized under AS 28.33.031(a)(2) or AS 28.35.031(g);

13 (9) driving while license, privilege to drive, or privilege to obtain a
14 license, canceled, suspended, or revoked, or in violation of a limitation.

15 * Sec. 5. AS 28.33.031(a) is amended to read:

16 (a) A person who operates a commercial motor vehicle in this state is
17 considered to have given consent to a chemical test or tests

18 (1) of the person's breath if the person is lawfully arrested for an
19 offense arising out of acts alleged to have been committed when the person was
20 operating the commercial motor vehicle while intoxicated: the [. THE] test or tests
21 may be administered at the direction of a law enforcement officer who has reasonable
22 grounds to believe that the person was operating a commercial motor vehicle while
23 intoxicated in violation of AS 28.33.030 or AS 28.35.030;

24 (2) of the person's breath and blood for the purpose of determining
25 the alcoholic content of the person's breath and blood, and of the person's blood
26 and urine, for the purpose of determining the presence of controlled substances
27 in the person's blood and urine, if the person is involved in a motor vehicle
28 accident that causes death or serious physical injury to another person; the test
29 or tests may be administered at the direction of a law enforcement officer who
30 has reasonable grounds to believe that the person was operating a commercial
31 motor vehicle that was involved in an accident causing death or serious physical

1 injury to another person.

2 * Sec. 6. AS 28.33.190 is amended to read:

3 Sec. 28.33.190. DEFINITIONS. In this chapter [AS 28.33.100 - 28.33.190],

4 (1) "alcoholic beverage" has the meaning given in AS 04.21.080(b);

5 (2) "commercial motor vehicle" has the meaning given in
6 AS 28.40.100;

7 (3) "controlled substance" means any substance listed as being
8 controlled under AS 11.71 or 21 U.S.C. 812 - 813, or determined under federal
9 regulations to be controlled for purposes of 21 U.S.C. 801 - 813 (Controlled
10 Substances Act);

11 (4) "disqualification" means a withdrawal of the privilege to drive a
12 commercial motor vehicle;

13 (5) "disqualified" means that a person's privilege to drive a commercial
14 motor vehicle has been withdrawn;

15 (6) "drive a commercial motor vehicle" means to affect the movement,
16 attempt to affect the movement, or to be in actual physical control, of a commercial
17 motor vehicle in motion, excluding slight motion incidental to loading, unloading,
18 servicing, or inspecting the vehicle;

19 (7) "employer" means a person who

20 (A) provides compensation to a person who operates a
21 commercial motor vehicle, including wages or other remuneration, whether
22 through an employment relationship or by contract; or

23 (B) acts as an agent of someone who provides compensation to
24 a person who operates a commercial motor vehicle, with authority to allow,
25 require, permit, assign, or authorize the person being compensated to operate
26 a commercial motor vehicle;

27 (8) "hazardous substance" means a substance found by the United
28 States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 -
29 1813 (Hazardous Materials Transportation Act);

30 (9) "operating a commercial motor vehicle" means

31 (A) to drive a commercial motor vehicle; or

1 (B) whether or not the vehicle is in motion, or is capable of
2 being moved, to be in actual physical control, or to attempt to affect the
3 movement, of a commercial motor vehicle; and

4 (10) "serious traffic violation" means

5 (A) speeding 15 miles per hour or more above the posted limit;

6 (B) reckless or negligent driving, in violation of AS 28.35.040
7 or 28.35.045 or an ordinance with substantially similar elements;

8 (C) violation of a provision of this title, or a regulation adopted
9 under this title, relating to improper lane changes or following too closely, or
10 an ordinance with substantially similar elements; or

11 (D) violation of a law or ordinance relating to traffic control,
12 which was determined by the court by a preponderance of the evidence to have
13 been a factor in causing physical injury to a person.

14 * Sec. 7. AS 28.35.030(a) is amended to read:

15 (a) A person commits the crime of driving while intoxicated if the person
16 operates or drives a motor vehicle or operates an aircraft or a watercraft

17 (1) while under the influence of intoxicating liquor, or any controlled
18 substance;

19 (2) when, as determined by a chemical test taken within four hours
20 after the alleged offense was committed, there is 0.08 [0.10] percent or more by weight
21 of alcohol in the person's blood or 80 [100] milligrams or more of alcohol per 100
22 milliliters of blood, or when there is 0.08 [0.10] grams or more of alcohol per 210
23 liters of the person's breath; or

24 (3) while the person is under the combined influence of intoxicating
25 liquor and a controlled substance.

26 * Sec. 8. AS 28.35.031 is amended by adding a new subsection to read:

27 (g) A person who operates or drives a motor vehicle in this state shall be
28 considered to have given consent to a chemical test or tests of the person's breath and
29 blood for the purpose of determining the alcoholic content of the person's breath and
30 blood and shall be considered to have given consent to a chemical test or tests of the
31 person's blood and urine for the purpose of determining the presence of controlled

1 substances in the person's blood and urine if the person is involved in a motor vehicle
2 accident that causes death or serious physical injury to another person. The test or
3 tests may be administered at the direction of a law enforcement officer who has
4 reasonable grounds to believe that the person was operating or driving a motor vehicle
5 in this state that was involved in an accident causing death or serious physical injury
6 to another person.

7 * Sec. 9. AS 28.35.032(a) is amended to read:

8 (a) If a person under arrest for operating a motor vehicle or aircraft while
9 intoxicated refuses the request of a law enforcement officer to submit to a chemical
10 test authorized under AS 28.33.031(a)(1) [AS 28.33.031(a)] or AS 28.35.031(a), or
11 if a person involved in a motor vehicle accident that causes death or serious
12 physical injury to another person refuses the request of a law enforcement officer
13 to submit to a chemical test authorized under AS 28.33.031(a)(2) or
14 AS 28.35.031(g), after being advised by the officer that the refusal will [, IF THAT
15 PERSON WAS ARRESTED WHILE OPERATING A MOTOR VEHICLE OR
16 AIRCRAFT,] result in the denial or revocation of the driver's license, privilege to
17 drive, or privilege to obtain a license, that the refusal may be used against the person
18 in a civil or criminal action or proceeding arising out of an act alleged to have been
19 committed by the person while operating a motor vehicle or [, AN] aircraft [, OR A
20 WATERCRAFT] while intoxicated, and that the refusal is a crime, a chemical test may
21 not be given, except as provided by AS 28.35.035. If a person under arrest for
22 operating a watercraft while intoxicated refuses the request of a law enforcement
23 officer to submit to a chemical test authorized under AS 28.35.031(a), after being
24 advised by the officer that the refusal may be used against the person in a civil
25 or criminal action or proceeding arising out of an act alleged to have been
26 committed by the person while operating a watercraft while intoxicated, and that
27 the refusal is a crime, a chemical test may not be given, except as provided by
28 AS 28.35.035.

29 * Sec. 10. AS 28.35.032(e) is amended to read:

30 (e) The refusal of a person to submit to a chemical test authorized under
31 AS 28.33.031(a) or AS 28.35.031(a) or (g) [OF BREATH UNDER (a) OF THIS

1 SECTION] is admissible evidence in a civil or criminal action or proceeding arising
2 out of an act alleged to have been committed by the person while operating or driving
3 a motor vehicle or operating an aircraft or watercraft while intoxicated.

4 * Sec. 11. AS 28.35.032(f) is amended to read:

5 (f) Refusal to submit to a [THE] chemical test [OF BREATH] authorized by
6 AS 28.33.031(a) or AS 28.35.031(a) or (g) is a class A misdemeanor.

7 * Sec. 12. AS 28.35.032(j) is amended to read:

8 (j) For purposes of this section, convictions for operating or driving while
9 intoxicated under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a
10 chemical test [OF BREATH] under this section, i arising out of a single transaction
11 and a single arrest, are considered one previous conviction.

12 * Sec. 13. AS 28.35.033(a) is amended to read:

13 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
14 alleged to have been committed by a person while operating or driving a motor vehicle
15 or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the
16 person's blood or breath at the time alleged shall give rise to the following
17 presumptions:

18 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the
19 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
20 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
21 breath, it shall be presumed that the person was not under the influence of intoxicating
22 liquor.

23 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
24 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
25 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or
26 in excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters
27 of the person's breath, that fact does not give rise to any presumption that the person
28 was or was not under the influence of intoxicating liquor, but that fact may be
29 considered with other competent evidence in determining whether the person was
30 under the influence of intoxicating liquor.

31 (3) [REPEALED]

1 (4) If there was 0.08 [0.10] percent or more by weight of alcohol in
2 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the
3 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
4 breath, it shall be presumed that the person was under the influence of intoxicating
5 liquor.

6 * Sec. 14. AS 28.35.035(a) is amended to read:

7 (a) If a person is under arrest for an offense arising out of acts alleged to have
8 been committed while the person was operating a motor vehicle, aircraft, or watercraft
9 while intoxicated, and that arrest results from an accident that causes death or physical
10 injury to another person, a chemical test may be administered without the consent of
11 the person arrested to determine the amount of alcohol in that person's breath or blood
12 or to determine the presence of controlled substances in that person's blood and
13 urine.

14 * Sec. 15. AS 28.35.035(b) is amended to read:

15 (b) A person who is unconscious or otherwise in a condition rendering that
16 person incapable of refusal is considered not to have withdrawn the consent provided
17 under AS 28.33.031(a) or AS 28.35.031(a) or (g) and a chemical test may be
18 administered to determine the amount of alcohol in that person's breath or blood or
19 to determine the presence of controlled substances in that person's blood and
20 urine. A person who is unconscious or otherwise incapable of refusal need not be
21 placed under arrest before a chemical test may be administered.

22 * Sec. 16. AS 28.35 is amended by adding a new section to article 2 to read:

23 Sec. 28.35.039. DEFINITION FOR AS 28.35.029 - 28.35.039. In
24 AS 28.35.029 - 28.35.039, "controlled substance" has the meaning given in
25 AS 28.33.190.

26 * Sec. 17. AS 28.40.100(a) is amended by adding a new paragraph to read:

27 (24) "serious physical injury" has the meaning given in
28 AS 11.81.900(b).

29 * Sec. 18. AS 28.35.030(m)(1) is repealed.

30 * Sec. 19. REQUIRED STUDY AND REPORT. (a) The Department of Public Safety,
31 in conjunction with the Department of Law, the Department of Corrections, the Alaska Court

1 System, and the Alaska State Legislature, shall perform a comprehensive review of the
2 following issues by December 31, 1994:

3 (1) the means by which the mandatory forfeiture of vehicles used in the
4 commission of offenses related to driving while intoxicated may be implemented; and

5 (2) the means by which felony penalties may be applied to certain offenses
6 related to driving while intoxicated.

7 (b) The review required under (a) of this section shall consider the fiscal effect on the
8 state, deterrence of convicted and potential offenders, relevant policies of other governing
9 bodies, and potential funding sources. Also, the Department of Public Safety shall present a
10 report to the Nineteenth Alaska State Legislature that summarizes the conclusions of the
11 review described in this section and that recommends specific legislative action.

12 * Sec. 20. APPLICABILITY. The amendments made by this Act apply to offenses that
13 are committed on or after the effective date of this Act, except that references to previous
14 convictions include convictions occurring before, on, or after the effective date of this Act.

15 * Sec. 21. This Act takes effect July 1, 1994.

5-7-94
Dau S.
O



Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

TO: Senator Steve Frank, Co-Chair
 Senator Drue Pearce, Co-Chair
 Senate Finance Committee

FROM: David Skidmore, Staff Aide

RE: Comparison of Senate CS for HB 445 (Judiciary) and Senate CS
 for HB 445 (Finance) (version "O")

DATE: 6 May 1994

Version "O" differs from the Senate Judiciary CS in the following respects:

1. The provisions which defined an individual's third or subsequent DWI conviction as a felony offense are omitted.
2. References to "commercial motor vehicles" have been included in Sections 2 and 3 at the request of the Departments of Law and Public Safety.
3. A technical change to language has been made in Section 4 at the request of the Departments of Law and Public Safety.
4. The legal blood-alcohol limited is lowered from 0.10 to 0.08 in Sections 7 and 13.
5. The provisions which established a mandatory vehicle forfeiture procedure are removed.
6. The Department of Public Safety--in conjunction with other State entities--is directed in Section 19 to conduct a study and prepare a report on mandatory vehicle forfeiture and application of felony penalties to certain drunk driving offenses.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB 445 (JUD)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: DWI Laws BRU: Trial Courts
 Components: _____
 Sponsor: By request of the Governor
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 195	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	705.4	705.4	705.4	705.4	705.4	705.4
TRAVEL	35.0	35.0	35.0	35.0	35.0	35.0
CONTRACTUAL	222.1	222.1	222.1	222.1	222.1	222.1
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	22.3					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	988.9	964.6	964.6	964.6	964.6	964.6

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	988.9	964.6	964.6	964.6	964.6	964.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	988.9	964.6	964.6	964.6	964.6	964.6

POSITIONS

FULL-TIME	10.0	10.0	10.0	10.0	10.0	10.0
PART-TIME	4.0	4.0	4.0	4.0	4.0	4.0
TEMPORARY	4.0	4.0	4.0	4.0	4.0	4.0

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Agency: Alaska Court System Date: 04/29/94

Approved by: Arthur H. Snowden, III, Administrative Director *AS* *CSC* Date: 04/29/94
 Agency: Alaska Court System

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most economical way of increasing the availability of judges, since the court system only needs to pay a retired judge the difference between his or her retirement benefits and the salary of an active judge. However, the caseload increase made by SCS HB 445 (JUD) is so large that it cannot be met by existing pro tem resources; additional superior court judgeships will need to be added by the legislature. Because this bill does not create those judgeships, this note does not reflect such costs; instead, it reflects the lower cost of pro tem judges. This is misleading, in that the bill cannot be implemented without the addition of several superior court judgeships or the full-time reassignment of several judges handling civil cases, with the resulting massive slippage in the civil caseload.

This fiscal note estimates a trial rate of 20 percent. Note that each increase of five percent in the trial rate for this offense would require an additional full-time judge. Thus, it is possible that this note dramatically underestimates the actual costs of SCS HB 445 (JUD).

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB 445 (JUD)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: DWI Laws BRU: Trial Courts
 Components: _____
 Sponsor: By request of the Governor
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	705.4	705.4	705.4	705.4	705.4	705.4
TRAVEL	35.0	35.0	35.0	35.0	35.0	35.0
CONTRACTUAL	222.1	222.1	222.1	222.1	222.1	222.1
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	22.3					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	986.9	964.6	964.6	964.6	964.6	964.6

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	986.9	964.6	964.6	964.6	964.6	964.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	986.9	964.6	964.6	964.6	964.6	964.6

POSITIONS

FULL-TIME	10.0	10.0	10.0	10.0	10.0	10.0
PART-TIME	4.0	4.0	4.0	4.0	4.0	4.0
TEMPORARY	4.0	4.0	4.0	4.0	4.0	4.0

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Agency: Alaska Court System Date: 04/29/94
 Approved by: Arthur H. Snr. wden, III, Administrative Director *AS* Date: 04/29/94
 Agency: Alaska Court System

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ALASKA COURT SYSTEM
SCS HB 445 (JUD)
FISCAL ANALYSIS

SCS HB 445 (JUD) increases the penalty for three or more driving while intoxicated or refusing to submit to a chemical test convictions, from a class A misdemeanor to a class C felony. Three or more convictions will result in a minimum mandatory sentence of 360 days imprisonment.

The bill also extends existing vehicle forfeiture provisions for driving while intoxicated or refusing to submit to a chemical test, to make vehicle forfeiture mandatory upon a first conviction. A person having an ascertainable security interest in a forfeited vehicle, other than the person who committed the offense resulting in the forfeiture, would be permitted to seek remission of the forfeiture. A court hearing would be required. At the present time, the state rarely seeks vehicle forfeiture in DWI cases. SCS HB 445 (JUD) would require the state to seek forfeiture in 3000 cases per year. This note assumes that 10 percent of these cases will result in a remission hearing. Such hearings can be expected to take one-half day of judicial time.

At the present time, approximately 700 persons are charged and 650 persons are convicted each year for driving while intoxicated three or more times. Handling these as felony cases rather than misdemeanor cases will substantially increase the court costs associated with the offense. An average misdemeanor DWI trial can be expected to last two days, and is tried before a six member jury. A felony DWI trial can be expected to average five days in length, and would be tried before a 12 member jury. The extra time results in the more serious consequences of a felony conviction; attorneys for both sides spend more time on matters such as jury selection, examination of witnesses, and motion practice.

Because of the more serious consequences of a felony conviction, and because the mandatory minimum penalty is much longer than the current mandatory minimum for most third and subsequent DWI convictions, the trial rates can be expected to increase substantially. Because there is no prosecutorial discretion with respect to charge or recommended sentence as there is in most other felony cases, the trial rate for this crime will most likely equal or exceed the trial rate for more serious felonies with presumptive sentences. This note assumes that the trial rate will increase from approximately five percent to 20 percent.

Unlike misdemeanor cases, felony cases require presentment to a grand jury. SCS HB 445 (JUD) will increase the number of cases presented to grand juries each year by approximately 15 percent, with a corresponding increase in grand jury costs.

Fiscal notes for legislation which requires additional judicial time normally assume that retired judges will receive pro tem appointments to hear the new caseload. This is the

most economical way of increasing the availability of judges, since the court system only needs to pay a retired judge the difference between his or her retirement benefits and the salary of an active judge. However, the caseload increase made by SCS HB 445 (JUD) is so large that it cannot be met by existing pro tem resources; additional superior court judgeships will need to be added by the legislature. Because this bill does not create those judgeships, this note does not reflect such costs; instead, it reflects the lower cost of pro tem judges. This is misleading, in that the bill cannot be implemented without the addition of several superior court judgeships or the full-time reassignment of several judges handling civil cases, with the resulting massive slippage in the civil caseload.

This fiscal note estimates a trial rate of 20 percent. Note that each increase of five percent in the trial rate for this offense would require an additional full-time judge. Thus, it is possible that this note dramatically underestimates the actual costs of SCS HB 445 (JUD).

Alaska Court System
Fiscal Analysis
SCSHB 445 (JUD)

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, Anchorage, PFT, 12 months, 50% vested	\$48,300	\$30,370	\$78,670
Pro Tem Superior Court Judge, Anchorage, PFT, 12 months, 50% vested	48,300	30,370	78,670
Pro Tem Superior Court Judge, 1st District, PFT, 12 months, 50% vested	48,300	30,370	78,670
Pro Tem Superior Court Judge, 4th District, PFT, 12 months, 50% vested	48,300	30,370	78,670
In-Court Clerk, range 12A, Anchorage, PFT, 12 months	27,108	12,234	39,342
In-Court Clerk, range 12A, Anchorage, PFT, 12 months	27,108	12,234	39,342
In-Court Clerk, range 12A, 1st District, PFT, 12 months	27,108	12,234	39,342
In-Court Clerk, range 12A, 4th District, PFT, 12 months	30,780	13,200	43,980
Bailiffs, range 6A, all courts, NPP, 48 months, 4 positions	76,320	8,492	84,812
Law clerk, range 13D, Anchorage, PFT, 12 months	31,824	13,474	45,298
Law clerk, range 13D, Anchorage, PFT, 12 months	31,824	13,474	45,298
Secretary, range 12A, Anchorage, PFT, 12 months	27,108	12,234	39,342
Secretary, range 12A, Anchorage, PFT, 12 months	27,108	12,234	39,342
Court Clerk II, range 10A, Anchorage, PFT, 12 months	24,012	11,419	35,431
Court Clerk II, range 10A, Anchorage, PFT, 12 months	24,012	11,419	35,431
			<u>801,640</u>
			<u>(96,200)</u>
			<u>705,440</u>

New position costs

801,640

Personal services cost offset for existing judicial and clerical resources devoted to DWI misdemeanors

(96,200)

Net Personal Services

705,440

Travel

Judicial travel to outlying courts

35,000

Contractual

Petit jury fees for 140 felony trials (20% trial rate on 700 cases) of 5 days, 13 jurors at \$25 day

227,500

Grand jury fees. Estimated 15% increase in grand jury costs (using FY 93 costs of \$175,900)

26,385

Jury costs offset for fees paid in existing misdemeanor trials

(36,750)

Telephone, postage and other contractual costs related to new employees

5,000

Total contractual costs

222,135

Supplies

Estimated supply costs for new employees and from increased workload

2,000

Equipment (one-time cost)

Equipment for new permanent full-time positions

22,300

Total estimated cost

\$986,875

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB 445 (JUD) revised

Revision Date: 05/04/94 Dept. Affected: Alaska Court System
 Title: DWI Laws BRU: Trial Courts
 Components: _____
 Sponsor: By request of the Governor
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	947.9	947.9	947.9	947.9	947.9	947.9
TRAVEL	35.0	35.0	35.0	35.0	35.0	35.0
CONTRACTUAL	315.5	315.5	315.5	315.5	315.5	315.5
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	41.3					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	1,342.2	1,300.9	1,300.9	1,300.9	1,300.9	1,300.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,342.2	1,300.9	1,300.9	1,300.9	1,300.9	1,300.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	1,342.2	1,300.9	1,300.9	1,300.9	1,300.9	1,300.9


POSITIONS

FULL-TIME	15.0	15.0	15.0	15.0	15.0	15.0
PART-TIME	4.0	4.0	4.0	4.0	4.0	4.0
TEMPORARY	6.0	6.0	6.0	6.0	6.0	6.0

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264 228
 Agency: Alaska Court System Date: 05/04/94

Approved by: Arthur H. Snowden, II, Administrative Director 
 Agency: Alaska Court System Date: 05/04/94

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ALASKA COURT SYSTEM
SCS HB 445 (JUD)
FISCAL ANALYSIS

REVISED
5/4/94

SCS HB 445 (JUD) increases the penalty for three or more driving while intoxicated or refusing to submit to a chemical test convictions, from a class A misdemeanor to a class C felony. Three or more convictions will result in a minimum mandatory sentence of 360 days imprisonment.

The bill also extends existing vehicle forfeiture provisions for driving while intoxicated or refusing to submit to a chemical test, to make vehicle forfeiture mandatory upon a first conviction. A person having an ascertainable security interest in a forfeited vehicle, other than the person who committed the offense resulting in the forfeiture, would be permitted to seek remission of the forfeiture. A court hearing would be required. At the present time, the state rarely seeks vehicle forfeiture in DWI cases. SCS HB 445 (JUD) would require the state or municipalities to seek forfeiture in over 4000 cases per year. This note assumes that 10 percent of these cases will result in a remission hearing. Such hearings can be expected to take one-half day of judicial time. In addition, there are approximately 4400 persons charged with first or second offense DWI each year, either by the state or a municipality. The trial rate for these persons is approximately two percent. If the penalty is increased to include forfeiture of a vehicle, the trial rate will undoubtedly increase. This note assumes that the trial rate for first and second offenders will increase to six percent.

At the present time, approximately 700 persons are charged and 650 persons are convicted each year for driving while intoxicated three or more times. Handling these as felony cases rather than misdemeanor cases will substantially increase the court costs associated with the offense. An average misdemeanor DWI trial can be expected to last two days, and is tried before a six member jury. A felony DWI trial can be expected to average five days in length, and would be tried before a 12 member jury. The extra time results from the more serious consequences of a felony conviction; attorneys for both sides spend more time on matters such as jury selection, examination of witnesses, and motion practice.

Because of the more serious consequences of a felony conviction, and because the mandatory minimum penalty is much longer than the current mandatory minimum for most third and subsequent DWI convictions, the trial rates can be expected to increase substantially. Because there is no prosecutorial discretion with respect to charge or recommended sentence as there is in most other felony cases, the trial rate for this crime will most likely equal or exceed the trial rate for more serious felonies with presumptive sentences. This note assumes that the trial rate will increase from approximately five percent to 20 percent.

Unlike misdemeanor cases, felony cases require presentment to a grand jury. SCS HB

445 (JUD) will increase the number of cases presented to grand juries each year by approximately 15 percent, with a corresponding increase in grand jury costs.

Fiscal notes for legislation which requires additional judicial time normally assume that retired judges will receive pro tem appointments to hear the new caseload. This is the most economical way of increasing the availability of judges, since the court system only needs to pay a retired judge the difference between his or her retirement benefits and the salary of an active judge. However, the caseload increase made by SCS HB 445 (JUD) is so large that it cannot be met by existing pro tem resources; two additional district judgeships will need to be created by the supreme court, and additional superior court judgeships will need to be created by the legislature. This fiscal note reflects the cost of two new district judges. However, because SCS HB 445 (JUD) does not create new superior court judgeships, this note does not reflect such costs; instead, it reflects the lower cost of pro tem judges. This is misleading, in that the bill cannot be implemented without the addition of several superior court judgeships or the full-time reassignment of several judges handling civil cases, with the resulting massive slippage in the civil caseload.

This fiscal note estimates a felony trial rate of 20 percent. Note that each increase of five percent in the trial rate for this offense would require an additional full-time judge. Thus, it is possible that this note dramatically underestimates the actual costs of SCS HB 445 (JUD).

Alaska Court System
Fiscal Analysis
SCSHB 445 (JUD) revised

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, Anchorage, PFT, 12 months, 50% vested	\$48,300	\$30,370	\$78,670
Pro Tem Superior Court Judge, Anchorage, PFT, 12 months, 50% vested	48,300	30,370	78,670
Pro Tem Superior Court Judge, 1st District, PFT, 12 months, 50% vested	48,300	30,370	78,670
Pro Tem Superior Court Judge, 4th District, PFT, 12 months, 50% vested	48,300	30,370	78,670
2 District Court Judge, Anchorage, PFT, 12 months	81,888	46,422	128,310
In-Court Clerk, range 12A, Anchorage, PFT, 12 months (Superior)	27,108	12,234	39,342
In-Court Clerk, range 12A, Anchorage, PFT, 12 months (Superior)	27,108	12,234	39,342
In-Court Clerk, range 12A, 1st District, PFT, 12 months (Superior)	27,108	12,234	39,342
In-Court Clerk, range 12A, 4th District, PFT, 12 months (Superior)	30,780	13,200	43,980
2 In-Court Clerk, range 12A, Anchorage, PFT, 12 months (District remission hrs)	54,216	24,468	78,684
Balliffs, range 6A, all courts, NPP, 60 months, 6 positions	76,320	8,492	84,812
Law clerk, range 13D, Anchorage, PFT, 12 months (Superior)	31,824	13,474	45,298
Law clerk, range 13D, Anchorage, PFT, 12 months (Superior)	31,824	13,474	45,298
Secretary, range 12A, Anchorage, PFT, 12 months (Superior)	27,108	12,234	39,342
Secretary, range 12A, Anchorage, PFT, 12 months (Superior)	27,108	12,234	39,342
Court Clerk II, range 10A, Anchorage, PFT, 12 months	24,012	11,419	35,431
Court Clerk II, range 10A, Anchorage, PFT, 12 months	24,012	11,419	35,431
Court Clerk II, range 10A, Anchorage, PFT, 12 months	24,012	11,419	35,431

New position costs 1,044,065

Personal services cost offset for existing judicial and clerical resources devoted to DWI misdemeanors (86,200)

Net Personal Services 947,865

Travel

Judicial travel to outlying courts 35,000

Contractual

Petit jury fees for 140 felony trials (20% trial rate on 700 cases) of 5 days, 13 jurors at \$25 day	227,500
Grand Jury fees. Estimated 15% increase in grand jury costs (using FY 93 costs of \$175,900)	26,385
Jury costs offset for fees paid in existing 3rd DWI misdemeanor trials	(38,750)
Petit jury fees for 176 new misdemeanor trials (@ 6% trial rate) of 3 days, 7 jurors at \$25 day	92,400
Telephone, postage and other contractual costs related to new employees	6,000

Total contractual costs 315,535

Supplies

Estimated supply costs for new employees and from increased workload 2,500

Equipment (one-time cost)

Equipment for new permanent full-time positions 41,250

Total estimated cost \$1,342,150

#7

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCS HB 445 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to administrative or court
revocation of a driver's license...." BRU: Office of Public Advocacy
 Sponsor: Rules Committee Component: Office of Public Advocacy
 Requestor: (S) Jud COMPONENT SERIAL NO. 43

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Director
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Date: 5/2/94

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#6

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCS HB 445 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to operating or driving a motor vehicle, commercial motor vehicle, aircraft, or watercraft..." B.U.: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Senate Rules Committee
 Requestor: _____ COMPONENT SERIAL NO. 1631

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	377.7	389.0	400.7	412.7	425.1	437.9
TRAVEL	3.0	3.1	3.2	3.3	3.4	3.5
CONTRACTUAL	6.0	6.2	6.4	6.6	6.8	7.0
SUPPLIES	6.0	6.2	6.4	6.6	6.8	7.0
EQUIPMENT	9.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	401.7	404.5	416.7	429.2	442.1	455.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	401.7	404.5	416.7	429.2	442.1	455.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
Total	401.7	404.5	416.7	429.2	442.1	455.4

Estimate of current year (FY94) cost: \$ -0-

POSITIONS:

FULL-TIME	5	5	5	5	5	5
PART-TIME	2	2	2	2	2	2
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: John B. Salemi, Director
 Division: Public Defender Agency

Phone: 264-4400
 Date: _____

Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Date: 5/2/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCS HB 445 (Jud)

ANALYSIS:

The Committee Substitute makes a third DWI or refusal conviction a felony crime, with a mandatory year in jail. While the original bill's implied consent provision had negligible fiscal impact, this proposal would have a profound and immediate fiscal impact. Department of Motor Vehicle statistics indicate that in the last three years, such a change would have resulted in an increase of between 650 and 750 new felony charges per year. The increased seriousness of the charge and the consequent cost to defend assure the likelihood of Public Defender appointment. Felony charges are the most expensive and work intensive of Public Defender cases. With the possibility of a felony record and a mandatory year in prison, there is little likelihood of a plea to the charge. Trial preparation, investigation, independent chemical testing, possible accident reconstruction, expert testimony, and constitutional challenges as well as lengthy trials will be the likely consequence. National law enforcement standards require a minimum of four attorneys qualified to conduct felony litigation, as well as necessary support services.

Budget Analysis

100 Personal Services

2 - Attorney III - Anchorage	146.8
1 - Attorney III - Fairbanks	83.1
1 - Attorney III - Juneau	73.4
1 - Legal Secretary I - Anchorage	36.9
1/2 - Legal Secretary I - Fairbanks	19.1
1/2 - Legal Secretary I - Juneau	<u>18.4</u>
	377.7

200 Travel

Outer offices from Anchorage, Fairbanks, and Juneau	3.0
--	-----

300 Contractual

Office Space	6.0
--------------	-----

400 Supplies	6.0
--------------	-----

500 Equipment (one time)	<u>9.0</u>
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TOTAL	401.7
-------	-------

Position Title Attorney III		No. of Positions 4	Range / Step 22/A	Barg. Unit PX
Time Status PFT	Staff Months 48	Location EBA - JBA - AWA		Election District 50 - 60 - 3
TYPE OF EXPENDITURE		AMOUNT		
Salary		220,920		
Benefits		82,216		
Premium Pay				
Other				
Total Personal Services		303,136		
Travel		3,000		
Contractual		6,000		
Commodities		4,000		
Equipment		6,000		
Other				
Total Cost		322,136		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	322,136		
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification This bill, CSSB 279, could result in an additional 650 to 750 new felony cases per year for the Public Defender Agency. The recommended felony load for an attorney is 150 cases so the agency will need a minimum of 4 attorneys plus support staff. Two Attorney III's and a Legal Secretary I would be assigned to Anchorage; one Attorney III and a part-time Legal Secretary I would be assigned to Fairbanks and Juneau respectively. The attorneys would include a travelling calendar to serve outer agency offices with fewer cases.				

1/Leg94/17/11607d.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU PUBLIC DEFENDER AGENCY
 COMPONENT PUBLIC DEFENDER AGENCY

FY 95

Page 3 of 5
Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA		Election District 50
TYPE OF EXPENDITURE		AMOUNT		Justification This bill, CSSB 279, could result in an additional 650 to 750 new felony cases per year for the Public Defender Agency. The recommended felony load for an attorney is 150 cases so the agency will need a minimum of 4 attorneys plus support staff. Two Attorney III's and a Legal Secretary I would be assigned to Anchorage; one Attorney III and a part-time Legal Secretary I would be assigned to Fairbanks and Juneau respectively. The attorneys would include a travelling calendar to serve outer agency offices with fewer cases.
Salary		24,756		
Benefits		12,110		
Premium Pay				
Other				
Total Personal Services		36,866		
Travel		-0-		
Contractual		-0-		
Commodities		1,000		
Equipment		1,500		
Other				
Total Cost		39,366		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		39,366		
I-A Receipts 1007				
CIP Receipts 1061				
Other				

1/Leg94/17/11607b.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU PUBLIC DEFENDER AGENCY
 COMPONENT PUBLIC DEFENDER AGENCY

FY 95

Page 4 of 5
Revised Date: _____

Position Title Legal Secretary I (Part-Time)		No. of Positions 2	Range / Step 10/A	Barg. Unit GGU
Time Status PPT	Staff Months 12	Location JBA - AWA		Election District 60 - 3
TYPE OF EXPENDITURE		AMOUNT		
Salary		25,254		
Benefits		12,250		
Premium Pay				
Other				
Total Personal Services		37,504		
Travel		-0-		
Contractual		-0-		
Commodities		1,000		
Equipment		1,500		
Other				
Total Cost		40,004		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		40,004		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
Justification This bill, CSSB 279, could result in an additional 650 to 750 new felony cases per year for the Public Defender Agency. The recommended felony load for an attorney is 150 cases so the agency will need a minimum of four attorneys plus support staff. Two Attorney's III and a Legal Secretary I would be assigned to Anchorage; one Attorney III and a part-time Legal Secretary I would be assigned to Fairbanks and Juneau respectively. The attorneys would include a travelling calendar to serve outer agency offices with fewer cases.				

1/Leg94/17/11607a.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU PUBLIC DEFENDER AGENCY
 COMPONENT PUBLIC DEFENDER AGENCY

FY 95

Page 5 of 5
Revised Date: _____

#5

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB 445 am (IUD)

Revision Date: May 2, 1994
Title: "...relating to operating...a motor vehicle...
classifying certain...offenses as felonies..."
Sponsor: Senate Rules/By Request of the Governor
Requestor: Governor's Office/OMB

Department Affected: Department of Law
BRU: Prosecution
Component: Third Judicial District
Fourth Judicial District
COMPONENT SERIAL NO. 0087 through 0088

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	604.6	604.6	604.6	604.6	604.6	604.6
TRAVEL	40.0	40.0	40.0	40.0	40.0	40.0
CONTRACTUAL	51.3	51.3	51.3	51.3	51.3	51.3
SUPPLIES	27.9	23.4	23.4	23.4	23.4	23.4
EQUIPMENT	62.5					
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	786.3	719.3	719.3	719.3	719.3	719.3

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	786.3	719.3	719.3	719.3	719.3	719.3
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	786.3	719.3	719.3	719.3	719.3	719.3

POSITIONS:

FULL-TIME	9.0	9.0	9.0	9.0	9.0	9.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: May 2, 1994
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law Date: May 2, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB 445 am (JUD)

ANALYSIS CONTINUATION:

The Senate Judiciary Committee Substitute for HB 445 amends the state's laws concerning driving while intoxicated, and implied consent to submit to a chemical test to determine intoxication, in three important respects.

First, the bill gives police officers the authority to administer a chemical test to drivers involved in a serious accident. Refusal could result in the same penalties for refusing to take a chemical test after being arrested for driving while intoxicated. Granting this authority to police officers was the original intent of the bill.

Second, the bill increases the penalty for three or more driving while intoxicated convictions, from a class A misdemeanor to a class C felony. The bill similarly raises the penalty for three or more refusing to submit to a chemical test convictions from a class A misdemeanor to a class C felony. This bill also provides that three or more convictions will result in a minimum mandatory sentence of 360 days of imprisonment.

Third, the bill extends existing optional vehicle forfeiture provisions for driving while intoxicated or refusing to submit to a chemical test, to make vehicle forfeiture mandatory upon a first conviction. Currently, the state's vehicle forfeiture provisions do not apply until the third conviction for driving while intoxicated or refusing to submit to a chemical test. A person having an ascertainable security interest in a forfeited vehicle, other than the person who committed the offense resulting in the forfeiture, would be permitted to seek remission of the forfeiture. A court hearing would be required to effect remission of a forfeited vehicle.

Increasing the penalty for a third offense to a class C felony, and invoking vehicle forfeiture for a first offense, will have a substantial impact on the Department of Law.

About 650 persons are currently penalized each year for driving while intoxicated for the third or more times. Consequently, prosecutors will be required to handle these prosecutions as felonies with attendant increased judicial processes, such as grand jury, motion practice, and appeals. This is a significant increase in the number of felonies handled annually, where the statewide total is now about 4,000. Furthermore, the number of offenses where forfeiture would apply would jump from 650 a year (where the state has the seldom-used option to seek forfeiture) to over 3,000 a year where the state would be required to seek forfeiture. As a result, state attorneys would be required to represent the state at a very large number of remission hearings.

Based on the foregoing, the following new positions (and new positions costs) will be needed to implement the increased penalty provisions provided in the bill.

<u>Location</u>	<u>Position</u>	<u>Per. Svc.</u>	<u>Travel¹</u>	<u>Contr.</u>	<u>Supplies</u>	<u>Equipment</u>	<u>Total Cost</u>	
Anchorage	A	Attorney III	72.1	3.0	8.6	3.3	6.5	93.5
	A	Attorney III	72.1	3.0	8.6	3.3	6.5	93.5
	B	Attorney III	72.1	3.0	8.6	3.3	6.5	93.5
	A/B	Leg. Sec. I	37.3	-0-	6.0	2.4	8.5	54.2
Fairbanks	A	Attorney III	81.7	7.5	4.0	3.3	6.5	103.0
	B	Attorney III	81.7	7.5	4.0	3.3	6.5	103.0
	A/B	Leg. Sec. I	38.6	-0-	3.5	2.4	8.5	53.0
Kenai	A/B	Attorney III	76.9	6.0	4.0	3.3	6.5	96.7
SE Alaska (Juneau)	A/B	Attorney III	72.1	10.0	4.0	3.3	6.5	95.9
			<u>604.6</u>	<u>40.0</u>	<u>51.3</u>	<u>27.9</u>	<u>62.5</u>	<u>786.3</u>

A = New felony caseload

B = New forfeiture remission caseload

¹\$25,000 in reimbursable travel is included for Department of Public Safety chemists/laboratory experts travel outside of Anchorage to testify/verify intoxometer results against intoxometer challenges.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 4
Bill Version: HB 445
(H) Publish Date: 2/4/94

III

Revision Date: _____ Dept. Affected: Public Safety
 Title: Mandatory Drug / Alcohol Testing BRU: DPS Statewide Support
 _____ Component: Laboratory Services
 Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO. 527

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	49.6	49.6	49.6	49.6	49.6	49.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.6	49.6	49.6	49.6	49.6	49.6
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other Interagency Rcpts.	49.6	49.6	49.6	49.6	49.6	49.6
TOTAL	49.6	49.6	49.6	49.6	49.6	49.6

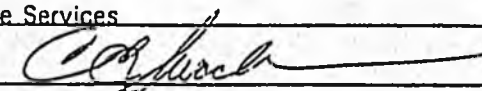
Estimate of current year (FY 94) impact: \$ 0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: (907) 269-5691
 Division: Administrative Services Date: 01/10/94
 Approved by Commissioner:  Date: 01/10/94
 Agency: Richard J. Burton, Dept. of Public Safety

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Handwritten:
1/10/94

Department of Public Safety
Fiscal Note Analysis
Law Log 94-0019
Mandatory Drug/Alcohol Testing
Page 3 of 4

It is anticipated that federal highway funds through the Highway Safety Planning Agency will be available to fund the initial three years of this position. Contingent upon the success of the program and review by the regional administrator, federal highway funds may be available to continue this position beyond the initial three year period.

PERSONAL SERVICES

Salary - Criminalist I Range 15, Step A	\$34,260
Benefits	<u>15,321</u>

Total Personal Services	\$49,581
-------------------------	----------

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 4
Bill Version: HB 445
(H) Publish Date: 2/4/94

Revision Date: _____ Dept. Affected: Public Safety
Title: Mandatory Drug / Alcohol Testing BRU: DPS Statewide Support
Component: Laboratory Services
Sponsor: Rules
Requestor: Governor COMPONENT SERIAL NO. 527

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	49.6	49.6	49.6	49.6	49.6	49.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.6	49.6	49.6	49.6	49.6	49.6

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other Interagency Rcpts.	49.6	49.6	49.6	49.6	49.6	49.6
TOTAL	49.6	49.6	49.6	49.6	49.6	49.6

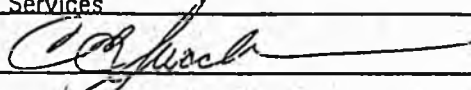
Estimate of current year (FY 94) impact: \$ 0

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: (907) 269-5691
 Division: Administrative Services Date: 01/10/94
 Approved by Commissioner:  Date: 01/10/94
 Agency: Richard J. Burton, Dept. of Public Safety

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Fiscal Note Analysis
Law Log 94-0019
Mandatory Drug/Alcohol Testing
Page 2 of 4

In 1992, 382 major injury crashes involving approximately 550 drivers and 89 fatal crashes involving approximately 125 drivers were reported statewide.

Implementation of this legislation will require chemical test or tests to be administered at the direction of a law enforcement officer who has reasonable grounds to believe that a person was operating or driving a motor vehicle or commercial vehicle involved in an accident that causes death or serious physical injury to another person, for the purpose of determining the presence of controlled substances in that person's blood and urine, even if the person is not under arrest.

The Scientific Crime Detection Laboratory oversees all breath instrument tests statewide. Approximately 6,000 DWI breath tests are conducted per year by city and state. Additionally 250 blood tests are administered for the purpose of determining the alcohol content of the person's blood. It is estimated that approximately 300 chemical tests will be administered statewide per year to detect the presence of alcohol and/or controlled substances in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person.

To perform this function the Scientific Crime Detection Laboratory will require one additional scientist, a Criminalist I, who will be a trained Toxicologist. This employee will utilize a sophisticated Ion Trap Mass Spectrometer instrument to analyze urine and blood samples to determine the presence or the lack of the presence of alcohol and/or controlled substances. Other duties performed by this employee would include: instrumental identification of controlled substances; drug analysis of specimens from suspects in murder and assault cases; analyses of solid dosages of controlled substances; and other tasks associated with the Statewide Breath Alcohol Program such as instrument calibration and certification.

Currently, the Scientific Crime Detection Laboratory is not performing these toxicology analyses; they are sent out-of-state. To our knowledge, there are no laboratories in the state (other than this laboratory) equipped to do these analyses. Additionally, if court testimony is needed of the analyst, it is very costly to bring them up from the Lower 48 for court purposes.

Department of Public Safety
Fiscal Note Analysis
Law Log 94-0019
Mandatory Drug/Alcohol Testing
Page 3 of 4

It is anticipated that federal highway funds through the Highway Safety Planning Agency will be available to fund the initial three years of this position. Contingent upon the success of the program and review by the regional administrator, federal highway funds may be available to continue this position beyond the initial three year period.

PERSONAL SERVICES

Salary - Criminalist I Range 15, Step A	\$34,260
Benefits	<u>15,321</u>

Total Personal Services

\$49,581

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
12/30/93 Position Information Inquiry/Update

07:58:10

Position: 12-12#091 Project: 0 Salary Costs: 34,260.00
Component: 12-62-06-02-01-10 Benefits Costs: 15,321.37
Scenario: 3 FY: 95 COLA %= 0.00 Total Costs: 49,581.37

Actuals not available (Status: UNKNOWN) Retirement Code: A

00/00/00 0 Step: A for 12.0 months & Step: B for 0.0 months (total: 12.00)
0 Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
0 Class/Sched Prefix: 1 Schedule: 1A (actual:)
0 Bargaining Unit: GG Range: 15 (actual:)
0 Location Code: EBA Place: ANCHORAGE
0 Job Class Code: P8371 Title: CRIMINALIST I
0 Seasonal Indic.: F Type: -

Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months & rate of 0.00 for 0.0 months
Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:

1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations
7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0

SÉÔ Aa æÃæ06 FX

FISCAL NOTE

No. 1
 Bill Version: HB 445
 (H) Publish Date: 2/4/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: _____
 Title: Relating to operating a motor vehicle
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Director
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Date: 12/23/93

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1994 LEGISLATIVE SESSION

Revision Date: _____
 Title: Relating to operating a motor vehicle
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 3540

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John B. Salemi, Public Defender
 Division: Public Defender Agency

Phone: 264-4400
 Date: _____

Approved by Commissioner: Nancy Bear Usera, Commissioner
 Agency: Department of Administration

Date: 12/27/93

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: SCS CSHB 445(JUD)

Revision Date:	_____	Dept. Affected:	_____
Title:	DWI Laws	BRU:	All
Sponsor:	House Rules	Component:	All
Requestor:	Senate Judiciary	Component Serial #:	694-1884

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXP.	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	11,896.4	12,257.2	12,624.9	13,003.7	13,393.8	13,795.6
TOTAL OPERATING	11,896.4	12,257.2	12,624.9	13,003.7	13,393.8	13,795.6

CAPITAL EXP	20,000.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	31,896.4*	12,257.2*	12,624.9*	13,003.7*	13,393.8*	13,795.6*
1005 GF/Program Receipts	*	*	*	*	*	*
1006 GF/MHTIA						
Other						
TOTAL	31,896.40	12,257.20	12,624.90	13,003.70	13,393.80	13,795.60

Estimate of any current year (FY94) cost \$ 0.0

POSITIONS

FULL-TIME	*	*	*	*	*	*
PART-TIME	*	*	*	*	*	*
TEMPORARY	*	*	*	*	*	*

ANALYSIS: Please see the attached explanation.

Prepared by: Diane Schenker, Special Assistant
 Division: Office of the Commissioner
 Approved by: J. Frank Prewitt, Jr., Commissioner
 Agency: Department of Corrections

Phone: 465-4643/786-2147
 Date: 5/3/94
 Date: 5/3/94
 Page 1 of 5

The bill authorizes chemical testing of breath, blood, and urine to determine the presence of alcohol or other controlled substances if a person is involved in a motor vehicle accident that causes death or serious physical injury. This is expected to impact the department by increasing the chances of conviction for manslaughter or certain assault crimes involving motor vehicles.

The bill also makes a third conviction for DWI or refusing a chemical test a class C felony, punishable by a minimum of 360 days of imprisonment. An offender may be ordered by the court to take antabuse to prevent consumption of alcohol, as a condition of probation.

Assumptions

1. Attachment A reflects the annual number of cases of third-time or higher DWI/Refusal cases, based upon information from the Department of Public Safety, Division of Motor Vehicles, 1991-93. The average number per year is approximately 685 cases.
2. Current minimum sentences of imprisonment for third, fourth, and fifth(+)-time offenders are 60, 120, and 360 days, respectively. DOC randomly surveyed prisoner records convicted for third and subsequent DWI/Refusals to arrive at the "average sentence" length in the table below. Combining this average sentence-length information with the DMV data on rate of occurrence provides the expected total prisoner-days per year for these offenses under current law. The result is a weighted average of 92 days for an average sentence for third or subsequent offenders. With deduction for statutory good time (SGT), this would result in an average period of incarceration of approximately 60 days.

OFFENSE	# OF CASES PER DMV (1993)	AVERAGE SENTENCE (DOC FILE REVIEW)	IMPRISONMENT DAYS PER YEAR
3rd offense	423	75 days	31,725
4th + offense	224	125 days	28,000
TOTAL	647	92.3	59,725

3. The bill would require a minimum sentence of imprisonment of 360 days for third and subsequent convictions. With deduction for statutory good time, this would result in actual imprisonment for 240 days. Subtracting the average 60 days of imprisonment served under current law, there would be an increase of 180 days of incarceration in each case. (This assumption should be considered conservative since it is based upon the minimum sentence in every case.) For 647 cases per year, 180 days of additional incarceration would result in 116,460 additional prisoner-days per year ($647 \times 180 = 116,460$).

4. 116,400 prisoner-days per year will require 319 additional correctional beds. (116,400 days divided by 365 days per year.) The system cannot absorb any additional prisoners without additional beds, since it has been operating over emergency capacity for more than a year and faces a contempt motion at this time. Additionally, many DWI cases are already awaiting prison space due to severely backlogged court report lists. These felony DWI cases would be remanded directly to DOC, it is assumed, based upon the seriousness of the offense and the well-known inability of the system to accommodate those placed on waiting lists in a timely manner.

It is assumed that two thirds of the new beds would be state correctional beds. By definition of the crimes addressed in the bill, this is a repeatedly non-compliant population who present high risk of reoffense and will have to be carefully screened for furlough eligibility in community settings.

5. Based on Assumption #4, DOC will need 200 new state correctional beds, at an average construction cost of \$100,000 per bed. An additional 119 CRC beds will be purchased through contract.

6. The average daily cost of incarceration based upon a weighted average of state correctional beds and community residential center beds is approximately \$98 per day. It is assumed that this population will be spending time in both prison and community placements.

5. Felony cases require preparation of Presentence Investigation reports by the Community Corrections component. These reports are not prepared in misdemeanor cases. The cost of report preparation is estimated at \$750 per report for staff investigation, criminal checks, writing, preparation, and presentation to the court.

6. It is assumed that felony offenders will be placed on formal, supervised probation for approximately 2 years, average, based upon anecdotal information from DOC probation staff. This should be considered conservative, since the maximum period of probation could be up to five years. (Misdemeanor cases are not supervised on probation by DOC, so all supervision will be additional costs.)

7. Regular probation is estimated to cost approximately \$6 per day, but involves infrequent face-to-face contact. If a probationer is ordered to take antabuse as a condition of probation, additional indeterminate expenses may be incurred to cover medical prescriptions and any special monitoring necessary to ensure compliance.

8. The state receives payments from local governments in Anchorage, Juneau, and Fairbanks, for incarcerating misdemeanants prosecuted and convicted of local misdemeanor charges. By changing third and subsequent DWI/Refusal cases to felonies, the state will carry the burden of all incarceration costs. However, this effect might be lessened by the fact that as felons, many offenders will be furloughed to CRCs where they will be allowed to work and contribute 25% of their earnings to the state. DOC will probably request changes in program receipt authority as a result of these factors.

9. A substantial number of third or subsequent offenders will have prior felonies, thus falling under presumptive sentencing laws. A substantial number of these offenders will violate probation, be revoked, and be returned to custody for additional periods of time. The additional costs attributable to these factors underscore the conservative nature of this fiscal estimate.

Operating Expenses

116,400 prisoner-days X \$98 per day = \$11,407,200 in FY95

(Adjusted for inflation by 3% in subsequent years)

647 cases X \$750 per PSI = \$485,250 in FY95 (adjusted for 3% inflation thereafter.)

647 cases per year X 1 year probation at \$6 per day = \$3,882 in FY95

647 cases on second year of probation plus 647 new cases at \$6 per day = \$7,764 in FY96 and subsequent years. (Subsequent years adjusted for 3% inflation.)

Capital Expenses

Out of the 319 new beds per year, 119 are assumed to be CRC beds under contract, the cost of which is included in the operating costs above. The remaining 200 beds will have to be added to the state correctional system:

200 X \$100,000 per bed = \$ 20,000,000

91-93BAC.XLS

Number of administrative driver's license revocations for breath alcohol concentration of .10 or greater BAC and refusal to submit to a chemical test.						
			1991	1992	1993	
1st offense			3638	3532	3224	
2nd offense			1141	1124	1223	
3rd offense			375	470	423	
4th and subsequent offense			283	276	224	
			658	746	647	
This table does not reflect the number of court convictions for the criminal charge of DWI or Refusal to submit to a chemical test.						

C.G.

FISCAL NOTE

5/17/94 Does not apply to "10" version

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB 445 am (FIN)

Revision Date: May 4, 1994
 Title: "...relating to operating...a motor vehicle...
 classifying certain...offenses as felonies..."
 Sponsor: Senate Rules/By Request of the Governor
 Requestor: Senate Finance

Department Affected: Department of Law
 BRU: Prosecution
 Component: Third Judicial District
 COMPONENT SERIAL NO. 0087

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	72.1	72.1	72.1	72.1	72.1	72.1
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	8.6	8.6	8.6	8.6	8.6	8.6
SUPPLIES	3.3	2.4	2.4	2.4	2.4	2.4
EQUIPMENT	6.5					
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	93.5	86.1	86.1	86.1	86.1	86.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	93.5	86.1	86.1	86.1	86.1	86.1
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	93.5	86.1	86.1	86.1	86.1	86.1

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: May 4, 1994
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law Date: May 4, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCSHB 445 am (FIN)

ANALYSIS CONTINUATION:

The Senate Finance Committee Substitute for HB 445 amends the state's laws concerning driving while intoxicated, and implied consent to submit to a chemical test to determine intoxication, in two important respects.

First, the bill gives police officers the authority to administer a chemical test to drivers involved in a serious accident. Refusal could result in the same penalties for refusing to take a chemical test after being arrested for driving while intoxicated.

Second, the bill extends existing optional vehicle forfeiture provisions for driving while intoxicated or refusing to submit to a chemical test, to make vehicle forfeiture mandatory upon a third or subsequent conviction. Mandatory forfeiture would apply only if the person convicted was the sole owner of the vehicle, and if the vehicle had a value of at least \$1,000. Consequently, it is likely that a large number of prosecutions for third-time offenses will be contested, where offenders who now plead guilty will be inclined to plead not guilty in an attempt to save their vehicle from forfeiture. Of the 650 persons currently penalized each year for driving while intoxicated for the third or subsequent time, 50 to 60 new misdemeanor trials will probably occur. This new trial caseload is far more than that handled by a single attorney. However, because a large part of the caseload will occur in the Third Judicial District, a single attorney should be added to the Anchorage District Attorney's Office. In addition to handling the Anchorage caseload, this office also handles case overload problems at the other prosecutors' offices in the district and thus there will be a position available district-wide to absorb the new trial caseload.

<u>Location</u>	<u>Position</u>	<u>Per. Svc.</u>	<u>Travel</u>	<u>Contr.</u>	<u>Supplies</u>	<u>Equipment</u>	<u>Total Cost</u>
Anchorage	Attorney III	72.1	3.0	8.6	3.3	6.5	93.5
		<u>72.1</u>	<u>3.0</u>	<u>8.6</u>	<u>3.3</u>	<u>6.5</u>	<u>93.5</u>

This position will be needed to offset the additional contested misdemeanor trials that will occur as a result of mandatory vehicle forfeitures for third-time or subsequent DWI/refusal convictions.

GOVERNOR HICKEL'S DWI LAWS (SB 279 & HB 445)

Governor Hickel has introduced legislation to remove the impaired driver from the Alaska's highways. The main objective of this legislation is to provide "implied consent" for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial motor vehicles involved in accidents that cause death or serious physical injury.

Impaired driving, and crashes related to it account for more than half of all traffic deaths in Alaska and is among the nation's leading problems. Despite a rising tide of public indignation, the wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to Alaska's highways.

The Governor's legislation amends the implied consent statutes to specify that a person who operates a motor vehicle or commercial motor vehicle in this state is considered to have given consent to submit to a chemical test or tests of the person's blood and urine for the purpose of determining the presence of both alcohol and drugs if the person is involved in an accident that causes death or serious physical injury to another person, even if the person is not under arrest. The tests may be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating a motor vehicle or commercial vehicle that was involved in an accident that caused death or serious physical injury to another person.

The penalty for refusal to submit to a chemical test under the provision of the legislation is a Class A misdemeanor and will result in revocation of the driver's license, privilege to drive, or privilege to obtain a license, in addition to other criminal penalties. If a person has been notified of the penalties that will result from refusal to submit to a chemical test, and the person refuses to submit, the chemical test may not be given unless the person has been arrested and the arrest resulted from an accident that causes death or serious physical injury to another person.

Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms. This legislation will provide law enforcement and prosecutors with the tools they need to combat the significant highway safety problems presented by those drivers who use drugs and then cause fatal or serious injury accidents.

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

Richard L. Burton
Commissioner
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February 16, 1994

DRUGS IN SERIOUS INJURY AND FATAL ACCIDENTS

FACT SHEET

1. Very few studies have been conducted of drug use by drivers involved in crashes. What limited data is available has focused on limited geographic areas and special driver populations such as young males.
2. In 1988, the National Highway Transportation Administration synthesized existing research in a report to Congress and found that drugs were present in 10-22 percent of crash involved drivers.
3. Los Angeles Police Department personnel estimate that 20 percent of persons arrested for impaired driving were under the influence of drugs. In addition, when drugs were found in either crash involved or arrested drivers, they were found most often in combination with alcohol.
4. Urine is generally the best specimen to screen for the presence of a drug, but blood is necessary if you wish to know the degree of influence of the drug as well as possible dose and time of administration.
5. If you want to know if a suspect was under the influence of a drug at the time of committing an offense, a blood and urine sample should be collected as close to the time of the offense as possible.
6. In one study blood specimens were obtained from nearly 2,000 fatally injured drivers from seven states. Drugs other than alcohol were present in approximately 18 percent of these drivers.
7. A second recent study which was a far more comprehensive which focused on fatally injured drivers who died within four hours of the crash. Blood specimens were collected from a sample of 1,882 fatally injured drivers from 13 sampling sites, encompassing three entire states (Massachusetts, North Carolina, and Wisconsin), and selected counties in California, Nevada, Texas and Virginia. The results of the tests are as follows:
 - a. Alcohol was found in 52 percent of fatalities.

- c. 64 percent of drug cases also had alcohol.
 - d. A drug was detected without alcohol in 6.3 percent of fatalities.
 - e. Abuse drugs (e.g., marijuana, cocaine) were found most frequently in the 25-54 age group.
 - f. Marijuana and cocaine were found more frequently in urban crashes than in rural ones.
 - g. Prescription drugs were found most frequently in the over 55 age group.
 - h. Drugs were found mostly in males.
 - i. Regional difference: Amphetamines were found nearly exclusively in California; Marijuana/cocaine were unusually prevalent in Dallas, TX; and Wisconsin had the lowest abuse drug involvement.
8. With a urine sample, the lab is able to screen for a wide range of all types of controlled substances in detail very cheaply. Then the lab is able to go back after identifying the controlled substance in the urine and quantify the amount through the blood test. If blood alone is submitted it is a very cumbersome, slow expensive process to attempt to identify multiple substances or in essence screen the blood.
9. The following substances are usually checked during a routine urine screen.
- A. Stimulants
 - 1. Amphetamines
 - 2. methamphetamine
 - 3. "MDA"
 - 4. Dexedrine
 - B. Depressants
 - 1. Barbiturates
 - 2. Seconal
 - 3. Nembutal
 - C. Tranquilizers
 - 1. Valium
 - 2. Librium
 - D. Opiates
 - 1. Morphine
 - 2. Percodan
 - 3. Heroin
 - 4. Dilaudid
 - E. Antidepressants
 - 1. Elavil

F. Marijuana

G. Cocaine

H. LSD

Lorn M. Campbell

Lorn M. Campbell (Name of Submitter)

HSPA (Agency)

465-4374 (Phone Number)

WALTER J. HICKEL, GOVERNOR

Richard L. Burton
Commissioner

DEPARTMENT OF PUBLIC SAFETY

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Mandatory Drug/Alcohol Testing
Discussion Paper

"A bill to provide for implied consent for, and administration of, chemical test to detect the presence of drugs in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person".

This proposed legislation gives law enforcement officers additional tools they need to combat the significant highway safety challenge presented by those drivers who use drugs and then cause fatal or serious injury accidents.

Discussion:

Much deserved attention has been focused on drunk driving, while the related dangers presented by individuals driving under the influence of drugs other than alcohol or taken in conjunction with alcohol or other drugs have had little attention. One of the reasons for the lack of attention has been a lack of legislation allowing for the taking of blood and urine samples in those cases where drug use may be suspected.

The impact of intentional or unintentional drug abuse on motor vehicle operation in our highly mobile society is enormous as there currently are obtainable over 20,000 prescription drugs; 100,000 over-the-counter drugs; 500 illicit drugs; and 200 herbal drugs.

Drug use has become prevalent in our society. An estimated twenty-three million people are marijuana users, at least five million people use cocaine, and even a greater number use psychactive prescription and over-the-counter medication.

There are unique subcategories of drivers whose apparent drug use patterns differ from those of the general driving population. For example, commercial truck drivers exhibit a substantially lower alcohol-involvement crash rate than do passenger vehicle drivers. In 1985, five percent of the drivers of heavy trucks involved in fatal crashes had been drinking whereas thirty-four percent of the drivers of passenger vehicles involved in fatal crashes had consumed alcohol. However, truck drivers were found to have been more apt to use stimulants.

DISCUSSION PAPER

The National Transportation Safety Board (NTSB) released a study in October 1988 revealing that at least 26 accidents of 189 heavy truck accidents from 1985 to 1987 conclusively involved drug or alcohol abuse. In one case, the driver of a heavy truck struck the rear of a queue of four other heavy trucks; the driver had not slept in the previous forty-four hours and had consumed alcohol, amphetamines, and cocaine in an attempt to stay awake.

Another unique subgroup appears to be young male drivers. An often-cited study (Compton, A Report to Congress 1988) of drug incidence among fatally injured young male drivers in California found higher rates of drug use in general and marijuana and cocaine use in particular than among the general population. One or more drugs were detected in 81 percent of 440 male drivers aged 15 to 34 killed in vehicle crashes, whereas two or more drugs were detected in 43 percent. In addition, drugs other than alcohol rarely were detected alone; the drugs usually were found in combination with alcohol and generally the BAC levels were 0.10 percent or higher. The use of drugs among young drivers is thought to present a greater risk than among the general population since youths are beginning to experiment with drugs and are inexperienced at driving.

The wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to the nation's highways.

It is the consensus of the Highway Safety Planning Agency that passage of this legislation will provide law enforcement with an additional tool in which to remove the impaired driver from the state's highways.

Lorn M. Campbell
Lorn M. Campbell
Executive Director
Alaska Highway Safety Planning Agency

02/08/94
Date

IMPLIED CONSENT LAW TABLE (November 18, 1993)

State	Implied Consent Law Applies To DWI Alcohol and/or Drugs		Bodily Substances Tested				Who Selects Test?		More Than One Test Can Be Required	Statutory Citation
	Alcohol	Drugs	Blood	Breath	Urine	Saliva	Driver	Police		
AL	X		X	X	X			X	X ¹	§32-5-192(a)
AK	X			X			N/A	N/A		§28.35.031(a)
AZ	X	X	X	X	X			X	X	§24-691(A)
AR	X	X ²	X	X	X			X ²	X	§5-65-202 & 203
CA	X	X	X ³	X ³	X ³		X		X	Veh. Code §23157(a) ²⁰
CO	X	X	X ⁴	X ⁴	X ⁴	X ⁴	.	.	X	§42-4-1202(3)(c)
CT	X	X	X	X	X			X		§14-227b
DE	X	X	X	X	X			X	X	21 §§2740 & 2741
DC	X	X	X	X	X			X ⁵	X ⁷	§40-302(a) & (b)
FL ⁶	X ⁶	X ⁶	X ⁶	X ⁶	X ⁶		.	.	X	§313.1932(1)(a)
GA	X	X	X	X	X			X	X ⁸	§40-3-35(a)
HI ⁶	X		X	X			X		X ¹¹	§286-106
ID	X	X	X	X	X			X ⁹	X ⁹	§18-8002 & 18-8004
IL	X	X	X	X	X			X	X ¹¹	625 ILCS 5/11-901.1(a)

NATIONWIDE COMPARISON
IMPLIED CONSENT

IMPLIED CONSENT LAW TABLE (continued)

State	Implied Consent Law Applies to DWI Alcohol and/or Drugs		Bodily Substances Tested				Who Selects Test?		More Than One Test Can Be Required*	Statutory Citations
	Alcohol	Drugs	Blood	Saliva	Urine	Naive	Driver	Police		
IN	X	X	X	X	X	..		X	X	§9-30-6-2
IA	X	X	X	X	X			X	X	§321.6
KS	X	X	X	X	X	..		X	X	§8-1001(a)
KY	X	X	X	X	X			X	X	§189A.103(1)
LA*	X	X	X	X	X	..		X	X	§32.661
ME	X	X	X ²	X ²	X ²			X ²	X ²	29 §1312
ND	X	X	X	X				X	X ²	Comm. §16-205.1
MA*	X		X	X ²				X ²		90 §34(1)(c)
MI*	X	X	X	X	X			X ²	X	§257.625c
MIN	X	X	X	X	X			X ²	X ²	§169.123, subd. 2
MS	X		X	X	X		N/A	N/A		§63-11-3
MO	X	X	X	X	X			X ²	X	§577.020
MT	X		X	X	X			X		§61-8-402(1)
NB	X	X	X	X	X			X ²	X	§39-669.08(1)
NV*	X	X	X	X	X	..		X ²	X	§484.343.(1)
NH*	X	X	X	X	X			X	X	§265:84

IMPLIED CONSENT LAW TABLE (continued)

State	Implied Consent Law Applies to DWI Alcohol and/or Drugs		Bodily Substances Tested				Who Selects Test?		More Than One Test Can Be Performed?	Statutory Citations
	Alcohol	Drugs	Blood	Breath	Urine	Saliva	Driver	Police		
NJ*	X	X		X			N/A	N/A		§39-6-50.2
NM	X	X	X	X				X	X	§66-8-107
NY	X	X	X	X	X	X		X	X	V&T Law §1194(C)(a)
NC	X	X	X ¹¹	X	- ¹²	- ¹³		X ¹²	X	§20-16.2(a)
ND	X	X	X	X	X	X		X	X	§19-20-01
OH	X	X	X	X	X			X	X	§4511.191(A)
OK	X	X	X ¹²	X ¹²	X ¹²	X ¹²		X ¹²	X ¹²	47 §731
OR*	X			X			N/A	N/A		§813.100
PA*	X	X	X	X	X			X ¹²	X ¹²	75 §1547
PR*	X		X	X		- ¹⁴	X ¹⁴		X ¹⁵	9 §1043
RH	X	X	X	X	X			X	X	§31-27-2.1
SC*	X	X	X	X	X			X ¹⁶	X	§56-5-2950(a)
SD	X	X	X	X				X ¹⁷		§32-23-10
TN	X	X	X	X	X			X		§§55-10-405(5) & -406(a)(1)
TX	X	X	X	X	- ¹⁸	- ¹⁹		X ²⁰	X	Act. 67117-5, §§1 & 2(a)
UT	X	X	X	X	X			X	X ²¹	§41-6-44.10(1)(a) & (b)

IMPLIED CONSENT LAW TABLE (continued)

State	Implied Consent Law Applies to DWI Alcohol and/or Drugs		Really Substances Tested					What Substances Tested		More Than One Test Can Be Required*	Summary Citations
	Alcohol	Drugs	Blood	Breath	Urine	Saliva	Driver	Police			
VT	X	X	X ²	X				X	X	21 § 207(A)	
VA	X	X	X	X			X ²		X	§ 18-2-168	
WA	X	X ²	X ²	X			X	X	X ²	§ 46.20.020(1)	
WV	X		X	X	X			X ²	X	§ 17C-5-4	
WI	X	X	X	X	X			X	X	§ 803.205(7) & (9)	
WYO	X	X	X	X	X			X ²	X	§ 11-6-102(A)	
TOTALS	52	43	48	52	37	4	4	42	43		

N/A=Not Applicable

*The law of this State limits the types of drugs/substances that can be considered for the purpose of determining whether a person has been driving while under the influence. I.e., the law does not cover driving under the influence of all drugs/substances. **States law provides that "other bodily substances" may be tested but such substances are not specifically identified. T.S., state than one type of bodily substance can be tested under the State's implied consent law.

¹If the driver objects to a blood test, the officer shall designate one of the other tests.

²Controlled substances

However, if the driver objects to a blood test, a breath or urine test may be used instead.

Chemical testing of blood, breath or urine of alcohol concentration; chemical testing of blood or urine of drug concentrations.

For alcohol concentration, tests on blood or breath are to be performed.

For drug concentrations, tests on blood, urine or saliva are to be performed. If the test is for alcohol concentration, the driver may request either a blood or breath test. For drug driving offenses, the officer may request the person to submit to a particular type of test (blood or urine). *Stanger v. Colorado Dept. of Revenue, 780 P.2d 94 (Colo. App. 1989)*

The law enforcement officer shall select which chemical test is to be administered. However, a person may object to a particular test on valid religious or medical grounds.

The driver is required to submit to two (2) chemical tests of their blood, breath or urine for alcohol or drugs.

IMPLIED CONSENT LAW TABLE (continued)

¹A breath test can only be performed to determine alcohol concentration. A urine test must be used to determine whether urine drugs were in a body (blood). A blood test may only be performed on a driver who has been injured when such test is a part of treatment at a medical facility. The law specifies the type of tests that are to be given in certain DWI situations.

²*McCasus v. State*, 371 S.E.2d 243 (Ga.App. 1988)

³The driver may elect to submit to both blood and breath tests.

⁴*Leiter v. Griffin*, 744 P.2d 97 (Utah 1987)

⁵*People v. Alvarez*, 516 N.E.2d 783 (Ill.App. 3 Dist. 1987), and *People v. Boudier*, 514 N.E.2d 1346 (Ill.App. 4 Dist. 1989)

Sec. 11-90 L.(g) provides that "[i]f the test may be administered even after a blood or breath test or both has been administered."

⁶A breath test is administered unless it is unworkable to give such test. However, a person has a "duty" to submit to either a blood or urine test to determine a category of drug in the person's system and the concentration of such drug, if a law enforcement officer has probable cause to believe that the person was under the influence of a specific category of drug. That person has the right to a blood test if the person so elects.

⁷There is an implication that the law enforcement officer selects the test.

⁸A person may elect to consent to tests of either blood or urine for the purpose of determining if there are other impeding substances in the person's body.

⁹See also §94-669.07.

¹⁰For the purpose of determining alcohol content, a person may refuse a blood test if a breath test is reasonably available. For the purpose of determining controlled drug content, a person may elect to collect a blood or urine test or both.

¹¹A blood test is limited to persons who are unconscious or otherwise incapable of refusing a test. The officer may direct the administration of any other chemical analysis that may be effectively performed (120-16.2(c)).

¹²Test of: tests of blood or breath for alcohol; test of tests of blood, urine or saliva for "toxicating substances".

¹³*People v. Dept. of Public Safety*, 785 P.2d 332 (Col.App. 1987). The law enforcement agency specifies the type of substances that is to be tested. *Brown v. City of Tulsa*, 837 P.2d 917 (Okla. Cr. 1992)

¹⁴*McNeil v. Conn.*, 522 A.2d 177 (Pa. Commw. 1987). In situations involving driving under the influence of alcohol, the driver must be given two (2) consecutive breath tests. In this case, the test results cannot be submitted into evidence as a DWI test. *Conn. v. Disher*, 571 A.2d 418 (Pa.Super. 1990)

¹⁵*People v. Oregon State*, 97 P.3d 465 (1997).

¹⁶The law is not specific as to whether multiple tests can be administered.

¹⁷To determine alcohol concentration, the person must be afforded a breath test first; a blood test may be requested if it is not reasonably possible to obtain a breath sample. To determine a drug concentration, the person must submit to a urine test.

¹⁸*State v. Katz*, 360 N.W.2d 523 (S.D. 1985), and *Miller v. State*, Dept. of Public Safety, 366 N.W.2d 497 (S.D. 1985)

¹⁹Art. 6701.5, §1 also provides that a person may consent to give a specimen of another substance for the purpose of determining alcohol concentration. However, they are only required to provide either a blood or breath specimen.

²⁰*White v. State*, 711 S.W.2d 106 (Tex.App. - [14th Dist.] Houston 1986), & *State v. Gonzalez*, 659 P.2d 672 (Tex.App. - San Antonio 1993)

²¹*People v. Brown v. Schwandman*, 769 P.2d 288 (Utah App. 1989), the court held that law enforcement officers have the authority to request more than one breath test sample from a driver under the implied consent law.

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IMPLIED CONSENT LAW TABLE (continued)

§114 under 23 for 1102(a), if the law enforcement officer has "reasonable grounds" to believe that the driver was operating a motor vehicle while under the influence of drugs (or other substances), the driver is deemed to have given consent to a blood test. See also *Stutz v. Oregon*, 522 A.2d 242 (Vt. 1987) where the court held that there was no need to request a breath test prior to a blood test in situations where the driver has been charged with both driving under the influence of alcohol and drugs.

Typically a person has the right to select the type of test. *Proctor v. Conn.*, 421 S.E.2d 674 (Va.App. 1997) However, if such a test is not available, they must submit to the other test. *Keane v. Conn.*, 435 S.E.2d 544 (Va. App. 1993)

If, normally, the tests are for alcohol only. However, if there has been an injury likely to cause death, a driver may be compelled to take a blood or breath test or determine the presence and/or concentrations of alcohol or drugs.

In *Boyer v. Dept. of Licensing*, 756 P.2d 133 (Wash.App. 1988), the court held that a refusal to undergo testing could result in license revocation.

If a person refuses to submit to a blood test, the officer shall select either a breath or a urine test.

If the selected test is either blood or urine, the driver may select the other test. However, the officer may request a urine test if the driver is suspected of driving while under the influence of a controlled substance.

If either breath or blood tests are administered to determine alcohol concentration, blood tests are not administered to determine the content of controlled substances.

In *People v. Francis*, 219 Cal. App. 4th 1022 (Cal.App. 4th Div. 1991)

If the first test is a breath test, the police officer can request a second test of either blood or urine (§114-4007(10)). However, the law is not clear on whether the officer can request a second breath test or (2) a blood (urine) if the first test was urine (blood). Also, the law is not clear on whether the officer can request a breath test after either a blood or urine test.

The law enforcement officer administers the test. However, if a person refuses submit to a blood test, the officer must offer the person an alternative test. Likewise, if a person refuses to submit to a urine test, they must be offered an alternative test. The law does not specify the type or types of alternative test or tests. *Whitman v. Commissioner of Public Safety*, 477 N.W.2d 539 (Minn.App. 1991)

STATE:
General Reference:

ARIZONA
Arizona Revised Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §28-692(A)(1)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ^{1&2} and Any Controlled Substance in a Person's Body ³ §28-692(A)(2) & (3)
Presumption (BAC Level):	0.10 §28-692(E)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, a vapor releasing substance containing a toxic substance or (2) a combination of liquor, drugs or toxic vapor releasing substance if the person is impaired to the slightest degree. §28-692(A)(1)
Other:	For Commercial Motor Vehicle Operators, see p. 3-27.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §28-691.01 (Based on reasonable suspicion of a DWI offense.)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §28-691(A)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §28-691(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) §28-692(I)
Other Information:	Special Note: Police officers may request persons (e.g. medical facility personnel), who collect blood, urine or other bodily substances from suspected DWI offenders, to supply samples of such substances to law enforcement authorities for testing; see §28-692(J). Such samples can also be obtained via search warrants; see §28-691(D).

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §28-691
Urine:	Yes §28-691
Other:	"Other bodily substances" §28-691

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §28-692(O)

²It is a Class 1 misdemeanor for any person under 21 years old to operate a motor vehicle with any "spituous liquor" in their body. Jail-not more than 6 mos; fine-not more than \$2,500. See §§4-244(34), 4-246(B), 13-701, 13-707, 13-801 & 13-802.

³Except in cases where a person was impaired in the "slightest degree," a person is not guilty of this offense if they are legally entitled to use these drugs. §28-692(F)

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

STATE:
General Reference:

CALIFORNIA
West's Annotated California Codes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of an alcoholic beverage Veh. Code §§23152 & 23153
Illegal Per Se Law (BAC/BrAC Level):	0.08 ^{1&2} Veh. Code §§23152(b) and 23153(b)
Presumption (BAC Level):	0.08 Veh. Code §23155(3)
Types of Drugs/Alcohol and Drugs:	Under the influence of (1) Any Drug or (2) a Combination of Alcohol and Any Drug ³ Veh. Code §§23152 & 23153
Other:	For Commercial Motor Vehicle Operators, see p. 3-45. For bicycle riders, see the Special Note below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes Veh. Code §23157(h) (Note: A PBT may be conducted without legislative authority. A.G. Opinion 88-1102, Oct. 25, 1989)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Veh. Code §23157
Implied Consent Law Applies to Drugs (Yes/No):	Yes Veh. Code §23157(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal & Civil Cases) Veh. Code §23157(a)(4)
Other Information:	A person, who has been arrested for a DWI offense, may be compelled to submit to a blood test for either alcohol concentration or the presence of drugs. See <i>Mercer v. Department of Motor Vehicles</i> , 309 P.2d 404 (Cal. 1957).

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes Veh. Code §23157
Urine:	Yes Veh. Code §23157
Other:	None

¹Special juvenile offense at 0.05 (Standard: Percent by weight of alcohol in the blood); see Veh. Code §23140(a).

²The regular standards for BAC and BrAC (respectively grams of alcohol per 100 milliliters of blood and grams of alcohol per 210 liters of breath) are used for the illegal per se offense.

³Note: It is illegal to be under the influence of certain "controlled substances" irrespective of whether the offender was operating a motor vehicle. Health and Safety Code §11350.

Special Note: Under Veh. Code §21200.5, it is illegal to ride a bicycle on the highway while under the influence of either alcohol or drugs. This section provides that a person committing this offense may be fined not more than \$250. This section further provides that a person under 21 years old, who commits this offense, is subject to license suspension under Veh. Code §13202.5; see the Special Note on p. 3-50 for details on this license suspension.

STATE:
General Reference:

COLORADO
Colorado Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol/Impaired by the consumption of alcohol §42-4-1202(1)(a) & (b)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ §42-4-1202(1.5)(a)
Presumption (BAC Level):	>0.05-Driving while impaired 0.10-Driving under the influence §42-4-1202(2)(b) & (c)
Types of Drugs/Drugs and Alcohol:	(1) Any Drug or (2) a Combination of Alcohol and Drugs ² (applies to both driving under the influence and driving while impaired) §42-4-1202(1)(a) & 42-4-1202(1)(b)
Other:	For Commercial Motor Vehicle Operators, see p. 3-63.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §42-4-1202(2.5)
Implied Consent Law:	
Arrest Required (Yes/No):	No Only probable cause is required; an actual arrest is not necessary. §42-4-1202(3)(a)(II) & III
Implied Consent Law Applies to Drugs (Yes/No):	Yes §42-4-1202(3)(a)(III)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §42-4-1202(3)(a)
Other Information:	A person's blood may be taken from them by force if there is probable cause that they committed criminally negligent homicide with a motor vehicle, vehicle homicide, assault in the third degree with a motor vehicle or vehicle assault. §42-4-1202(3)(a)(IV)

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes (Alc. & Drugs) §42-4-1202(3)(a)(II) & (III)
Urine:	Yes (For Drugs only) §42-4-1202(3)(a)(III)
Other:	Saliva (For Drugs only) §42-4-1202(3)(a)(III)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

²A "drug" is defined as either a substance, that is intended to cure or prevent disease, listed in the U.S. Pharmacopoeia, or a controlled substance; see §§12-27-303(7) & (13) and 42-4-1202(1)(d).

STATE:
General Reference:

FLORIDA
Florida Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:

Under the influence of alcoholic beverages¹
§316.193(1)(a)

Illegal Per Se Law (BAC/BrAC Level):

0.10^{1&2} §§316.193(1)(b) & 316.1932(b)1

Presumption (BAC Level):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of a Controlled
Substance/Chemical Substance listed in §877.111
§§316.193(1)(a) & 316.1931

Other

1) A BAC/BrAC level of 0.10³ is prima facie
evidence of driving under the influence
§316.1934(2)(c)
2) See the Special Note below.
3) For Commercial Motor Vehicle Operators, see
p. 3-100.
4) A person arrested for a DWI offense cannot be
released from custody until: (1) they are no
longer under the influence of alcohol or other
chemical substance, (2) their BAC level is less
than 0.05 or (3) eight (8) hrs have elapsed from
the time of their arrest. §316.193(9)

¹The offense of "driving under the influence" includes (1) driving under the influence of alcoholic beverages or (2) driving with a blood or breath level of 0.10 or more. See §316.193(1)(a) & (b) and State v. Rolle, 560 So.2d 1154 (Fla. 1990).

²This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. The standard definitions of BAC and BrAC are used; see §316.1932(b)1.

³Standard: Percent by weight of alcohol in either the blood or breath. §316.1934(2)(c)

Special Note: A jury instruction, that was based on a verbatim reading of §316.1934(2)(c), was held to be unconstitutional in that it created a mandatory "irrebuttable" presumption that shifted the burden of proof of the DWI offense to the defendant; see *Wilhelm v. State*, 568 So.2d 1 (Fla. 1990). Notwithstanding this case, the statutory language itself has been held constitutional in a prior decision; see *State v. Rolle*, 560 So.2d 1154 (Fla. 1990). Note: A Federal court has held in similar circumstances that there was no constitutional infirmity. However, the Federal court did express its concern that a jury could be confused with the term "prima facie". Despite this concern, the court felt that no unconstitutional mandatory presumption had been created when this instruction was viewed in conjunction with the other jury instructions that were given. See *Santiago Sanchez Defuentes v. Dugger*, 923 F.2d 201 (11th Cir. 1991).

STATE - Florida

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law: No

Implied Consent Law:
Arrest Required (Yes/No): Yes §316.1932(1)(a) Note: Under §316.1932(1)(c), an arrest is not a prerequisite to the taking of a blood sample if the driver is taken to a medical facility for treatment as a result of an accident. See *Kenson v. State*, 577 So.2d 694 (Fla.App. 3 Dist. 1991).

Implied Consent Law Applies to
Drugs (Yes/No): Yes §316.1932(1)(a)¹

Refusal to Submit to Chemical Test
Admitted into Evidence: Yes (Criminal Cases) §§316.1932(1)(a) & 316.1932(1)(b)

Other Information: A blood test may be given a driver without their consent only if they have been involved in an accident resulting in either death or serious bodily injury. See §316.1933(1) and *Carbone v. State*, 564 So.2d 1253 (Fla.App. 4 Dist. 1990), and *State v. Perez*, 531 So.2d 961 (Fla. 1988).

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood: Yes-Limited A blood test, for the purposes of implied consent, may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible. §316.1932(1)(b)

Urine: Yes-Limited Under §316.1932(1)(a), there is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.

Other: None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): Yes Applies only to DWI manslaughter/veh homicide offs; see §316.656.

Anti-Plea Bargaining Statute (Yes/No): Yes Only applies if BAC level is 0.20 or more or for DWI manslaughter/veh homicide offs; see §316.656.

Pre-Sentencing Investigation Law (PSI)
(Yes/No): Yes A person convicted of a DWI offense may be referred to substance abuse evaluation; see §316.193(5).

¹The implied consent law, as applied to driving while under the influence of drugs, provides only for the testing of urine.

STATE:
General Reference:

IDAHO
General Laws of Idaho Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §18-3004(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ §18-3004(1)(a)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug, (2) Intoxicating Substance or (3) a Combination of Any Drug and Alcohol §§18-3004(1)(a) & 18-3004(5)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	No ²
Implied Consent Law Applies to Drugs (Yes/No):	Yes §18-3002(1)
Refusal to Submit Chemical Test Admitted into Evidence:	Yes (Criminal Cases) State v. Bock, 322 P.2d 1055 (1958)
Other Information:	Under §18-3002(6)(b), a law enforcement officer may order a "qualified person" to withdraw blood from a driver for evidential purposes in cases where there is probable cause to believe that such driver has committed either a DWI aggravated/homicide offense. Comment: This provision appears to allow law enforcement officers to obtain a blood sample via force.

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration level of 0.10 or more or (2) a urine alcohol concentration of 0.10 or more.

²The police need only "reasonable grounds" of a DWI off before the implied consent law is applicable: see §18-3002(1). However, §18-3002(4)(b) appears to indicate that "probable cause" is needed.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials; if, while driving a CMV, they (1) have a BAC/BrAC/"Sodily Substance" level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). A person, who operates a CMV with an alcohol concentration of 0.04 or more or while under the influence of alcohol/drugs, is subject to DWI criminal sanctions. In addition, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. See §§49-105(6), 49-104(9), 49-335 (Reference is made to 49 CFR part 382.), 18-3002(3)(a), 18-3004(1)(b) & (5), 18-3004(4), and 18-3005(2) & (3).

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §§18-3002(1) & 18-3004
Urine:	Yes §§18-3002(1) & 18-3004
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (Alcohol Evaluation) §18-3005(9)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	No
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal</u> -180 dys susp (mand); <u>2nd Refusal</u> (w/n 5 yrs)-1 yr susp (mand) §18-3002(3)(c), (4)(b) & (4)(c)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

1st off Misd-Not more than 6 mos; 2nd off (w/n 5 yrs) Misd-10 dys to 1 yr; 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs) Felony-Not more than 5 years. Aggravated DWI where there is bodily harm/disfigurement-Not more than 5 years. See §§18-3005 & 18-3006.

Mandatory Minimum Term:

1st off Misd-None; 2nd off (w/n 5 yrs) Misd- 10 dys (must serve 48 con. hrs); 3rd & sub off (w/n 5 yrs) or 4th or sub. off (w/n 10 yrs) Felony-30 dys¹ Aggravated DWI off where there is bodily harm/disfigurement-30 dys¹ See §§18-3005 & 18-3006.

¹Historical Note: Under Art. 5, §12 of the State's constitution, the legislature may provide for mandatory minimum sanctions. This constitutional provision indirectly abrogated the Idaho Supreme Court's decision in State v. McCoy, 486 P.2d 247 (Idaho 1971), that had voided a statute requiring mandatory sanctions.

STATE:
General Reference:

ILLINOIS
Smith/Hurd Illinois Annotated Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol Ch. 95%, §11-501(a)(2)
Illegal Per Se Law (BAC/BAC Level):	0.10 ¹ or Any Amount of Cannabis/Controlled Substance ² Ch. 95%, §11-501(a)(1) & (5)
Presumption (BAC Level):	0.10 Ch. 95%, §11-501.2(b)(3) & 11-501.6(a)(3)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) a Combination of Any Drug and Alcohol See Ch. 95%, §11-501(a)(3) & (4).
Other:	For Commercial Motor Vehicle Operators, see p. 3-147.

Chemical Breath Tests for BAC/BAC Level:

Preliminary Breath Test Law:	Yes-Limited ³ Ch. 95%, §11-501.5
Implied Consent Law:	
Arrest Required (Yes/No):	Yes Ch. 95%, §11-501.1 See the Special Note below.
Implied Consent Law Applies to Drugs (Yes/No):	Yes Ch. 95%, §11-501.1(a)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) See Ch. 95%, §11-501.2(c) & 11-501.6(f) and People v. Thomas, 555 N.E.2d 655 (Ill.App. 3 Dist. 1990). A BAC (blood test) test may be taken by force for a DWI offense (injury or non injury related) as long as the police have "probable cause" for such offense. See People v. Byrd, 574 N.E.2d 1259 (Ill.App. 4 Dist. 1991), and People v. Yant, 570 N.E.2d 3 (Ill.App. 2 Dist. 1991).
Other Information:	

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. Ch. 95%, §11-501.2(a)(5) "as found in the blood or urine" resulting from unlawful use or consumption." 95%, §11-501(a)(5)

²Before a PBT can be administered, a law enforcement officer must have probable cause to believe that the driver is violating the DWI law. The test is given prior to an actual DWI arrest for the purpose of assisting the officer in determining whether to require a chemical (evidentiary) test under the implied consent law.

Historical Note: Under Ch. 95%, §11-501.6(a), which is now void, a law enforcement officer could request that a person, via "implied consent", submit to a chemical test of their blood, breath or urine for alcohol or drug content based only on "probable cause" that the person was responsible for an accident that resulted in either an injury or a death. There was no requirement that there be "probable cause" of an offense (e.g. DWI). Because of this deficiency, the Illinois Supreme Court declared Ch. 95%, §11-501.6 unconstitutional under both the State and Federal constitutions. King v. Ryan, Secretary of State, ___ N.E.2d ___ (Ill. 1992) (1992 Ill. LEXIS 198) The sanctions for refusal to submit to this test were the same as for refusal under the regular implied consent law. Ch. 95%, §116-206(a)(3) & 11-501.1

STATE - Illinois

Chemical Tests of Other Substances for SAC Level
Which Are Authorized Under the Implied Consent Law:

Blood: Yes Ch. 92%, §§11-501.1
Urine: Yes Ch. 95%, §§11-501.1
Other: None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No
Anti-Plea Bargaining Statute (Yes/No): No¹
Pre-Sentencing Investigation Law (PSI)
(Yes/No): Yes Ch. 95%, §§11-501(a)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:
Criminal Sanctions (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): None
Other: None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action
(Susp/R v):

1st refusal-Susp for 6 mos (Note: A Judicial Driving Permit is available: see footnote No. 2 (under Admin. per se) on p. 3-145 for details.) Also, restricted driving privileges are available under 95% §16-206(c)(3): subsequent refusals² (w/n 5 yrs)-Susp for 2 yrs; 6 mos mandatory; a restricted license may be issued after this 6 month period.) See footnote No. 4 on p. 3-146. Ch. 95%, §§16-206(c)(3), 6-206.1, 6-208.1 and 11-501.1

Other: None

Criminal Sanctions:

Imprisonment:

1st & 2nd offs (Class A misd)-Less than 1 yr;
subsequent offs³ (Class 4 felony)-1-3 yrs Ch. 36, §§1005-3-1(a)(7) & 1005-9-3(a)(1) and Ch. 95%, §§11-501. See footnote No. 2 on p. 3-145.

¹Note: A defendant cannot obtain deferred judgement and be placed on supervision if within the past 10 years they have either (1) been convicted of DWI, (2) pleaded guilty to or stipulated facts supporting the conviction of a DWI off charge or (3) received supervision for a prior DWI off. Ch. 38, §§1005-6-1(c) and 1005-6-1(d)

²Or a refusal where the person has had a previous DWI offense conviction or admin. per se violation (w/n 5 yrs). Ch. 95%, §§11-500

³This offense is defined as "Aggravated Driving Under the Influence of Alcohol or Drugs or a Combination of Both". Ch. 95%, §§11-501(d)

STATE:

INDIANA

General Reference:

Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense

Operating a vehicle while intoxicated
IC9-30-5-2 (The term "intoxicated" is defined
as under the influence of alcohol, drugs, etc.;
see IC9-13-2-36.)

Illegal Per Se Law (BAC Level):

0.10¹ IC9-30-5-1(a) or Any Amount of a
Controlled Substance IC9-30-5-1(b)

Presumption (BAC Level):

0.10²

Types of Drugs: Drugs and Alcohol:

Under the influence of: (1) Any Drug, (2) a
Controlled Substance or (3) Any Combination of
Alcohol and Drugs IC9-30-5-2 & IC9-13-2-36

Notes:

0.10 BAC is also prima facie evidence of
intoxication. IC9-13-2-13:

See Footnote No. 4 concerning school bus
operators.

For Commercial Motor Vehicle Operators, see p.
3-156.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:

No (Note: PBT law, formerly IC9-30-5-3,
repealed by P.L. 143 enacted in 1983.)

Implied Consent Law:

Arrest Required (Yes/No):

No (A request for a test must be based on
probable cause. However, an actual arrest is
not required. See IC9-30-6-2 and Clark v.
State, 370 N.E.2d 135 (Ind. 1978).)

Implied Consent Law Applies to

Drugs (Yes/No):

Yes IC9-30-6-2

Refusal to Submit to Chemical Test:

Admitted into Evidence:

Yes (Criminal & Civil Cases) IC9-30-6-3(b)

Other Information:

In accidents where there has been either a
fatality or a serious injury, a blood sample may
be obtained from a driver suspected of DWI via
force. IC9-30-6-6(g)

¹Standard: Percent by weight of alcohol in the blood. IC9-30-5-1(a)

²This State's illegal per se law also makes it an offense (Class A Misd.) for a person to operate a
motor vehicle with any amount of a controlled substance in their blood. Exception: It is a
defense to this offense if it is shown that the defendant was using a controlled substance via
a valid prescription. IC9-30-5-1(c)

³Under IC9-30-5-15(b)(2), a chemical test indicating a BAC level of 0.10 is to be taken as a
presumption of such BAC level.

⁴It is a Class A Misd. to consume either alcohol or a controlled substance within six (6) hours
of operating a school bus. IC20-2.1-2-1.6 Sanctions: Jail-not more than 1 yr; fine-not more
than \$5,000. IC35-50-2-7 & IC35-50-3-1

STATE - Indiana

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes ¹
Urine:	Yes ¹
Other:	Any other bodily substance ¹

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	No

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	Yes-Limited ²
Administrative Licensing Action (Susp/Rev):	1-yr susp ^{2&3} (May not be mandatory if there is a DWI conviction. ³) IC9-30-6-9(a) See Footnote No. 3 on p. 3-157. (Note: A driver's license may be reinstated if the DWI charges are dismissed. IC9-30-6-11(a)(1))
Other:	None

¹The implied consent law requires a driver to submit one or more "chemical tests". The substances that may be tested are breath, blood, urine or any other bodily substance.

IC9-30-6-1 & IC9-30-6-6(a)

²Refusal to submit to a implied consent test, where there has been an accident in which there has been a death or a serious bodily injury likely to cause death, is a class C Infraction (a fine of not more than \$500). IC9-30-7-5 & IC34-4-32-4(.) In addition, the court may suspend a persons license for not more than 1 yr. IC9-30-7-5

³This susp. is consecutive to any susp. for a DWI offense. However, if a court finds in the sentence order for a DWI Conviction that it is in the best interest of society, .c may terminate all or any part of this suspension. IC9-30-6-14(b)

STATE:

NEBRASKA

General References:

Revised Statutes of Nebraska and
Nebraska Administrative Code (NAC)

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcoholic liquor §39-669.07(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ §39-669.07(1)(b) & (c)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of Any Drug §39-669.07(1)(a)
Other:	For Commercial Motor Vehicle Operators, see § 3-287.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §39-669.08(3)
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §39-669.08(3)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §39-669.08(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes §39-669.08(3) (Criminal Cases) and State v. Romell, 204 N.W.2d 573 (1973)
Other Information:	A driver, who has been involved in an accident and where there is reasonable grounds that the driver is DWI, may be required to submit to a chemical test to determine if they have either alcohol or drugs in their system. Injury or death is not a prerequisite for this requirement. §39-669.08(3)

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §39-669.08(1)
Urine:	Yes §39-669.08(1)
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ³
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes ⁴ Alcohol assessment (screening) for either a 1st offender or a sub. offender who has not received such an assessment. §39-669.07(8)

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. Note: Illegal per se based on alcohol concentration in urine was repealed. Sec. 4 of L.B. 291 enacted in 1992

²A surviving driver (or pedestrian under 16 years old), who is involved in an accident where there has been a fatality, shall be required to submit to a BAC chemical test. The results of such test, however, can only be used for statistical purposes. §§39-6.104.08 & 39-6.104.09

³Note: Under §29-3604, pretrial diversion of DWI cases is prohibited.

⁴"A court may order a presentence investigation in any case." §29-2251(2) & (3)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	Class V misd \$100 fine, no imprisonment §§28-106 & 39-669.08(3)
Administrative Licensing Action (Susp/Rev):	None
Other:	None

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail):	C1 W misd: <u>1st off</u> -Not more than \$500/60 dys; <u>2nd off</u> (w/n 8 yrs)-Not more than \$500/90 dys; <u>3rd off</u> (w/n 8 yrs)-Not more than \$500/1 yr; <u>4th or sub. off</u> (w/n 8 yrs)-Not more than \$10,000/5 yrs §§28-106 & 39-669.08
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Mandatory Sanctions:

I. If probation is not granted: 1st off-\$200/7
dys¹; 2nd off (w/n 8 yrs)-\$500/30 dys¹; 3rd off
(w/n 8 yrs)-\$500/90 dys¹; 4th or sub. off (w/n 8
yrs)-\$500/1 yr¹ §§28-106 and 39-669.08(4)(b) &
(c)

II. If probation is granted: 1st off-None; 2nd
off (w/n 8 yrs)-48 hrs¹; 3rd or sub. off (w/n 8
yrs)-7 dys¹ §§28-106 and 39-669.08(4)(b) & (c)
See the Comment on p. 3-285.

Administrative Licensing Action
(Susp/Rev):

I. The following revocations are mandatory if
probation is not granted:³ 1st off-Rev 6 mos;
2nd off-Rev 1 yr; 3rd and sub. off-Rev 15 yrs²
§§28-106 & 39-669.08

II. If probation is granted, the following
mandatory revocations must be imposed:³ 1st
off-Rev 60 dys; 2nd off-Rev 6 mos; 3rd and sub.
off-Rev 1 yr §§28-106 & 39-669.08

III. Administrative action⁴: 1st and sub.
refusals-Rev. 1 yr (mand) §39-669.16 & 247 HAC
§026

Other:

None

¹The period of imprisonment, if appears, must be served consecutively. State v. Texel, 433 N.W.2d 541 (Neb. 1989)

²Reduced to 5 yrs provided the person (1) has completed a chemical dependency program, (2) has not been convicted of either a DWI or implied consent offense, (3) has abstained from the excessive consumption of alcoholic beverages and (4) is not under suspension or revocation for any other reason. Sec. 10 of L.B. 291 enacted in 1992

³These revocations are based upon a conviction under §39-669.08. Special Note: Revocations cannot run concurrently with jail sanctions.

⁴This action by the licensing agency is independent of any licensing action that may be taken by the courts. A person, who is subject to this administrative action, is not eligible for employment (hardship) driving privileges under §60-4,130.

STATE:
General Reference:

NEVADA
Nevada Revised Statutes

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §484.379(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ^{1&2} §§484.0135 & 484.379(1)(b)
Presumption (BAC/BrAC Level):	0.10 §484.381(2)(c) & (4)(c)
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) A Controlled Substance, (2) a Combination of Intoxicating Liquor and a Controlled Substance or (3) Any Chemical, Poison, Organic Solvent and Any Compound or a Combination of These. §484.379(2)
Other:	For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	Yes §484.362
Implied Consent Law:	
Arrest Required (Yes/No):	No ³ §484.363(1)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §484.363(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §484.369

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more. §484.0135

²Special Note: Sec. 484.381(1) provides for a presumption related to illegal per se. This provision states that if the chemical test indicates a BAC level of 0.10 or more such result shall be "presumed to be no less than the amount present at the time of the alleged violation." A Federal appellate court has held that this statutory provision does not create an unconstitutional mandatory conclusive presumption on its "face". However, a State trial court applied this presumption as if it were a mandatory conclusive presumption. Such application was held to be unconstitutional. McLean v. Moran, 363 F.2d 1306 (9th Cir. 1992)

³Only "reasonable grounds" are needed not an actual arrest.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): The State's Public Service Commission and Department of Motor Vehicles and Public Safety have promulgate regulations that adopt by reference 49 CFR Parts 383 and 392. Under 49 CFR §383.51, a person is "disqualified" from operating a CMV for 1 yr. (mand.) (3 yrs (mand.) if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of alcohol or a controlled substance or (3) refuse to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (mand.). Under 49 CFR §392.5, a CMV operator who has any "detectable" amount of alcohol in their system must be placed "out-of-service" for 24 hours. In addition, it is misdemeanor to violate a regulation. The sanctions for this offense are a jail term of not more than 6 mos and/or a fine of at least \$100 (mand.) but not more than \$1,000. Note: A person, who violates a regulation, may also be liable for a civil penalty which is not to exceed \$10,000. See §§483.908, 706.173, 706.756 & 706.771, NAC §706.247 and 49 USC Appx §2901 et seq.

Chemical Breath Tests for BAC/BrAC Level:
(continued)

Other Information:

Note: A BAC chemical test via a blood sample may be given without consent if (1) there was a death or substantial bodily harm to another person or (2) the driver to be tested was convicted of a previous DWI offense w/n 7 yrs. See §484.383(3) & (8) and *Ebarb v. State*, Dept. of Motor Vehicles and Public Safety, 322 P.2d 1120 (Nev. 1991).

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes - §484.383(1)
Urine:	Yes §484.383(1) ¹
Other:	Or other unspecified bodily substances §484.383(1)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	Yes (Note: A DWI charge cannot be exchanged for a lesser charge unless there is no evidence to support such a DWI charge. §484.3792(3))
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes For a 3rd DWI and felony offs §§176.135, 484.3792(1)(c) & 484.3796 Special Note: For 1st offenders, a teacher of an (alc.) education course must evaluate the DWI offender to determine if such offender is an abuser of alcohol or drugs. The finding of this evaluation must be reported to the court. §484.3792(1)(a)(3)

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:	
Criminal Sanctions (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	Rev-90 dys §484.384(3)
Other:	None

¹A urine test can only be requested under two conditions. (1) A driver has been arrested for an alcohol driving offense and it is determined that they have hemophilia or a heart condition which would exempt them from a blood test or (2) a driver has been arrested for a drug driving offense. §484.383(4), (6) & (7)

STATE:
General Reference:

NEW JERSEY
New Jersey Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of intoxicating liquor §39:4-50(a) See the Special Note below.
Illegal Per Se Law (BAC Level):	0.10 ²⁴³ §39:4-50(a) <u>Under 21 Years Old</u> -0.01 but less than 0.10 ¹ §39:4-50.1d
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) A Narcotic (2) A Hallucinogenic Drug or (3) A Habit-Producing Drug §39:4-50(a)
Driver:	For Comm. Motor Vehicle Operators, see c. 3-216.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Probably Yes Under §39:4-50.2(a), a driver's license can only be revoked when the refusal is based on an arrest. However, see §39:4-50.2(a) where only "reasonable grounds" seems to be required.
Drugs (Yes/No):	No
Refusal to Submit to Chemical Test:	
Admitted into Evidence:	Yes (Criminal Cases) State v. Stever, 527 A.2d 408 (N.J. 1987)
Other Information:	(1) An "involuntary" blood (not breath) sample may be obtained from a person who has been arrested for a DWI offense; i.e., a blood sample may be taken by "force". State v. Dyer, 478 A.2d 260 (N.J. 1984), and State v. Hoeman, 483 A.2d 837 (N.J. Super. A.D. 1984) (2) Tests for alcohol shall be made on automobile drivers who survive traffic accidents fatal to others. §23:25-24 and State v. Figueroa, 518 A.2d 242 (N.J. Super. A.D. 1986), cert. den. 516 A.2d 204

Standards: Percent by weight of alcohol in the blood. §39:4-50(a)
In State v. Downie, 569 A.2d 242 (N.J. 1990), the N.J. Supreme Court held that breathalyzer results must be given "judicial notice". The court felt that this was in keeping with the legislature's policy of measuring alcohol in the brain for the purpose of determining whether a person was DWI. Comment: The practical end result of this decision was to in effect create a "judicial" illegal per se law based on BrAC; see the dissenting opinion.

¹See State v. Lencini, 573 A.2d 464 (N.J. Super. A.D. 1990).

Special Note: Under separate statutory provisions, it is illegal for a person to drive a motor vehicle while under the influence of intoxicating liquor, any narcotic or any habit forming drug (1) on "vehicle crossings" (bridges and tunnels) operated by the Port of New York Authority, (2) on any "project" of the New Jersey Expressway Authority or (3) on any "project" of the New Jersey Turnpike Authority. §§27:12C-37(6), 27:12C-37J, 27:23-25, 29:23-32, 32:1-154.3, 32:1-154.9 & 32:1-154.10 It is illegal to operate a motorized bicycle while under the influence of intoxicating liquor, any narcotic or any habit forming drug. §39:4-14.3g The law provides that a violation of these provisions results in the same sanctions as for violating the regular DWI law. §39:4-50

²The only sanctions for this offense are community service and forfeiture of driving privileges.

Chemical Tests for Other Substances for 3Ard level
Which Are Authorized Under the Implied Consent Law:

Blood:	No
Urine:	No
Other:	None

Adjudication of OWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law..(PSI) (Yes/No):	Yes (Alcohol screening) §39:4-50(b)

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	Fine-\$250 to \$500 §39:4-50.4a
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal-Rev-6 mos (Mand); 2nd or sub refusal-Rev 2 yrs (Mand) §§39:4-50.2 & 39:4-50.4a</u>
Other:	None

Sanctions Following a Conviction for a OWI Offense:

Criminal Sanctions:	See the Special Note below.
Imprisonment: Term (Day, Month, Years, Etc.):	<u>1st off-Not more than 30 dys; 2nd off (w/n 10 yrs of a first off)-48 cons hrs-90 dys; 3rd and subsequent offs (w/n 10 yrs of a second off)-Not less than 180 dys §39:4-50</u>
Mandatory Minimum Term:	<u>1st off-(See Rehabilitation on p. 3-316.); 2nd off-48 cons hrs (See Rehabilitation on p. 3-316.); 3rd and subsequent offs-90 dys (See Rehabilitation on p. 3-316.)</u>

The law provides that the court may substitute no more than 90 of the 180 jail term for community service on a day-for-day basis. Consequently, a 3rd or subsequent OWI offender would still be subject to a mandatory jail term of at least 90 dys. §39:4-50(a)(3) and State v. Laurick, 575 A.2d 240 (N.J. 1990)

Special Note: In State v. Hamm, 577 A.2d 1259 (N.J. 1990), the New Jersey Supreme Court noted that a OWI offense is not a "crime".

STATE:
General Reference:

OKLAHOMA
Oklahoma Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	(1) Under the influence of alcohol and (2) Impaired by the consumption of alcohol 47 §§751(A) & 11-902(A)(2)
Illegal Per Se Law (BAC/BrAC Level):	0.10 47 §§756(d) & 11-902(A)(1)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Intoxicating Substances or (2) a Combination of These and Alcohol 47 §11-902(A)(3) & (4)
Other:	0.10 BAC level is also <u>prima facie</u> evidence that a person was under the influence of alcohol 47 §756(d) >0.05 and <0.10 is evidence of Driving While Impaired 47 §756(b) For Commercial Motor Vehicle Operators, see below.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes 47 §751(A)
Implied Consent Law Applies to Drugs (Yes/No):	Yes 47 §751(A)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) 47 §756
Other Information:	Note: (1) Under 47 §753, a mandatory chemical test may be ordered in situations where there is probable cause that a person has been operating a motor vehicle while DWI and such operation has caused either death or serious physical injury to another person. (2) Also, under 47 §10-104(3), a mandatory chemical for alcohol/drugs may be ordered in traffic accident situations where the driver (person to be tested) has been cited for a traffic offense.

This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

²The impaired offense applies only to the use of alcohol (not other drugs). The sanctions given for driving while under the influence includes both alcohol and drug driving violations.

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 yr. (1 yr. mand.) (not less than 2 yrs (2 yrs mand.) if transporting hazardous materials), if while operating a CMV they (1) have a BAC/BrAC level of 0.04 or more, (2) are under the influence of alcohol or an intoxicating substance or (2) refuse to submit to a chemical test for an alcohol concentration. For either (1) a second "conviction" or (2) a combination of two "convictions" of any of the above listed items, the "disqualification" is for life (10 yrs mand.). See 47 §6-205.2.

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood:	Yes (for alcohol and intoxicating substances) 47 §751(A)
Urine:	Yes (for intoxicating substances only) 47 §751(A)
Other:	Saliva (for intoxicating substances only) 47 §751(A)

Adjudication of OWI Charges:

Mandatory Adjudication Law (Yes/No):	No
Anti-Plea Bargaining Statute (Yes/No):	No
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes (2nd and subsequent offs) 22 §982

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent
Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st Refusal</u> -Rev-180 dys (90 dys mandatory) ¹ ; <u>2nd Refusal</u> (w/n 5 yrs)-Rev.-1 yr (mandatory); <u>Sub. Refusal</u> (w/n 5 yrs)-Rev.-3 yrs (mandatory) 47 §§ 6-205.1, 6-211(i), 753, 754.1 & 755 See Footnote No. 2 on p. 3-374.
Other:	None

Sanctions Following a Conviction for a OWI Offense:

Criminal Sanctions:

Imprisonment: Term (Day, Month, Years, Etc.):	Driving While Under the Influence/Illegal Per Se <u>1st Off</u> (Misd)-10 dys to 1 yr; <u>2nd & subsequent offs</u> (w/n 10 yrs-felony)-1 yr to 5 yrs 47 §11-902 Personal Injury Accident (Driving While Under the Influence/Illegal Per Se)- <u>1st Off</u> (Misd)-90 dys to 1 yr; <u>2nd Off</u> (felony)-1 to 5 yrs 47 §11-904(A) Great Bodily Harm (Driving While Under the Influence/Illegal Per Se) (felony)-not more than 5 yrs 47 §904(B)
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¹A restricted hardship license is available after the mandatory 90 day period.

STATE:

SOUTH DAKOTA

General Reference:

South Dakota Codified Laws

Basis for a DWI Charge:

Standard DWI Offense: Under the influence of an alcoholic beverage §32-23-1(2)
Illegal Per Se Law (BAC Level): 0.10¹ §32-23-1(1)
Presumption (BAC Level): 0.10¹ §32-23-7 (Note: §32-23-7 applies this presumption to the ven homicide off.)
Types of Drugs/Drugs and Alcohol: Under the influence of (1) Any Substance, (2) Any Controlled Drug, (3) Marijuana or (4) a Combination of These Substances and an Alcoholic Beverage §32-23-1(3) & (4)
Other: For Commercial Motor Vehicle Operators, see § 3-431.

Chemical Breath Tests for BAC Level:

Preliminary Breath Test Law: Yes §32-23-1.2
Implied Consent Law:
Arrest Required (Yes/No): Yes §32-23-10
Implied Consent Law Applies to
Drugs (Yes/No): Yes §32-23-10
Refusal to Submit to Chemical Test
Admitted into Evidence: Yes §§19-13-28.1 & 32-23-10.¹⁴ (Criminal Cases)
Other Information: Chemical test required for persons who have been arrested for a third or subsequent DWI offense which constitutes a felony. "Force" may be used to obtain a blood sample. §32-23-10. State v. Heinrich, 449 N.W.2d 25 (S.D. 1989), State v. Lanier, 452 N.W.2d 144 (S.D. 1990), and State v. Sickler, 453 N.W.2d 70 (S.D. 1992)

Chemical Tests of Other Substances for BAC Level
Which Are Authorized Under the Implied Consent Law:

Blood: Yes §32-23-10
Urine: No §32-23-10
Other: "Other bodily substances" §32-23-10

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No): No
Anti-Plea Bargaining Statute (Yes/No): No (Note: An illegal per se charge may be reduced or dismissed only when written reasons for such have been filed with the court. §32-23-1.3)

¹Based on percent by weight of alcohol in the blood. However, under §32-3-7, there is a provision that "[p]ercent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath."

²This statute was held constitutional in South Dakota v. Neville, 459 U.S. 553 (1981).

Adjudication of OWI Charges: (continued)

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes Limited If the defendant's BAC level is 0.17 or more, the court must require them to undergo an evaluation to determine if they are addicted to alcohol. §32-33-23 Note: The courts have general authority to order discretionary pre-sentence investigation reports. §23A-27-5

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): None
Other: None

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev):

Rev 1 yr¹ (A restricted hardship license is available.) §32-23-11

Other: None

Sanctions Following a Conviction for a OWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off C1 1 Misd-1 yr (county jail); 2nd off (w/n 5 yrs) C1 1 Misd-1 yr (county jail); 3rd off C1 6 Felony (w/n 5 yrs)-Not more than 2 yrs (State penitentiary); 4th & sub. off (w/n 5 yrs) C1 5 Felony-Not more than 5 yrs (State penitentiary) §§22-6-1, 22-6-2, 32-23-2, 32-23-3, 32-23-4 & 32-23-4.1

Mandatory Minimum Term:

None

Fine:

Amount (\$ Range):

1st off-\$1,000; 2nd off (w/n 5 yrs)-\$1,000; 3rd off (w/n 5 yrs)-\$2,000; 4th & sub. off (w/n 5 yrs)-Not more than \$5,000

Mandatory Min. Fine (\$):

None

¹Under §32-23-11.1, a driver's license is not subject to revocation for refusal to submit to a chemical test under the implied consent law if either (1) the driver pleads guilty to a OWI offense or (2) the OWI charge is dismissed prior a hearing on the refusal and the person is not convicted of a lesser charge or, if a hearing is not requested, prior to the revocation being ordered.

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

STATE:
General Reference:

UTAH
Utah Code Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of alcohol §41-6-44(1)(a)
Illegal Per Se Law (BAC/BrAC Level):	0.08 ¹ §41-6-44(1)(a) & (2)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) a Combination of Any Drug and Alcohol §41-6-44(1)(a)
Other:	For Commercial Motor Vehicle Operators, see p. 3-461.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §41-6-44.10(2)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §41-6-44.10(1)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) §41-6-44.10(3)
Other Information:	A driver may be compelled to submit to a chemical test if they have been placed under arrest either (1) for a DWI offense and there is reason to believe that another person may die as a result of the offense or (2) for a vehicle homicide alcohol related offense. §76-5-207(5)(b) & (7)(a)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes §41-6-44.10
Urine:	Yes §41-6-44.10
Other:	None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No (Note: A Magistrate may not grant diversion in a DWI case. §77-2-9)
Anti-Plea Bargaining Statute (Yes/No):	No (Note: If the defendant pleads guilty or <u>nolo contendere</u> to reckless driving as a substitute for a DWI charge, the prosecution must state for the record whether alcohol or drugs were related to the pleaded off. §41-6-44(10))
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes §41-6-44(4) & (5) (Assessment)

This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.08 or more.

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): N/A
Administrative Licensing Action
(Susp/Rev): N/A
Other: N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail): None
Administrative Licensing Action
(Susp/Rev): Rev for 1 yr¹ Mandatory §41-6-44.10(2)(b)
(Note: No hardship license may be issued for
revs based on a test refusal. §41-2-19(d))
Other: None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off and 2nd off (w/n 5 yrs)-Class B misd.-
not more than 6 mos; 3rd & sub off (w/n 5 yrs)
if one or more of the previous offs occurred
prior to 4/23/90-Class B misd. - not more than 6
mos; 3rd off (w/n 5 yrs) if two of the previous
offs occurred after 4/23/90-Class A misd. - not
more than 1 yr; 4th & sub off (w/n 5 yrs) if the
three previous offs occurred after 4/23/90-3rd
Degree felony - not more than 5 yrs
A DWI off-where there is an injury related to
negligent action-Class A misd.- not more than 1
yr §§41-6-44(3)(a), 76-3-203(3) & 76-3-204
1st off-48 cons hrs; 2nd off (w/n 5 yrs)-240
cons hrs; subsequent off² (w/n 5 yrs)-720 hrs
DWI related injury off-48 cons hrs

Mandatory Minimum Term:

¹This sanction also applies to persons under 21 years old who refuse to submit to a chemical test to determine if they have violated §41-6-44.1(1). This section provides for administrative (licensing) actions against such persons who drive a vehicle with any amount of alcohol in their body.

²This mandatory sanction (i.e., jail or community service alternative) may not apply to 3rd offenses (w/n 5 yrs) if two of the previous offs occurred after 4/23/90 and to 4th & sub offenses (w/n 5 yrs) if the three previous offs occurred after 4/23/90. The law provides that for these offenses "[e]nrollment in and completion of a chemical dependency rehabilitation program approved by the court may be a sentencing alternative to incarceration or community service if the program provides intensive care or inpatient treatment and long-term closely supervised follow through after the treatment." §41-6-44(6)(c)(II) & (7)(c)

STATE:
General Reference:

WASHINGTON
Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of or affected by intoxicating liquor §§46.61.502(3) & 46.61.504(3)
Illegal Per Se Law (BAC/BrAC Level):	0.10 ¹ §§46.61.502(1) & (2) and 46.61.504(1) & (2)
Presumption (BAC Level):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) Any Drug or (2) a Combination of Intoxicating Liquor and Any Drug §§46.61.502(3) & (4) and 46.61.504(3) & (4)
Other:	For Commercial Motor Vehicle Operators, see p. 3-495.

Chemical Breath Tests for BAC/BrAC Level:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §46-20-308
Implied Consent Law Applies to Drugs (Yes/No):	No ³
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal Cases) §46.61.517 ²
Other Information:	Special Note: A person may be administered either a breath or blood test without their consent, if they have been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) DWI where there has been an injury related accident which may result in death. §46.20.308 ³ & State v. Schuize, 304 P.2d 555 (Wash. 1957)

Chemical Tests of Other Substances for BAC Level Which Are Authorized Under the Implied Consent Law:

Blood:	Yes
Urine:	No
Other:	None

¹This State's illegal per se law also makes it an offense to operate a motor vehicle with a breath alcohol concentration level of 0.10 or more.

²See State v. Zwicker, 713 P.2d 1101 (Wash. 1986), which limited such evidence to situations where the defendant initially raises the issue of a blood alcohol test by contesting the credibility or competence of police procedures.

³Under §46.20.308(2), if there is an injury likely to cause death, a person may be compelled to submit to a test for drugs as well as for alcohol.

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):	No ¹
Anti-Plea Bargaining Statute (Yes/No):	No ¹
Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Permissive authorization, but not mandatory; see §46.51.515.

Sanctions for Refusal to Submit to a
Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):	N/A
Administrative Licensing Action (Susp/Rev):	N/A
Other:	N/A

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>1st refusal</u> -Rev for 1 yr (Mandatory); <u>2nd refusal</u> (w/n 5 yrs) Rev for 2 yrs (Mandatory) §§46.20.308 and 46.20.311(2)
Other:	None

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

1st off - 24 hrs - 1 yr; 2nd and Subsequent off
(w/n 5 yrs) - 7 dys - 1 yr; 2nd and Subsequent
off but offender has no license or because their
license was either suspended or revoked - 90 dys
- 1 yr Veh Assault (Drunk driving related
injury C1 C felony) - Not more than 5 yrs
§§9A.20.021(1)(c), 46.61.502, .504, .515, .522
See Miscellaneous Sanctions on p. 3-196.

Mandatory Minimum Term:

1st off - 24 cons hrs^{1&2}; 2nd and Subsequent
offs (w/n 5 yrs) - 7 dys^{2&3}; 2nd and Subsequent
off but offender has no license or because their
license was either suspended or revoked - 90
dys See Miscellaneous Sanctions on p. 3-196.

¹The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once in every five (5) years. The program provides for alcohol treatment for a two year period. Upon successful completion of the program. The court shall dismiss the charges pending against the defendant. §10.05.010 et seq.

²May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

³With 48 con. hrs. §46.61.515(1)

Special Note: The Washington Supreme Court has held that DWI offenses are not felonies. State v. Eigin, 825 P.2d 314 (Wash. 1992)