

**ALASKA LEGISLATURE**

**2544**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

MAY 12 2003

SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 243(STA)  
(H) Publish Date: 5/6/03

Revision Date/Time (Note if correction): 4/16/03 1:20 PM Dept. Affected: Governor  
Title: An Act establishing audit powers in the Office of the Governor BRU: OMB  
Component: OMB  
Sponsor: Rules Committee  
Requester: Governor Component No. 2144

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would re-establish an audit function in the Office of the Governor. Funding will be provided by reallocation of existing Office of the Governor funds in the Governor's FY 04 budget; no new money will be required.

The Governor's budget request for the Office of Management and Budget, and as approved by the House, totals \$1,899,500 from the general fund. Of that amount, \$1,767,500 is in personal service costs for 23 full time positions. To help restore the internal performance audit function, the following transfers were accomplished:

Prepared by: Jay Hogan, Deputy Director Phone 465-3559  
Division: OMB Date/Time 4/16/03 1:36 PM  
Approved by: Jay Hogan, Deputy Director Date 4/16/2003  
Agency: OMB

FISCAL NOTE #2

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

BILL NO. CSHB 243(STA)

ANALYSIS CONTINUATION

Three positions were transferred from the Division of Governmental Coordination [DGC was reduced in size and transferred via Executive Order 106 to the Department of Natural Resources] to support the audit and performance evaluation function. Two were classified as Management Analysts and the third as an Internal Auditor.

Funding for the three positions transferred came from reallocations within the Division of Elections [\$196,800] and the Human Rights Commission [\$128,800].

The three "new" positions, plus two existing OMB Internal Audit positions would give the audit and performance evaluation function a staff of five full time positions. It is also envisioned that as circumstances may require, OMB Budget and Policy Analysts would assist in various audit and performance evaluations.

FRANK H. MURKOWSKI  
GOVERNOR

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU  
ADMINISTRATIVE ORDER NO. 202

Under the authority of art. III, secs. 1 and 24, of the Alaska Constitution and AS 44.17.060, 44.17.070, AS 44.19.010, and 44.19.144 and in the interests of efficient administration, I, Frank H. Murkowski, Governor of the State of Alaska, order all principal departments of the executive branch to perform internal performance audits.

The performance audits are to be coordinated by the Office of Management and Budget, Office of the Governor (OMB) and are to be conducted according to the schedule and format determined by the OMB. The scope of these audits shall include

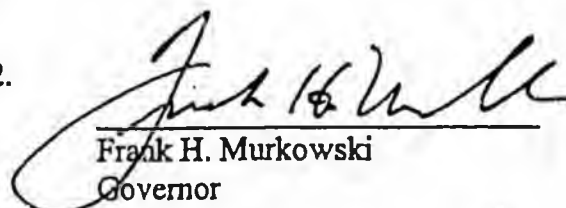
1. a review of department compliance with established objectives and goals and whether department operations and programs are being carried out as planned;
2. a review of the economy and efficiency with which a department's resources are employed;
3. an evaluation of the accuracy, timeliness, and effectiveness of department accounting systems, reporting systems, and procedures;
4. a review of the reliability and integrity of department financial and operating information;
5. a review of department compliance with existing statutes, regulations, policies, and procedures; and
6. recommendations for consolidation and reorganization of departments, divisions, and duties and any other recommendation to promote sound and efficient administration.

The OMB, together with principal departments of the executive branch, and in compliance with state personnel laws, may determine a program to reward executive branch employees for suggestions and recommendations that lead to significant improvements in the efficient administration of state government.

Working papers generated during the performance of these internal performance audits are confidential to the extent allowed by law until the related final report is released as provided under state law. Working papers containing material that is designated by law as confidential remain classified as confidential.

This Order takes effect immediately.

Dated this 2<sup>nd</sup> day of December, 2002.

  
Frank H. Murkowski  
Governor

OFFICE OF MANAGEMENT AND BUDGET  
STATEMENT AND SECTIONAL ANALYSIS FOR HOUSE BILL 243

The Office of Management and Budget was established in 1983. To staff OMB, existing budget components from other departments were transferred to the Office of the Governor and reorganized into four divisions. One of those transfers moved the Internal Audit function from the Department of Administration to OMB as part of the Management Division, then staffed with 19 full time positions. Management staff had declined to 12 full time positions by 1995, when the function was abolished.

The day Governor Murkowski took office, he signed Administrative Order No. 202 [attached] and directed "all principal departments of the executive branch to perform internal performance audits". OMB was directed to coordinate those departmental audits as part of the January/February budget review process. Much of the Governor's amended budget - now before the Legislature - is the product of this process.

In reestablishing the audit function, the Governor will shift focus from traditional internal auditing to:

**Performance Measurement** - Systematic collection and reporting of information that tracks resources used, work produced, and intended results achieved;

**Performance Evaluation** - Systematic collection and analysis of information to determine a program's performance and the reasons for achieving the level of performance; and both performance measurement and performance evaluation are vital parts of

**Performance Budgeting**, the central mission of OMB.

Borrowing from the Governor's transmittal letter for HB 243, the sectional analysis is:

**Section 1.** The bill would establish powers in the Office of Management and Budget necessary to evaluate program performance by executive branch agencies;

**Section 2.** Provide express authorization for the exercise of internal audit powers; and

**Section 3.** Would make "internal audit work papers and other related supportive material" confidential. And, as stated in the transmittal, "This provision mirrors the powers given to legislative auditors and is considered necessary to make the auditors effective in the performance of their duties."

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300  
123 4<sup>th</sup> ST., DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
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April 16, 2003

Hon. Bruce Weyhrauch, Chair  
House State Affairs Committee  
Alaska Legislature  
Room 102, State Capitol  
Juneau, Alaska 99801

Re: HB 243 - state agency performance audit powers;  
confidentiality provisions

Dear Representative Weyhrauch:

We were requested to comment on section 3 of the above-referenced bill which makes internal audit reports confidential until released by the governor. The intent of this provision is to attain the level of effectiveness for internal auditors as presently provided for legislative auditors. See AS 24.20.301(a) and 24.20.311. The ability to make audit communications and reports confidential greatly adds to an auditor's ability to provide candid assessments of program and policy implementation.

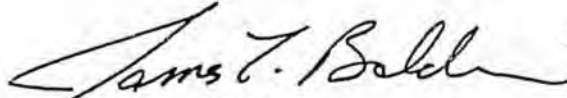
We expect that the internal audit function is likely to be less involved in post audit examinations and more in examinations of performance of assigned functions. In order to encourage candor on the part of auditors, there should be control vested in the governor as to when and if audit reports become public. It is likely that the preliminary reports of the auditors are privileged because the auditors will be advising the governor on matters of policy which would be part of the executive decision-making process. Under these circumstances the work of the auditors would be subject to the deliberative process privilege. See *Capital Info. Group v. State, Office of the Governor*, 923 P.2d 29 (Alaska 1996). However, unlike the unqualified privilege accorded to the legislature, the deliberative process privilege is qualified, meaning that it is determined by balancing the interests involved.

The bill proposes to make internal audit reports and supporting work papers confidential by law to avoid the uncertainty of the balancing process which can only be ultimately resolved in a court of law. In this way, the privilege accorded to the work product of internal auditors would be the same as accorded to legislative auditors.

Thank you for the opportunity to comment on this bill.

Sincerely,

GREGG D. RENKES  
ATTORNEY GENERAL



By: James L. Baldwin  
Assistant Attorney General

JLB:jn

cc: David Marquez, Assistant Attorney General, Legislative Liaison  
Deborah E. Behr, Legislation Attorney  
Jay Hogan, Deputy Director, OMB

FRANK H. MURKOWSKI  
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April 3, 2003

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would establish state agency program performance management and audit powers in the Office of the Governor. This bill would establish powers in the office of management and budget necessary to evaluate program performance by executive branch agencies. These powers would include express authorization for the exercise of internal audit powers. It is my intent that this authority permit the centralization of the internal audit function, which had been a declining effort under previous Administrations. I intend to use internal audits as a management tool in my Administration's continuing effort to streamline and make efficient the operations of state agencies.

The bill also would make certain audit records confidential. This provision mirrors the powers given to legislative auditors and is considered necessary to make the auditors effective in the performance of their duties.

I urge your favorable consideration of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Frank H. Murkowski".

Frank H. Murkowski  
Governor

**HB**

**244**

**HFIN**

**FILE**



Mothers Against Drunk Driving  
JUNEAU CHAPTER  
211 4th St., Suite 314  
Juneau, AK 99801  
Phone (907)463-2562  
Fax (907)463-2540  
madd@alaska.net  
www.madd.org/ak/juneau

Mothers Against Drunk Driving (MADD) supports CSSB 170 for House Bill 244.

MADD supports consecutive jail time for each death in a drunk driving crash in order for restorative justice to take place within our communities.

As a victim in the State v. Glaser case, I cannot begin to explain the unnecessary bitterness and frustration our families struggle with because of the court decision which refused to consider the multiple deaths in the drunk driving tragedy. Currently in Alaska, a loved one's life is less valuable than a stolen automobile in a felony case; this sends a dangerous message out to all Alaskans. Each life torn from us by drunk driving is certainly worth taking into individual consideration; to do otherwise would create additional heartache and trauma for victims of this violent crime.

MADD also supports the right for communities to adopt lower limits of alcohol possession and importation in order to increase the health and safety of their people.

MADD supports stricter drunk driving sanctions for high risk drivers. Habitual drunk drivers who have repeatedly chosen to endanger themselves and everyone else who shares their road system must be held accountable for their crimes.

About one-third of all drivers arrested or convicted of driving under the influence are repeat offenders. These drivers are 40% more likely to be involved in a fatal crash than those without prior DUIs.

MADD supports increased penalties for those whose choice to drink and drive results in the serious injury of an innocent victim or victims.

People who drink and drive are unable to determine if they are sober before arriving at their destination. If a person chooses to drink and drive then that person has committed a crime and should be held accountable for his/her actions.

MADD supports the recommended changes in CSSB 170 for House Bill 224 as a way of deterring further drunk driving tragedies and improving Alaska's restorative justice system.

Sincerely,

Cindy Cashen  
Executive Director

**CS for HOUSE BILL 244(2d JUD)**

**(April 14, 2004)**

**Sectional Summary**

**Sections 1 - 4** allow communities to adopt, as part of a local option, lower amounts of alcohol that may be possessed or imported into the community than may currently be possessed or imported, and still presumed to be for personal use rather than for sale. Certain communities have already adopted lower limits by ordinance. If it is part of a local option, however, state law enforcement authorities can help communities enforce these lower limits.

**Section 5** raises the penalty for furnishing alcohol to a person under 21 years of age from a class A misdemeanor to a class C felony, if the offense occurs in a village or municipality that has adopted a local option, unless the village or municipality opts out of the class C felony application as part of their local option.

**Sections 6** allows for the forfeiture of money used in bootlegging offenses.

**Section 7** also allows the state to share with municipal law enforcement agencies that participate in the arrest or conviction of a bootlegger the proceeds from forfeited property.

**Section 8** is a conforming amendment to the change described in **Section 13**.

**Section 9** expands the felony-murder rule so that an offender who commits a dangerous crime can be charged with second-degree murder if an accomplice is killed, except if the death of the participant is the direct result the felony criminal conduct by a nonparticipant. The current felony-murder rule allows an offender to be charged with second-degree murder if a person, such as a bystander, is killed during the commission of the crime, even if the offender did not directly cause the death. The purpose of the felony-murder rule is to discourage serious crimes. It will be more effective if it also applies to the death of a participant in the crime.

**Section 10** closes a loophole in our assault statutes by making criminally negligent conduct that causes serious physical injury with a dangerous instrument a class C felony. Under current law there is no statute addressing this conduct. The injury must be the kind that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy. One example of this conduct is a person who is partially impaired (but not enough to be DUI), drives in a dangerous manner, and causes serious physical injury to another person.

**Sections 11 - 12** increase the penalty for sexual abuse of young children by teenagers from a class A misdemeanor to a class C felony.

**Section 13** adopts a new crime - that of violating a person's duty as a third party custodian. It applies to a person who agrees to be a third party custodian, but does not report to authorities if the person in custody violates release conditions. It is either a class A or class B misdemeanor, depending on the crime with which the person released is charged.

**Section 14** disallows self-defense if the force applied resulted from use of a deadly weapon by the person claiming the defense, and the state proves that the defendant was furthering his own felony criminal objectives or those of a gang, or was participating in a felony drug deal.

**Section 15** amends the law in the state that requires the trial judge to give an instruction that allows the jury to find self-defense, even if the evidence supporting it is "weak or implausible." *Folger v. State*, 648 P.2d 111 (Alaska App. 1982). Federal law, by contrast, requires the defendant to produce enough evidence in support of self-defense that a rational jury could find that the defendant acted in self-defense. *United States v. Jackson*, 726 F.2d 1466 (9<sup>th</sup> Cir. 1984). The bill changes the law to allow the judge to instruct the jury only if there is plausible evidence of self-defense.

**Section 16** makes it clear that it is the defendant's right to request an attorney immediately after an arrest. An attorney may not interrupt an interview that the defendant has consented to, unless the defendant has requested the lawyer's consultation.

**Section 17** is a conforming section to **Section 13**.

**Section 18** requires the court to issue written or oral findings addressing the need to place a person charged with a crime in the custody of a third-party custodian as a condition of the defendant's release.

**Sections 19 - 21 and 24** adopt a fair and uniform procedure to determine if a witness has a valid Fifth Amendment privilege against self-incrimination. An attorney is appointed for the witness, and the court makes the determination in a closed proceeding outside the presence of the prosecution. If the court finds that the witness has a valid Fifth Amendment privilege, the court will inform an attorney designated by the attorney general of that finding, and whether the privilege applies to a higher-level felony (an unclassified or class A felony), a lower-level felony (a class B or C felony), or misdemeanor. If the designated attorney decides that granting immunity is appropriate, he or she shall by letter inform the witness or the attorney for the witness. The designated attorney may not disclose the category of offense to anyone.

**Sections 22 - 23 and 30 - 31** give direction to courts in sentencing a defendant for more than one crime. Current law appears to require consecutive sentences, but was not interpreted that way because of bad drafting. This clarifies that for most crimes a court may impose sentences that are concurrent or partially concurrent. However, for homicides, kidnapping, and serious sex offenses, this section specifies the minimum amount of consecutive time that must be imposed. For example, for two counts of first-degree murder, the court must require

the mandatory minimum term of the second offense to be served consecutively. For manslaughter and kidnapping, at least the period of the presumptive term of the second offense must be served consecutively.

**Sections 25, 27, and 29** disallow the "big gulp" defense in drunk driving cases. It reverses a recent court decision, *Conrad v. State*, 60 P.3d 701 (Alaska App. 2002), that allows a driver to claim that he drank alcohol just before driving, and was able to drive before the alcohol affected his perceptions. This case is a major step back in the state's efforts to reduce drunk driving, and requires expert testimony about alcohol assimilation rates and other issues confusing to jurors. The legislature, in prohibiting driving with .08 blood alcohol, as determined by a chemical test taken within four hours of driving, intended to avoid this battle of chemical experts.

**Sections 26 and 28** provide that once a person has been convicted of felony drunk driving or felony refusal to submit to a chemical test, a subsequent drunk driving or refusal offense will also be a felony if it occurs within 20 years of the previous felony conviction.

**Section 32** allows for greater disclosure to the public by a state or municipal agency of information about juvenile sex offenders, if necessary to protect children or vulnerable adults.

**Section 33** provides conforming repealers.

**Sections 34 and 35** include applicability and effective date provisions.

# FISCAL NOTE

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 244(2d JUD)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to murder in the BRU Legal and Advocacy Service  
second degree,... Component Public Defender Agency  
 Sponsor Rules Committee at Governor's Reque  
 Requester HouseFinance Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	74.5	74.5	74.5	74.5	74.5	74.5
Travel	2.1	2.1	2.1	2.1	2.1	2.1
Contractual	6.5	6.5	6.5	6.5	6.5	6.5
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>90.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>

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	90.8	84.8	84.8	84.8	84.8	84.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>90.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

The Public Defender's operations will be fiscally affected by this proposed legislation if it becomes law. In sections 1-7, if established villages and municipalities adopt lower amounts of alcohol for local option purposes than established in Title 4 that would increase the number of prosecutions per year, depending upon the number of local option areas that adopt lower amounts. The Agency cannot predict how many local option areas will lower the amounts, so the fiscal impact cannot be quantified. Expanding the circumstances under which the offense of furnishing alcohol to a minor is a class C felony instead of a class A misdemeanor, to include violations that occur within the boundaries of a local option area will

See attached page.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
 Division Public Defender Agency Date/Time 4/22/04 7:46 AM  
 Approved by: Kevin Jardell, Assistant Commissioner Date 4/22/2004  
 Agency Department of Administration

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CS HB 244(2d JUD)

### ANALYSIS CONTINUATION

have a fiscal impact on the operation of the Agency. Increasing what was a misdemeanor to a felony increases the workload of the Agency. Felonies are more difficult cases and often require more work, investigation, and resources to defend, especially in rural areas, that would be most impacted by this change. Allowing the forfeiture of money and other items used in financial transactions derived from prohibited activity violative of local or state laws, will have a fiscal impact on the operations of the Agency, because there will be more hearings on the issue of forfeiture involving potential claims by lienholders, owners, and others with an interest in the property subject to forfeiture.

Section 10 expands the crime of assault in the third degree, a class C felony, to include when a person with criminal negligence causes serious physical injury by means of a dangerous instrument. This conduct is currently an A misdemeanor. Expanding the crime of third degree assault, a C felony, to include causing serious physical injury with criminal negligence, by means of a dangerous instrument, most likely a vehicle, will certainly have a fiscal impact on Agency operations. Increasing what is now a misdemeanor to a felony level offense increases the workload of the Agency. Felonies are more difficult cases that require more resources to defend. It cannot be accurately predicted however what the increased number of cases from misdemeanor to felony will be, that are the target of this section.

Section 13 (with conforming Sections 8, 17, and 33(a)) seeks to increase the penalties for and create a new criminal offense for violations of a court-ordered third party custodian's duty. Changing what is now a contempt violation to a charge for a class A or B misdemeanor with significantly stiffer penalties will result in less clients getting out of jail or bail, which will increase the need to more quickly prepare a case for trial and then go to trial more quickly for these clients to ensure their right to a speedy trial. It will also increase the Public Defender Agency's caseloads because it may be appointed to represent many of these custodians charged with these misdemeanors for failing to immediately report a violation.

Section 14 will have a fiscal affect on the Agency operations because more cases will be prosecuted where self-defense used to be legitimately raised, but now will be disallowed, however, it is impossible to accurately predict how many of these new prosecutions will result.

Section 15 proposes changing the quantum of proof that the defendant must produce to the satisfaction of the judge, sitting without a jury, in order to raise self-defense or defense of others to the jury. Instead of "some evidence" as currently required, Section 15 proposes "some plausible evidence."

Sections 22-23, 30-31, and 33(b) seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate or restrict the court's ability to determine the appropriate amount of consecutive time to be imposed for certain crimes. This change in the sentencing statutes will likely result in the inability to resolve cases short of trial, when the case is one in which conviction of more than one count would otherwise have been an appropriate resolution, now would be forced to go to trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

Sections 25-28 concern drunk driving and refusal laws under Title 28. It broadens felony DUI and refusal to include a person driving under the influence who has a prior conviction for felony DUI or refusal within the last 20 years. Making any subsequent DUI or refusal a felony if there is a prior conviction for felony DUI or refusal within 20 years will impact the operations of the agency, probably not immediately, but in the future. It is unknown how many people convicted of felony DUI or refusal will allegedly reoffend after 10 years has elapsed. Since the enactment of felony DUI and refusal in 1996, the number of these cases handled by the Agency has increased every year, In FY 99 the Agency handled appoximately 125 felony DUI and refusals, but in FY02 it handled over 300. Felony prosecutions are more difficult cases and require more work, investigation, and resources to defend, especially in rural areas.

For all of the above reasons, one full time investigator is required in the Anchorage office to meet the fiscal challenges this bill will have on the operations of the Agency.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSHB 244(2d JUD)

1 Page 1, line 2:

2 Delete "rights of arrested persons,"

3

4 Page 9, lines 3 - 10:

5 Delete all material.

6

7 Renumber the following bill sections accordingly.

8

9 Page 17, lines 19 - 20:

10 Delete "22, 23, 30, 31, and 33(b)"

11 Insert "21, 22, 29, 30, and 32(b)"

12

13 Page 17, line 22:

14 Delete "25, 26, and 28"

15 Insert "24, 25, and 27"

16

17 Page 17, line 24:

18 Delete "26"

19 Inscrt "25"

20

21 Page 17, line 25:

22 Delete "28"

23 Insert "27"

1

2 Page 17, line 26:

3 Delete "26 and 28"

4 Insert "25 and 27"

5

6 Page 17, line 27:

7 Delete "17"

8 Insert "16"

9

10 Page 17, line 30:

11 Delete "16, 19 - 21, 27, and 30"

12 Insert "18 - 20, 26, and 29"

13

14 Page 18, line 1:

15 Delete "32"

16 Insert "31"

AMENDMENT

2

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSHB 244(2d JUD)

1 Page 12, lines 14 - 15:

2 Delete

3 "(i) manslaughter; or

4 (ii)"

5

6 Page 12, following line 15:

7 Insert a new subparagraph to read:

8 "(D) one-half the presumptive term specified in  
9 AS 12.55.125(c) or the active term of imprisonment, whichever is less, for  
10 each additional crime that is manslaughter;"

11

12 Reletter the following subparagraphs accordingly.

AMENDMENT 3

OFFERED IN THE HOUSE FINANCE COMMITTEE  
BY REPRESENTATIVE CROFT

TO: CS HB 244 (JUD), \S version

Page 10, lines 5-7:

Delete all material

Insert: "(e) In this section,"

Page 11, lines 4-11:

Delete all material

Renumber accordingly.



# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 244  
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to the Code of Criminal BRU Criminal Division  
 Procedure: . . ." \_\_\_\_\_ Component All  
 Sponsor Rules Committee  
 Requester Governor Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
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Contractual						
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Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The bill proposes a number of changes in the law regarding criminal defenses and criminal procedures. It addresses self-defense, and other defenses such as acting in the heat of passion and using deadly force in defense of others. It also would put some limits on collateral attacks on prior convictions. Additionally, the bill adopts a rational procedure for courts to follow in deciding claims of privilege and the granting of immunity, and it makes changes in sentencing procedures.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division Attorney General's Office Date/Time 3/20/03 8:30 AM  
 Approved by: Kathryn Daughhelee for Gregg D. Renkes, Attorney General Date 3/20/2003  
 Agency Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 244  
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Department of Corrections  
 Title Criminal Procedures, Sentencing & BRU Administration & Operations  
Related Issues Component Institution Director's Office  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 1381

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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	3.4	54.4	98.6	173.6	194.3	224.9
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
<b>TOTAL OPERATING</b>	<b>3.4</b>	<b>54.4</b>	<b>98.6</b>	<b>173.6</b>	<b>194.3</b>	<b>224.9</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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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	3.4	54.4	98.6	173.6	194.3	224.9
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>3.4</b>	<b>54.4</b>	<b>98.6</b>	<b>173.6</b>	<b>194.3</b>	<b>224.9</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**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)

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY03 cost of care of \$113.31. Sentences timeframe is estimated as beginning 7/1/2003.

See attached:

Prepared by: Jerry D. Burnett, Director  
 Division: Administrative Services  
 Approved by: Portia C.K. Parker, Deputy Commissioner  
 Agency: Department of Corrections

Phone (907) 465-3339  
 Date/Time 3/21/03 8:31 AM  
 Date 3/21/2003

FISCAL NOTE #2

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

BILL NO. HB 244

ANALYSIS CONTINUATION

For years past FY 2009, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2009. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences may reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSHB 244(JUD)  
 (H) Publish Date: 5/12/2003

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to the Code of Criminal Procedure;..." BRU: Legal and Advocacy Services  
 Sponsor: Rules Committee Component: Public Defender Agency  
 Requester: House Judiciary Component No.: 1631

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	106.4	106.4	106.4	106.4	106.4	106.4
Travel	4.2	4.2	4.2	4.2	4.2	4.2
Contractual	13.0	13.0	13.0	13.0	13.0	13.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	13.4	1.3	1.3	1.3	1.3	1.3
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>139.0</b>	<b>126.9</b>	<b>126.9</b>	<b>126.9</b>	<b>126.9</b>	<b>126.9</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	139.0	126.9	126.9	126.9	126.9	126.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>139.0</b>	<b>126.9</b>	<b>126.9</b>	<b>126.9</b>	<b>126.9</b>	<b>126.9</b>

Estimate of any current year (FY2003) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill proposes numerous changes in criminal law and procedure. These changes will result in a financial impact on the Public Defender Agency. The impact will be felt in increased preparation for trials in felony and misdemeanor cases as described below. The Agency will need two additional Investigators, one in Anchorage and one in Fairbanks, the offices with the highest caseloads, to meet this need. Currently the Agency only has 13.5 investigators handling over 20,000 cases a year.  
  
 See attached page for continuing analysis.

Prepared by: Linda K. Wilson, Deputy Director Phone: (907)-334-4416  
 Division: Public Defender Agency Date/Time: 5/8/03 7:17 AM  
 Approved by: Mike Miller, Commissioner Date: 5/8/2003  
 Agency: Department of Administration

### FISCAL NOTE #3

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

BILL NO. CSHB 244(JUD)

#### ANALYSIS CONTINUATION

Sections 1-5 change long-standing Alaska laws on self-defense, defense of others, and heat of passion and require the defense to carry the entire burden of proving to the jury that the defendant acted in self-defense, defense of others, or in the heat of passion. Under current law the defendant must produce some credible evidence of self-defense, defense of others or heat of passion before a judge will allow a jury to consider the defense, but once sufficiently produced, the state then has the burden of proving that the defendant's actions were not justified. The Agency will have increased investigative costs as a result of this change.

Shifting the burden to the defense to prove self-defense, defense of others, and heat of passion by a preponderance of the evidence in many instances will require more defense investigative efforts to find, arrange and then have the attorney present the relevant evidence. Relevant evidence to the defense is not always in the exclusive possession of the individual defendant.

Sections 7 and 15 of the bill propose to change the burden of proof, currently belonging to the prosecution, to make it the defense's burden of proof to challenge the validity of a prior conviction in both a prosecution where the prior conviction is an element of the crime being prosecuted and at sentencing where a prior conviction may result in a longer sentence. The defense must prove by a preponderance of the evidence that a prior conviction, sometimes from another state, that is either an element of the crime being prosecuted or is being used to seek a longer sentence, is invalid because of the denial of the right to counsel or jury trial. Shifting this burden of proof onto the defense will require more investigation efforts from the defense to find out the underlying facts in the old case, perhaps from out of state, and then retrieve evidence from that old case to be presented in the current case to meet the burden of proof. This is not an easy task to accomplish by an agency that is outside of law enforcement, and does not have the numerous resources to draw on to assist them across the country.

Sections 21 - 23 concern notice of defenses and experts and require the defense to give notice sooner than required under current law. It also adopts serious sanctions for failures to timely notify the prosecution. These changes in the rules will require the defense to put forth additional investigative efforts related to experts and defenses to meet these earlier deadlines in order to avoid the significant sanctions proposed.

Sections 13, 14, and 20 seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate the court's ability to determine the amount of consecutive time to be imposed for certain crimes. It will likely result in the inability to resolve cases short of trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: CSHB 244(2d JUD)  
(H) Publish Date: 4/21/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title "An Act relating to murder in the BRU Criminal  
second degree, the defense of acting in the heat of passion..." Component All  
Sponsor House Rules Committee  
Requester House Judiciary Committee Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

- The bill proposes a number of changes in the law regarding criminal defenses and procedures.
1. Makes the death of any person in the course of the enumerated crimes such as robbery murder in the second degree.
  2. It makes self-defense unavailable to violence resulting from gang activity or illegal drug transaction and it reverses certain self-defense decisions.
  3. It adopt a procedure for the courts to determine whether a valid privilege against self-incrimination exists, and if found makes requirements of the court to inform prosecution of the seriousness of the crime to which privilege applies.
  4. The bill adopts guidelines and direction to courts in imposing concurrent and consecutive terms of imprisonment when a defendant is convicted of more than one crime.

Prepared by: Kathryn Daughhete, Director Phone \_\_\_\_\_  
Division Administrative Services Date/Time 3/16/04 4:31 PM  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 3/16/2004  
Agency Department of Law

FISCAL NOTE #4

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 244(2d JUD)

ANALYSIS CONTINUATION

5. It also makes failure to report a violation of a condition of release by a third party custodian a misdemeanor.
6. It expands the crime of sexual abuse of a minor in the third degree to include offenders under 16 years of age engaging in sexual penetration with a person under 13 years of age and at least three years younger than the offender and makes it a class C felony. It also authorizes the release to the public, upon request, of agency records concerning adjudication of a sexual offense to protect the safety of a child or vulnerable adult.
7. Finally, this bill also relates to local options regarding alcoholic beverages; the boundaries of local option areas; furnishing alcoholic beverages to a person under 21 years old; and forfeiture of money and other valuable items derived from violation of laws relating to alcoholic beverages.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 5  
 Bill Version: CSHB 244(2d JUD)  
 (H) Publish Date: 4/21/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title Criminal Procedures, Sentencing & Related RDU Administration & Operations  
Issues. Component Institution Director's Office  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 1381

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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	3.4	54.6	98.9	174.2	195.0	225.7
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
<b>TOTAL OPERATING</b>	<b>3.4</b>	<b>54.6</b>	<b>98.9</b>	<b>174.2</b>	<b>195.0</b>	<b>225.7</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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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	3.4	54.6	98.9	174.2	195.0	225.7
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>3.4</b>	<b>54.6</b>	<b>98.9</b>	<b>174.2</b>	<b>195.0</b>	<b>225.7</b>

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**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)

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY04 cost of care of \$113.69. Sentences timeframe is estimated as beginning 7/1/2004.

See attached:

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339  
 Division Administrative Services Date/Time 3/16/04 8:05 AM  
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 3/16/2004  
 Agency Department of Corrections

FISCAL NOTE # 5

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 244(2d JUD)

ANALYSIS CONTINUATION

For years past FY 2010, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2010. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 6  
 Bill Version: CSHB 244(2d JUD)  
 (H) Publish Date: 4/21/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title: An Act relating to murder in the BRU: Legal and Advocacy Service  
second degree,... Component: Public Defender Agency  
 Sponsor: Rules Committee  
 Requester: House Judiciary Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	74.5	74.5	74.5	74.5	74.5	74.5
Travel	2.1	2.1	2.1	2.1	2.1	2.1
Contractual	6.5	6.5	6.5	6.5	6.5	6.5
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>90.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	90.8	84.8	84.8	84.8	84.8	84.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>90.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>	<b>84.8</b>

Estimate of any current year (FY2004) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

The Public Defender's operations will be fiscally affected by this proposed legislation if it becomes law. In sections 1-7, if established villages and municipalities adopt lower amounts of alcohol for local option purposes than established in Title 4 that would increase the number of prosecutions per year, depending upon the number of local option areas that adopt lower amounts. The Agency cannot predict how many local option areas will lower the amounts, so the fiscal impact cannot be quantified. Expanding the circumstances under which the offense of furnishing alcohol to a minor is a class C felony instead of a class A misdemeanor, to include violations that occur  
 See attached page.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
 Division: Public Defender Agency Date/Time 4/2/04 11:43 AM  
 Approved by: Mike Miller, Commissioner Date 4/2/2004  
 Agency: Department of Administration

FISCAL NOTE #6

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 244(2d JUD)

ANALYSIS CONTINUATION

within the boundaries of a local option area will have a fiscal impact on the operation of the Agency. Increasing what was a misdemeanor to a felony increases the workload of the Agency. Felonies are more difficult cases and often require more work, investigation, and resources to defend, especially in rural areas, that would be most impacted by this change. Allowing the forfeiture of money and other items used in financial transactions derived from prohibited activity violative of local option laws, will have a fiscal impact on the operations of the Agency, because there will be more hearings on the issue of forfeiture involving potential claims by lienholders, owners, and others with an interest in the property subject to forfeiture.

Section 9 expands the crime of assault in the third degree, a class C felony, to include when a person with criminal negligence causes serious physical injury by means of a dangerous instrument. This conduct is currently an A misdemeanor. Expanding the crime of third degree assault, a C felony, to include causing serious physical injury with criminal negligence, by means of a dangerous instrument, most likely a vehicle, will certainly have a fiscal impact on Agency operations. Increasing what is now a misdemeanor to a felony level offense increases the workload of the Agency. Felonies are more difficult cases that require more resources to defend. It cannot be accurately predicted however what the increased number of cases from misdemeanor to felony will be, that are the target of this section.

Section 12 (with conforming Section 28(a)) seeks to increase the penalties for and create a new criminal offense for violations of a court-ordered third party custodian's duty. Changing what is now a contempt violation to a charge for a class A or B misdemeanor with significantly stiffer penalties will result in less clients getting out of jail on bail, which will increase the need to more quickly prepare a case for trial and then go to trial more quickly for these clients to ensure their right to a speedy trial. It will also increase the Public Defender Agency's caseloads because it may be appointed to represent many of these custodians charged with these misdemeanors for failing to immediately report a violation.

Section 13 will have a fiscal affect on the Agency operations because more cases will be prosecuted where self-defense used to be legitimately raised, but now will be disallowed, however, it is impossible to accurately predict how many of these new prosecutions will result.

Section 14 proposes changing the quantum of proof that the defendant must produce to the satisfaction of the judge, sitting without a jury, in order to raise self-defense or defense of others to the jury. Instead of "some evidence" as currently required, Section 14 proposes "some plausible evidence."

The Agency will have increased investigative costs as a result of these changes, primarily in the Anchorage office that handles the most cases.

Sections 18-19, 25-26, and 28(b) seek to amend the sentencing statutes to expand the situations in which consecutive sentencing is mandated and to eliminate or restrict the court's ability to determine the appropriate amount of consecutive time to be imposed for certain crimes. This change in the sentencing statutes will likely result in the inability to resolve cases short of trial, when the case is one in which conviction of more than one count would otherwise have been an appropriate resolution, now would be forced to go to trial because of the exposure to mandatory consecutive sentences. This fiscal impact is not easily determined, but inevitable.

Sections 21-24 concern drunk driving and refusal laws under Title 28. It broadens felony DUI and refusal to include a person driving under the influence who has any prior conviction for felony DUI or refusal. Making any subsequent DUI or refusal a felony if there is a prior conviction for felony DUI or refusal will impact the operations of the agency, probably not immediately, but in the future. It is unknown how many people convicted of felony DUI or refusal will allegedly reoffend after 10 years has elapsed. Since the enactment of felony DUI and refusal in 1996, the number of these cases handled by the Agency has increased every year. In FY 99 the Agency handled approximately 125 felony DUI and refusals, but in FY02 it handled over 300. Felony prosecutions are more difficult cases and require more work, investigation, and resources to defend, especially in rural areas.

For all of the above reasons, one full time investigator is required in the Anchorage office to meet the fiscal challenges this bill will have on the operations of the Agency.

Comparison of HB 244, and CSHB 244 (Jud)

	HB 244 as Introduced	CSHB 244 (Jud)
Heat of Passion	Makes Heat-of-passion (essentially a form of temporary insanity), an affirmative defense that the defendant must prove by a preponderance of evidence, just like insanity.	No similar provision
Self-defense Burden of Proof	Makes self-defense an affirmative defense, that the defendant must prove by a preponderance of evidence, with certain exceptions.	No similar provision. DOES NOT CHANGE THE BURDEN OF PROOF.
Self-defense Standards	Prohibits use of deadly force if a person brings a deadly weapon to an encounter with reckless disregard that the encounter would result in combat.	Prohibits a claim of self-defense if a deadly weapon (i.e., guns or knives) is used to further the felony criminal objectives of other persons (i.e., gang activity), or in a felony drug transaction. Court may instruct a jury on self-defense if the court finds there is some <u>plausible</u> evidence to support it.
Felony-Murder	No similar provision	Expands felony-murder rule so offenders committing dangerous crimes can be charged with second-degree murder if their accomplice is killed.
Rights of Relatives and Attorneys	Clarified that a relative or attorney does not have a right to interrupt an interview with the police if the arrested person has consented to the interview after being advised of his rights.	Included
Immunity for witnesses	Conforms statutory law with <i>State v. Gonzales</i> , 853 P.2d 526 (Alaska 1993), that requires complete immunity if a person is compelled to testify after claiming a valid privilege against self-incrimination.	Included
Immunity for witnesses	Establishes orderly procedure for the court to consider if the witness has a valid claim of the privilege against self-incrimination. An attorney would be appointed to represent the witness, and the prosecutor would be present. The court would specify the crime to which the privilege applies.	Establishes a similar procedure. However, the prosecutor would not be present in the hearing. The Attorney General shall designate a special attorney to find out from the court the seriousness level of the crime, but not the specific crime the witness may have committed. The designated attorney makes the decision whether to grant immunity to the witness, and is prohibited from telling anyone about the seriousness level of the crime.
Misdemeanor Offense for Third Party Custodians Who Violate Court Orders	No similar provision	If a criminal defendant is released from jail into the custody of a third party custodian, the court orders the custodian to notify the police if the defendant breaks conditions of release. Many custodians do not comply with the judge's orders, and allow defendants to violate conditions. Current law makes the custodian guilty of contempt of court, with a possible sentence of 6 months. This bill creates a more specific offense that makes it a class A misdemeanor if the defendant was charged with a felony, and a class B misdemeanor otherwise. Judges are required to make written and oral findings regarding the reasons why a third party custodian is necessary. The House Judiciary bill also includes a letter of intent that judges should "more rigorously apply the statutory framework" for appointing third party custodians.

Comparison of HB 244, and CSHB 244 (Jud)

<p><b>Consecutive sentences: Generally</b></p>	<p>Adopts guidelines for judges sentencing defendants for more than one crime. In 1982, the legislature enacted AS 12.55.025 (e) and (g), which requires consecutive sentences for each count of homicide, assault, and sexual assault. Because of imprecise drafting, the courts have interpreted these statutes as a legislative preference for consecutive sentences. This preference is frequently ignored.</p>	<p>Included</p>
<p><b>Consecutive sentences: Serious Person Crimes</b></p>	<p>For homicide, kidnapping, first-degree sexual assault, and first-degree sexual abuse (penetration), the bill adopts minimum requirements for consecutive sentences in cases with multiple convictions.</p>	<p>Included</p>
<p><b>Consecutive sentences: Other Person Crimes</b></p>	<p>For less serious crimes against a person, such as a misdemeanor assaults, the court must impose some period of consecutive time for each crime.</p>	<p>Included</p>
<p><b>Consecutive sentences: Other</b></p>	<p>For other less serious crimes, the bill allows the court to impose sentences that are concurrent or partially concurrent.</p>	<p>Included</p>
<p><b>Bootlegging</b></p>	<p>No similar provision</p>	<p>Closes a loophole regarding the local option perimeters around villages. Allows communities to adopt lower limits of alcohol possession and importation as part of the local option system. Increases the penalty for bootleggers in urban areas who send alcohol to local option areas. Increases penalty to a class C felony for furnishing alcohol to minors in local options areas (unless the community opts out), and for sending large amounts of alcohol to local option areas. Strengthens the forfeiture law for bootlegging.</p>
<p><b>Drunk Driving</b></p>	<p>No similar provision</p>	<p>Once a person has committed felony drunk driving, all subsequent drunk driving offenses within 20 years would be treated as felonies. Increases penalty to a class C felony for certain vehicular offenses that cause serious physical injury. Prohibits the "big gulp" defense in drunk driving cases.</p>
<p><b>Protects the Public from Juvenile Sex Offenders</b></p>	<p>No similar provision</p>	<p>Increases penalty for sexual abuse of young children by teenagers. Allows greater disclosure of information about juvenile offenders.</p>
<p><b>Prior convictions admissible when elements of crime</b></p>	<p>The bill allows evidence of the prior convictions to be admitted during the state's case-in-chief, if the state is required to prove the prior convictions (e.g. felony drunk driving) as an element of the offense. Allows the defendant to challenge the validity of these prior convictions only by proving to the court that the defendant was denied the right to counsel or to a jury trial in the prior prosecutions.</p>	<p>No similar provision</p>
<p><b>Prior convictions at sentencing</b></p>	<p>For sentencing, the bill allows the defendant to claim that prior convictions are invalid only if the defendant claims that the right to counsel or a jury trial was denied in the prior case.</p>	<p>No similar provision</p>

<p><b>Sexual abuse and Sexual assault sentence mitigator</b></p>	<p>Added a statutory mitigating factor for sentencing in sexual assault and sexual abuse cases - that the defendant mitigated the effect of the crime on the victim by entering a plea of guilty or no contest within 30 days of arraignment in superior court.</p>	<p>No similar provision</p>
<p><b>Discovery in criminal cases: Notice of Defenses</b></p>	<p>Requires the defense to give notice of certain defenses (e.g. alibi, entrapment) 30 days before trial (current rules require 10 days notice). It also requires the defense to give notice of these defenses if they are likely to raise them, and requires the court to disallow the defense if notice is not given within 7 days of trial.</p>	<p>No similar provision</p>
<p><b>Discovery in criminal cases: Sanctions</b></p>	<p>Clarifies that sanctions for discovery violations, such as failure to give notice of defenses discussed above, are in addition to other sanctions provided in the Criminal Rules.</p>	<p>No similar provision</p>
<p><b>Discovery in criminal cases: Expert witnesses</b></p>	<p>Requires notice to opposing counsel of expert witnesses at least 45 days before trial. Adopts an orderly procedure for disclosure of written reports of experts, and information about experts retained to respond to expert testimony. The bill also provides sanctions for failure to comply with the rule. The court must exclude the testimony if disclosure is not made within 7 days of trial.</p>	<p>No similar provision</p>
<p><b>Impeachment evidence</b></p>	<p>Allows evidence given in a statement, if the statement was voluntary and not coerced, but suppressed because <i>Miranda v. Arizona</i> was violated, to be used to impeach the testimony of the person who gave the statement. This would prevent a person from testifying falsely with impunity after a statement is suppressed.</p>	<p>No similar provision</p>
<p><b>Impeachment evidence</b></p>	<p>Allows evidence illegally obtained (for example, taken as a result of a search that was later found to be flawed), to be used to impeach testimony, if the court finds that the evidence was not obtained in substantial violation of rights.</p>	<p>No similar provision</p>
<p><b>Impeachment with prior conviction</b></p>	<p>The Evidence Rules allow a witness to be impeached with the conviction of a crime involving dishonesty or false statement, but only if no more than five years have elapsed from the date of conviction to the time the witness testifies. However, it is also common that a person is not released from custody within 5 years of conviction, and the witness may never be impeached for conviction of a serious crime. The bill extends the time the conviction may be used to 5 years from the date of unconditional discharge from the conviction.</p>	<p>No similar provision</p>
<p><b>Domestic violence reports</b></p>	<p>Allows a statement made within 24 hours of an alleged domestic violence offense to be admitted, as an exception to the hearsay rule.</p>	<p>No similar provision</p>

## Highlights of Governor's 2004 Crime Bill (CSHB 244 (2d JUD))

### **MAKES CRIMINALS THINK TWICE BEFORE COMMITTING DANGEROUS OFFENSES**

1. Adopts consecutive sentencing procedures so that some consecutive term is imposed for each victim or each conviction of a serious crime.
2. Disallows self-defense if the state proves a deadly weapon was possessed to further the felony criminal objectives of a gang, or to buy or sell felony amounts of illegal drugs. Also disallows self-defense if the only evidence of it is implausible.
3. Adopts a uniform and constitutional procedure for deciding whether to grant immunity to witnesses, thus making it harder for gang members, accomplices and friends of defendants to refuse to testify by hiding behind state immunity laws.
4. Expands felony-murder law so offenders committing dangerous crimes can be charged with second-degree murder if their accomplice is killed.
5. Takes away the right of attorneys to demand to immediately enter prisons and jails to visit prisoners who are voluntarily speaking with police investigators.
6. Makes it a misdemeanor for a court-appointed custodian to knowingly fail to report that the defendant released to his custody has violated court-imposed conditions.

### **BOOTLEGGING: HELPS LOCAL OPTION COMMUNITIES**

7. Allows communities to adopt lower limits of alcohol possession and importation as part of the local option system; closes a local option loophole.
8. Increases penalty to a class C felony for furnishing alcohol to minors in local option areas, and for sending large amounts of alcohol to local option areas.
9. Allows forfeiture of cash seized in bootlegging offenses.

### **PROTECTS CHILDREN FROM JUVENILE OFFENDERS**

10. Increases penalty for sexual abuse of young children by teenagers.
11. Allows greater disclosure of information about juvenile offenders.

### **IMPROVES DRUNK DRIVING LAWS**

12. Once a person has committed felony drunk driving (three times in 10 years), all additional drunk driving within the next 20 years would be treated as a felony.
13. Increases penalty to a class C felony for certain vehicular offenses that cause serious physical injury.
14. Prohibits the "big gulp" defense in drunk driving cases that encourages drinking drivers to have "one for the road."

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Les Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee Letter of Intent CSHB 244 (2d JUD)

The Alaska State Legislature acknowledges the findings contained in the Alaska Judicial Council's study "Alaska Felony Process: 1999" that the use of third party custodians was initially intended to give indigent defendants an equal opportunity for predisposition release, that this bail condition was one of the most important influences on the length of time that defendants spent incarcerated before disposition of their cases, and that this bail condition has resulted in substantially longer terms of predisposition incarceration in non-violent type cases. Given the right to bail guaranteed by Article I, Section 11 of the Alaska Constitution, it is the intent of the Legislature that judicial officers appoint third party custodians in a manner that will further the intent of the statute.

A handwritten signature in cursive script, appearing to read "Lesil McGuire", written over a horizontal line.

Representative Lesil McGuire  
Chair

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4<sup>TH</sup> AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-5903  
PHONE: (907)269-5100  
FAX: (907)276-3697

March 9, 2004

The Honorable Lesil McGuire, Representative  
State Capitol  
Juneau, Ak 99801-1182

Re: HB 244, Governor's 2004 Crime Bill

Dear Representative McGuire:

I am writing to voice my support of the Governor's 2004 Crime Bill, which I understand, will be considered as a committee substitute for HB 244. Although I support all the provisions in the Governor's new bill, there are some that are of particular interest to me because they are important in protecting children from abuse.

For over 20 years I have been working in Alaska as a prosecutor of adult sex offenders, as a prosecutor of juvenile offenders, and as a line attorney and supervisor of prosecutors of child protection (CINA) cases, many of which involve sexual abuse of children, as well as other types of abuse and neglect. I have also served on two Governor's Child Protection Task Forces and the Balloon Project Steering Committee. I continue to serve on the Juvenile Justice Working Group, the CINA and Juvenile Delinquency Court Rules Committee, the CINA Court Improvement Project and the Management Team of Alaska CARES (Anchorage's Child Advocacy Center). And I currently serve as chair of the Federal Children's Justice Act Task Force. Finally, I received the 2003 Commissioner's Award from the U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, for my "outstanding leadership and service in the prevention of child abuse and neglect." This was followed by a citation in my honor issued by the Alaska Legislature and sponsored by the Honorable Fred Dyson.

Because of my lengthy and broad experience in several aspects of the fight against child abuse and neglect articulated above, I would like to add my support and comments to four particular provisions of the Governor's crime bill that deal directly with this effort.

First, the provisions giving direction to courts in imposing sentences for defendants convicted of more than one crime will help protect children from abusers. Current laws for sentencing offenders convicted of multiple offenses are confusing and unevenly applied. As I know you are aware, child abusers often victimize more than one child, and more than one time, and therefore these new sentencing provisions are of great interest to me.

Next, because I am well aware that sexual offenders are not always adults, I support the provisions that would increase the seriousness of abuse of young children by teenagers. A 14-year-old that sexually abuses a five-year-old by penetration should be adjudicated of a felony, not a misdemeanor. Even though the incarceration/treatment of these young offenders would not drastically change, increasing the class of the offense would send the correct message to these offenders about the seriousness of the offense. Currently, to a juvenile, it appears more serious to steal someone's laptop (a felony) than to engage in full sexual penetration with a kindergartner (a misdemeanor).

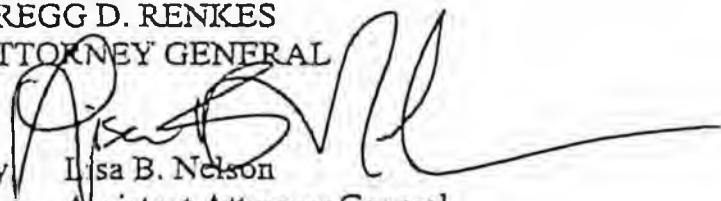
Thirdly, I support the provision that would allow greater information to be released about juvenile sex offenders. A parent should be able to find out if a potential babysitter for their children has been adjudicated in the juvenile justice system for a sex offense. As a mother of two young children, I know I would be horrified if I unwittingly hired a babysitter that perpetrated on one or both of my children. My children could be scarred for life.

Finally, the provisions giving local communities authority to adopt stronger controls over alcohol in local option areas, and related provisions to curb bootlegging, will contribute to a better environment for children in rural areas. Alcohol is almost always involved in incidents of child sexual abuse, physical abuse and neglect. If perpetrators who are prone to abusing children when they have consumed too much alcohol were not allowed access to it, I guarantee the rate of child abuse and neglect would plummet.

Thank you for hearing this legislation. I believe it will greatly assist our efforts to make Alaska a safer place to be a child.

Sincerely,

GREGG D. RENKES  
ATTORNEY GENERAL

By   
Lisa B. Nelson  
Assistant Attorney General

LBN:dal



# Alaska Association of Chiefs of Police

Via: US Mail

February 24, 2004

Mr. Dean Guaneli  
Chief Assistant Attorney General  
PO Box 110300  
Juneau, Alaska 99801

*RE: Governor's 2004 Crime Bill*

Dear Dean,

The Alaska Association of Chiefs of Police would like to offer our support for the Governor's 2004 Crime Bill. I believe this bill offers many potential solutions to problems we as Law Enforcement Officers and you as Prosecutors face day on a daily basis.

As an Alaskan Law Enforcement Officer for over 30 years I have watch our criminal justice system come from areas that were weak to a much stronger practice today. However there is still much to do to assure the safety of the people we serve as well as reducing the occurrence of serious and dangerous offenses. This bill assist's those communities that choose to reduce the use of alcohol; it improves our drunken driving laws and helps in the protection of children from juvenile offenders. These are important areas that need to be address and I believe the Governor has made a major step in the right direction.

We support this bill and offer any assistance we can provide. Please contact me if you have any questions or concerns.

Sincerely,

Thomas Lee Clemons  
Chief of Police

HB244



FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 3, 2003

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making changes to criminal procedures that would allow for more straightforward and fair prosecution of crime in Alaska. Additionally, the bill would improve the criminal law regarding sentences.

The bill proposes the following changes in criminal procedures.

Deterring Those Who Take Deadly Weapons to a Fight. We have to cut down on the violence on our streets. There are too many drug dealers, gang members, and violent people who bring guns to situations where they know they will get into fights; they then claim self-defense when they use the gun. Too many innocent people die, and prosecution is too difficult. We need to put a stop to this. If you bring a gun to a fight, you should be responsible for the consequences. Self-defense should not excuse a killing if the defendant brought a deadly weapon to a confrontation with reason to believe that combat would result. The Alaska Supreme Court long ago declared in *Bangs v. State*, 608 P.2d 1 (Alaska 1980), that a person who brings a deadly weapon to a confrontation, having reason to know that the encounter will likely result in combat, should not be entitled to self-defense protection. But trial judges have become too loose in enforcing the Alaska Supreme Court's admonition. A defendant who brings a gun to an encounter and uses it to finish a fight should not be able to claim self-defense.

Improving the Law of Self-Defense, Deadly Force In Self-Defense, Heat Of Passion, And Other Defenses. A related change is also necessary in the law of self-defense and "heat of passion." The prosecution always bears the burden of proving the essential elements of an offense, but if the defendant is going to raise a defense of which the defendant has exclusive knowledge, the defendant should have the burden to prove the defense by a preponderance of the evidence. This is called an affirmative defense, and the legislature has already created many examples in the Alaska Statutes. For example, duress is an affirmative defense. To establish duress, the defendant must prove that the defendant was coerced to commit a crime by a threat of imminent harm. The burden is correctly on the defendant, because only the defendant knows the effect of the threat.

The bill would change several similar defenses -- heat of passion, self-defense, the use of deadly force in self-defense, and defense of a third person -- to affirmative defenses. Currently, prosecutors must prove a negative. For example, if the defendant claims heat of passion (a defense to intentional murder in the first and second degrees), the state would have to disprove that the victim, who is dead, acted in a way to arouse the passion of the defendant. The bill provides that the defendant, who is often the only eyewitness still alive at trial, would be required to prove that "heat of passion" was aroused because of provocation by the victim. Citizens who defend themselves in their own homes and must use force to protect their families are not affected by this change. If the person acting in self-defense is a peace officer, or is on the person's own premises and is not assaulting a household member, this bill leaves the current law on self-defense intact, and requires that the prosecution disprove self-defense.

Right of Arrested Person. The bill would clarify that a person who is arrested has the right to a telephone call or visit from a friend, relative, or attorney. However, the right belongs to the person arrested, to exercise at his or her discretion.

Limiting Collateral Attacks on Prior Convictions. When an habitual criminal commits a new crime, the punishment is often greater because of the person's prior convictions. But it is now a common tactic in the new criminal case to attack the old convictions on technicalities. This means that before the prosecutor can even begin to prove the new crime, the prosecutor is forced to validate what happened in an old conviction, which is often from another state. This is generally a fruitless inquiry. The law already provides many avenues by which offenders can have their convictions reviewed. Unless a conviction was invalid because the defendant was denied the right to counsel or to a jury trial, the state should be able to rely on those convictions in prosecuting repeat criminals.

Admissibility of Prior Convictions. In the criminal code, the conviction of a prior crime is, in a few cases, an element of another offense. For example, having two prior drunk driving convictions within a certain period of time is an element of felony drunk driving. The bill would clarify that in these circumstances, evidence of prior convictions is admissible in order to prove all the elements of the charged offense. Although generally courts do not admit this evidence, the legislature has the authority to allow it. The bill also would overrule *Ostlund v. State*, 51 P.2d 938 (Alaska App. 2002), which requires a bifurcated trial, by allowing, at any time in the prosecution, evidence of prior convictions in the state's case if the prior conviction is an element of the current crime.

Grants of Immunity. The bill would give prosecutors the information needed to decide whether to grant immunity to a witness. If a witness claims a privilege against self-incrimination and refuses to testify, the only way to obtain that testimony under the Alaska Constitution is to give the person complete immunity for any crime the person may testify about. This makes it critical for the state to know what crimes will be immunized before offering immunity, but that is impossible under current procedures used by the courts. The current practice is for the judge to decide whether the witness is entitled to immunity in a closed hearing in which the prosecution is not allowed to be present. The prosecutor thus does not know what crimes require immunity. A homicide prosecution that currently is awaiting trial is a good example. The defendant, while in jail, allegedly tried to arrange for the killing of the trooper transporting him to court, so the defendant could escape. A cellmate notified the police, but will not testify without immunity. The judge held a hearing without the prosecutor, and ruled that the cellmate had a privilege against self-incrimination, but wouldn't reveal how the cellmate's testimony would incriminate him -- or even whether the cellmate feared prosecution for a felony or a misdemeanor. Unwilling to grant immunity blindfolded, the prosecutor must forego this powerful evidence of consciousness of guilt of the defendant.

The bill would give guidance to the court for evaluating a claim of privilege, and would allow the prosecutor to obtain necessary information and to be present at any hearings on the matter. Judges thus would no longer decide these issues without hearing both sides, and the prosecutor can make an informed decision about immunity.

Consecutive sentences. This bill also would strengthen and clarify the law regarding consecutive sentences for conviction of more than one crime. In 1982, AS 12.55.025(e) and (g), which mandated full consecutive sentences for each count of homicide, assault, and sexual offense, were enacted. But because of imprecise drafting, this clear expression of legislative intent was instead interpreted to be merely a "legislative preference" for consecutive

sentences that courts were free to ignore. *State v. Andrews*, 707 P.2d 900 (Alaska App. 1985), *aff'd*. 723 P.2d 85 (Alaska 1986). Later, in 1988, the legislature mandated consecutive sentences for assaults against children, but the provision that was finally enacted provided no firm guidance to the courts, especially in the most serious sexual assaults. AS 12.55.025(h).

As a result of the interpretations of the courts, trial judges ignore or pay only nominal recognition to the legislature's preference for consecutive sentences. For example, in the recent case of *State v. Glaser*, the defendant was convicted of two counts of second degree murder and one count of first degree assault. The sentence imposed by the superior court treated the drunk driving killing of two people and the serious physical injury of a third person as if only one victim had been affected by the crime, and imposed a sentence only slightly longer than the mandatory minimum sentence for a single count of second degree murder.

This bill would adopt minimum requirements for consecutive sentencing in cases involving multiple counts of homicide, kidnapping, first degree sexual assault, and first degree sexual abuse of a minor (sexual penetration). Although this bill does not go so far as the fully consecutive sentencing reflected in the 1982 legislation, it does provide more specific guidance than exists in current law. In a second degree murder case such as *State v. Glaser*, for example, the bill would require that imprisonment for at least 10 consecutive years be imposed for the second conviction of second degree murder, and some additional consecutive term of imprisonment be imposed for the assault on the third victim.

Better Notice of Expert Witnesses And Defenses. Delay, confusion, and other problems often result from the inefficient exchange of information about defenses and expert witnesses in criminal prosecutions. The discovery rules are supposed to make pretrial procedure orderly and avoid surprises at trial. However, our prosecutors report that at times attorneys who give late notice or no notice rarely suffer adverse consequences from the court, which encourages further disregard of the rules. The bill would adopt procedures for a more orderly exchange of expert witness information, and it also would adopt firm sanctions for violation of the rules. If a party does not provide notice of an expert in the time set out in the rule, the person may not use the expert testimony. The bill also would require that notice of certain defenses be made as required by the rules or the offering of that defense could be forfeited.

Expanding Impeachment of Testimony. The bill also would amend several provisions in the Alaska Rules of Evidence. Under the current rules, a statement obtained from a defendant that was not preceded by the warnings required in *Miranda v. Arizona*, 384 U.S. 436 (1966), is not admissible except in a prosecution for perjury. That is, although the statement may not be used against the person for the underlying offense, it may be used in a subsequent perjury prosecution if the person testifies falsely at trial. The bill would expand this exception to allow the statement to be used for impeachment if the person testifies falsely. Under the current court rule, a defendant in a murder case whose statements to police were suppressed could lie with impunity on the stand, knowing that at most the defendant faced a later prosecution for perjury. The bill's change to the court rule would, however, allow the defendant's statement to be used to contradict the defendant's testimony in the murder trial if the defendant lied.

A similar court rule limits the use of evidence obtained with an invalid search warrant or if the police make a mistake in the technical rules governing search and seizure. Such evidence is not admissible for the underlying prosecution, and can only be used in a subsequent perjury case. This bill would allow this evidence to be used to impeach the defendant or other witness on cross-examination. The exclusionary rule discourages careless law enforcement by excluding illegally obtained evidence. It should not give witnesses a chance to testify falsely at trial.

Current rules also allow a witness's credibility to be impeached by a prior conviction for a crime involving dishonesty or false statement (for example, theft, robbery, burglary, perjury) if the conviction occurred within five years of the testimony. However, in many instances, the five-year period is over before the person is even out of jail, so juries never find out that the person has a conviction for dishonesty. This bill would amend the court rule to allow juries to be told of such convictions if less than five years has elapsed from the person's unconditional discharge from probation or parole.

Giving Juries the Full Picture in Domestic Violence Cases. Domestic abusers often succeed in pressuring their domestic partners into not testifying against the abuser. In order to prosecute such cases, the prosecutor must be able to introduce evidence from other persons to tell the jury the whole story. But if the jury isn't allowed to know what was said immediately after the assault, the jury only gets part of the story. We can change this, and provide more perpetrators with the help they need to stop abusing. Victims of domestic violence are often unavailable to testify at trial -- often for compelling reasons concerning their safety and the safety of their children. Under current court rules, if the victim is not present, the statements of the victim are admissible only if the statements qualify under the narrow rule for "excited utterances."

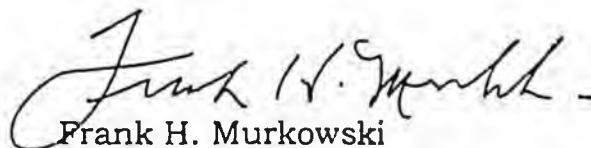
The Honorable Pete Kott  
April 3, 2003  
Page 6

This bill would expand that rule in domestic violence cases, so that a jury can learn about all statements made within 24 hours of the crime, if there are other indications of reliability. This hearsay exception would apply to statements that an assault occurred, and also if the victim recanted and denied that an assault occurred.

New Mitigating Factor for Defendants Who Show Concern for Victims of Sexual Offenses. Victims of sexual offenses, more so than any other crime, dread testifying in open court and often view giving testimony as being victimized again. They must not only testify in front of a jury of citizens and the defendant who violated them, but it must be done in public and often in cases that gain press attention. This is very traumatic for the victim. Sex offenders who have genuine remorse for their crimes do not want to put the victim through this crucible. For those sex offenders who quickly plead guilty, thus sparing their victims the ordeal of public testimony, this bill would provide a statutory "mitigating factor" that the judge may take into consideration in reducing the person's sentence.

I urge your prompt and favorable consideration of this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski  
Governor

Replacement

ou Meyer

23-GH1024D.1  
Luckhaupt  
5/14/03

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

1 Page 1, line 1, following "Procedure;":

2 Insert "relating to defenses and affirmative defenses to certain criminal acts;"

3

4 Page 1, following line 7:

5 Insert a new bill section to read:

6 "\* Section 1. AS 11.41.115(a) is amended to read:

7 (a) In a prosecution under AS 11.41.100(a)(1)(A) or 11.41.110(a)(1), it is an  
8 affirmative [A] defense that the defendant acted in a heat of passion, before there had  
9 been a reasonable opportunity for the passion to cool, when the heat of passion  
10 resulted from a serious provocation by the intended victim. "

11

12 Renumber the following bill sections accordingly.

13

14 Page 9, line 12:

15 Delete "secs. 4, 6, 7, and 15"

16 Insert "secs. 1, 5, 7, 8, and 16"

17

18 Page 9, line 14:

19 Delete "secs. 1 - 3, 5, and 8 - 14"

20 Insert "secs. 2 - 4, 6, and 9 - 15"

by Meyer

Replacement

23-GH1024D.2  
Luckhaupt  
5/14/03

AMENDMENT

2

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

1 Page 2, following line 3:

2 Insert a new bill section to read:

3 **\*\* Sec. 2.** AS 12.45 is amended by adding a new section to article 2 to read:

4 **Sec. 12.45.033. Admissibility of prior convictions.** (a) In a prosecution for  
5 a crime that has a prior conviction as an element of the offense, the following are  
6 admissible to prove any element of the offense:

7 (1) evidence of the prior conviction of the defendant;

8 (2) a stipulation made by the defendant to the prior conviction.

9 (b) In a prosecution for a crime that has a prior conviction as an element of the  
10 offense, the defendant may raise a legal challenge to the validity of a prior conviction  
11 only by proving, by a preponderance of evidence to a judge sitting without a jury, that  
12 the prior conviction is invalid because the defendant was denied the right to counsel or  
13 the right to a jury trial.

14 (c) In this section,

15 (1) "denied the right to counsel" means that under the law of the  
16 jurisdiction in which the conviction was entered, the defendant had no right to court-  
17 appointed counsel, and, in that particular case, the defendant did not retain counsel;

18 (2) "right to a jury trial" means that under the law of the jurisdiction in  
19 which the conviction was entered, the defendant was entitled to a trial by a jury of six  
20 or more persons."

21

22 Renumber the following bill sections accordingly.

23

1 Page 9, line 12:

2 Delete "secs. 4, 6, 7, and 15"

3 Insert "secs. 5, 7, 8, and 16"

4

5 Page 9, line 14:

6 Delete "secs. 1 - 3, 5, and 8 - 14"

7 Insert "secs. 1 - 4, 6, and 9 - 15"

by Stoltze

AMENDMENT

3

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

- 1 Page 1, lines 12 - 13:
- 2 Delete "or any relative or friend of the prisoner"

by Stoltze

23-GH1024\D.3  
Luckhaupt  
5/14/03

AMENDMENT

4

OFFERED IN THE HOUSE  
TO: CSHB 244(JUD)

- 1 Page 1, line 5:
- 2 Delete ", 609, and 803"
- 3 Insert "and 609"
- 4
- 5 Page 8, line 29, through page 9, line 4:
- 6 Delete all material.
- 7
- 8 Renumber the following bill sections accordingly.
- 9
- 10 Page 9, line 12:
- 11 Delete "secs. 4, 6, 7, and 15"
- 12 Insert "secs. 4, 6, 7, and 14"
- 13
- 14 Page 9, line 14:
- 15 Delete "secs. 1 - 3, 5, and 8 - 14"
- 16 Insert "secs. 1 - 3, 5, and 8 - 13"

AMENDMENT

5

TO BE OFFERED IN THE HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE Kerttula

TO: CS HB 244 (JUD)

Page 3, line 8:

Delete: "shall"

Insert: "may"

Renumber accordingly.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 244  
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title: "An Act relating to the Code of Criminal BRU Criminal Division  
 Procedure; . . ." \_\_\_\_\_ Component All  
 Sponsor: Rules Committee  
 Requester: Governor Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The bill proposes a number of changes in the law regarding criminal defenses and criminal procedures. It addresses self-defense, and other defenses such as acting in the heat of passion and using deadly force in defense of others. It also would put some limits on collateral attacks on prior convictions. Additionally, the bill adopts a rational procedure for courts to follow in deciding claims of privilege and the granting of immunity, and it makes changes in sentencing procedures.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division: Attorney General's Office Date/Time 3/20/03 8:30 AM  
 Approved by: Kathryn Daughhatee for Gregg D. Renkes, Attorney General Date 3/20/2003  
 Agency: Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 244  
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Department of Corrections  
 Title Criminal Procedures, Sentencing & BRU Administration & Operations  
Related Issues Component Institution Director's Office  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 1381

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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	3.4	54.4	98.6	173.6	194.3	224.9
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
<b>TOTAL OPERATING</b>	<b>3.4</b>	<b>54.4</b>	<b>98.6</b>	<b>173.6</b>	<b>194.3</b>	<b>224.9</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-----------------------------	------------	------------	------------	------------	------------	------------

<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-------------------------------	------------	------------	------------	------------	------------	------------

**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	3.4	54.4	98.6	173.6	194.3	224.9
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>3.4</b>	<b>54.4</b>	<b>98.6</b>	<b>173.6</b>	<b>194.3</b>	<b>224.9</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**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)

Time served is estimated based on the time that would have been served under this bill for defendants sentenced during the time period 1/1/2001 through 12/31/2001. Time served under current law is not included on Fiscal Note estimates. Months are based on an average of 30 days per month and the FY03 cost of care of \$113.31. Sentences timeframe is estimated as beginning 7/1/2003.

See attached:

Prepared by: Jarry D. Burnett, Director Phone (907) 465-3339  
 Division Administrative Services Date/Time 3/21/03 8:31 AM  
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 3/21/2003  
 Agency Department of Corrections

FISCAL NOTE #2

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

BILL NO. HB 244

ANALYSIS CONTINUATION

For years past FY 2009, there could be a cumulative effect of long-term and short-term sentence increases that would result in higher costs on an annual basis. We have not attempted to estimate these future year costs past FY 2009. Given the recidivism rates for many offenders, it is not clear that these longer sentences will actually have the effect of increasing costs to the Department of Corrections. Our costs are the same on a daily basis whether offenders are serving an extra period of incarceration or are reincarcerated for a new offense. To the extent that increased sentences may reduce recidivism for this group of offenders, the legislation may result in lower costs in future years.

*Replaced*  
AMENDMENT

*2 Meyer*

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 2, following line 3:

Insert a new bill section to read:

**\*\*Sec. 2.** AS 12.45 is amended by adding a new section to article 2 to read:

**Sec. 12.45.117. Admissibility of prior convictions.** (a) In a prosecution for a crime that has a prior conviction as an element of the offense, the following are admissible to prove any element of the offense:

- (1) evidence of the prior conviction of the defendant;
- (2) a stipulation made by the defendant to the prior conviction.

(b) In a prosecution for a crime that has a prior conviction as an element of the offense, the defendant may raise a legal challenge to the validity of a prior conviction only by proving, by a preponderance of evidence to a judge sitting without a jury, that the prior conviction is invalid because the defendant was denied the right to counsel or the right to a jury trial.

(c) In this section,

(1) "denied the right to counsel" means that under the law of the jurisdiction in which the conviction was entered, the defendant had no right to court-appointed counsel and in that particular case the defendant did not retain counsel;

(2) "right to a jury trial" means that under the law of the jurisdiction in which the conviction was entered, the defendant was entitled to a trial by a jury of six or more persons."

Renumber the following bill sections accordingly.

Replaced

AMENDMENT

Meyer

OFFERED IN THE HOUSE

TO: CSHB 244(JUD)

Page 1, following line 7:

Insert a new bill section to read:

**\*\*Section 1.** AS 11.41.115(1) is amended to read:

(a) In a prosecution under AS 11.41.100(a)(1)(A) or 11.41.110(a)(1), it is **an affirmative** [A] defense that the defendant acted in a heat of passion, before there had been a reasonable opportunity for the passion to cool, when the heat of passion resulted from a serious provocation by the intended victim."

Renumber the following bill sections accordingly.

AMENDMENT # ~~4~~ 3

OFFERED IN HOUSE FINANCE

BY REPRESENTATIVE STOLTZE

TO: CS HB 244 (JUD)

Page 1, line 12:

After "prisoner" delete "or any relative or friend of the prisoner"

AMENDMENT #

5.4

OFFERED IN HOUSE FINANCE

BY REPRESENTATIVE STOLTZE

TO: CS HB 244 (JUD)

Delete Section 13, beginning on page 8, lines 29 through 31, and page 9, lines 1 through 4.

Renumber sections accordingly.

AMENDMENT

B5

TO BE OFFERED IN THE HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE Kertula

TO: CS HB 244 (JUD)

Page 3, line 8:

Delete: "shall"

Insert: "may"

Renumber accordingly.

**PLETCHER & WEINIG**  
ASSOCIATED IN THE PRACTICE OF LAW

Richard A. Weinig  
ATTORNEY

DIMOND CENTER OFFICE TOWER  
800 E. DIMOND BLVD., SUITE 3-615  
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FACSIMILE  
(907) 349-7758

May 8, 2003

Representative Bill Williams  
Room 515  
State Capitol  
Juneau AK 99801-1182

Dear Representative Williams:

I am writing to ask you to vote against sections 1-5 of SB 170 and HB 244. Sections 1-5 are identical in each bill. They effectively destroy every Alaskan's right of self-defense and effectively prohibit the use of force to protect any third person who may be under attack.

At the present time, a person may use deadly force for self-defense against death, serious injury, kidnaping, sexual assault in the first degree, sexual assault in the second degree, or robbery. A person may use such force as he or she reasonably believes is necessary to defend a third person when he or she reasonably believes that the third person would be justified in using that degree of force for self-defense. (AS 11.81.330 and .340) In either case, the prosecution must prove, beyond a reasonable doubt, that such use of force was not justified.

Under SB 170 and HB 244, self-defense and use of force in defense of a third person are reduced from defenses to affirmative defenses. That means that the prosecution need prove nothing. It places the burden upon the accused to persuade a jury that use of force was necessary. This stands existing law on its head.

Moreover, if the accused was armed at the time of an attack upon him or her, SB 170 and HB 244 would deprive the accused of any right to assert self-defense or justifiable use of force in defense of a third person.

Approximately 15,000 Alaskans have concealed carry permits. Many use them. If a permit holder, lawfully carrying a handgun, were attacked and was forced to use his or her weapon in self-defense or in defense of a third person, SB 170 and HB 244 would preclude him or her from claiming self-defense or justifiable use of force in defense of that third person. If a woman had been previously attacked by an abusive husband or boyfriend and had the good sense to obtain a weapon to defend her or her child against future attacks, SB 170 and HB 244 would preclude her from asserting self-defense or defense of a third person in a subsequent attack. Section 4 of SB 170 and HB 244 state:

A person may not use deadly force . . . if the person brought a deadly weapon to an encounter with reckless disregard that the encounter would result in combat.

This means that if a carry permit holder or the woman who had been previously attacked armed himself or herself, they could not assert self-defense because they "brought a deadly weapon to an encounter".

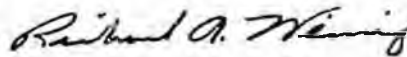
SB 170 and HB 244 should not be enacted. They are the sort of legislation which one might expect to emerge from Sara Brady, Senator Diane Feinstein, Senator Charles Schumer or Handgun Control. It is astonishing that a Republican governor or any Alaskan legislator would sponsor such bills.

Enclosed is a April 26, 2003 Anchorage Daily News article on this matter. I concur with the views expressed by Brant McGee and Barbara Brink.

Please let me know what your views are on SB 170 and HB 244.

Thanks for your attention.

My best regards,



Richard A. Weinig

addresses of all representatives and all senators  
this letter and a copy of the clipping goes to each of them.

\\Front desk\front\_c\D Cases\WEINIG\SB 170 HB 244.wpd

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

COMPASS: Points of view from the community

# Bills assault right to self-defense

By BRANT MCGEE and BARBARA BRINK

Your right to defend yourself and your family is under attack.

A radical change in the law has been proposed (Senate Bill 170; House Bill 244) to make it easier to convict Alaskans who exercise their right of self-defense. Under current law, if you are attacked and forced to defend yourself and later prosecuted, the government must prove beyond a reasonable doubt that your use of force was unjustified. The new statute will shift the burden of proof from the government to you and make you prove your innocence. In some situations you will have no right to defend yourself at all.

Self-defense, the right embodied in every major legal system since Old Testament times, always takes place in moments of crisis. While an Alaskan must act reasonably in using force in self-defense, "detached reflection cannot be demanded in the presence of an uplifted knife." These words by Justice Holmes describe the difficulty of knowing exactly what force is necessary at a particular moment in a confrontation. Determination of the facts by a jury is often difficult and now the government wants to stack the deck. This change in the law will treat you, the victim of an assault, like a criminal.

While it is claimed the new statute is for convicting gang members, it would dramatically diminish the rights of all of us to self-defense. But the most outrageous impact is on previously assaulted victims. The exact new words are that "a person may not use deadly force ... if the person brought a deadly weapon to an encounter with reckless disregard that the encounter would result in combat." In other words, a woman who arms herself because she is afraid her abusive ex-boyfriend might seriously hurt or kill her in an encounter has absolutely no right to self-



McGee

*While it is claimed the new statute is for convicting gang members, it would dramatically diminish the rights of all of us to self-defense. But the most outrageous impact is on previously assaulted victims.*



Brink

defense. This proposal denies any right of self-defense to the very people who are most likely to have to exercise it — those in fear of someone who has threatened them. By exercising her Second Amendment rights, she has canceled her right to self-defense.

Defending a loved one from an unexpected deadly assault will require you to prove your innocence. For example, an elderly grandfather has chosen to obtain a concealed weapon permit. Each day he walks his 10-year-old grandson to and from the bus stop. One afternoon, as he approaches the bus stop, he sees a group of older boys surround his grandson and the biggest one begins to pistol whip the boy. As his grandson drops unconscious to the ground, the assailant continues to strike him in the head with the pistol. The grandfather shouts two warnings before he opens fire and kills the assailant. The grandfather is arrested and charged with murder because the assailant's pistol was not employed as a firearm. This man must come to court and prove his innocence.

Why can't we trust juries to acquit in these cases even though the government has turned the presumption of innocence into a presumption of guilt and transferred the burden of proof to the citizen? The an-

swer is that the law should protect the innocent from arrest and prosecution as well. People charged with homicide almost never make bail — most lose their jobs and often their marriages and relationships. The children of jailed defendants are often taken into state custody. The cost of defending such cases will fall upon public agencies who use public dollars to pay lawyers, investigators, experts and scientific analysts. A homicide charge is a life-changing trauma that is never erased by an acquittal.

This change in the law is poorly conceived and runs counter to Alaskans' conception of their right to self-defense. What of the innocent person who, because of the change proposed in this bill, hesitates to act in a moment of crisis and is killed by an attacker?

This proposed change in the law demands public condemnation. Every person who has loved ones to protect has a stake in this issue. Do not let the government kill your right to defend yourself and your family.

■ Public Defender Barbara Brink and Public Advocate Brant McGee manage agencies that provide legal representation to indigent defendants, abused and neglected children, parents and other Alaskans.



# Alaska State Legislature

Please enter into the record my testimony to the House Finance

Committee name

Committee on H B 244 SB170 dated May 13, 2003

Bill/Subject

No on Senate bill 170 and House Bill 244!  
The rights of Alaskans to self defense  
would be gone!! Instead of gov murderers  
claim that it would help to hasten the  
conviction of gang members, we citizen would  
be charged guilty if arrested for defense,  
until we could prove ourselves innocent!!

Do NOT Let government Kill our Right,  
to defend ourselves + our FAMILIES

Signed:

Ellen G. Johnson

Testifier

all Alaskans

Representing (Optional)

501 KNIK GOOSE BAY Rd

Address

WASILLA ALASKA

Phone number

907-373-1139

HOUSE BILL 244  
Sectional Analysis

**Section 1.** "Heat of passion" applies only to First Degree Murder and Second Degree Murder. If a person kills while in a passion that was the result of serious provocation by the intended victim, that reduces the killing from murder to manslaughter. In one case, a man broke into the home of a drug dealer to recover money, and shot the drug dealer. He claimed that the shooting was done in a "heat of passion" and the Alaska Supreme Court reversed his murder conviction because the trial judge did not believe he was entitled to raise this defense. "Heat of passion" is often a fall-back position for defendants who do not think they will completely escape responsibility under self-defense. In cases where the state is able to disprove self-defense, it may also be required to disprove "heat of passion." This section would change "heat of passion" from a defense, that the state must *disprove* beyond a reasonable doubt, to an affirmative defense, that the defendant must prove by a preponderance of evidence. The defendant is the person who knows the motivation for the killing, and should bear the burden of establishing this justification.

**Sections 2 - 4.** These change self-defense from a defense, that the state must disprove beyond a reasonable doubt, to an affirmative defense, that the defendant must prove by a preponderance of evidence, with two exceptions. First, self-defense would remain a defense for the state to disprove if the person was on his or her property and did not use force against a household member; Second, it would remain a defense as under current law for force used by a peace officer acting within the scope of his or her duties. In most homicides, the defendant is only person still alive who was present at the killing. As with the defense of duress, the defendant is the person who knows the motivation for the use of force, and should bear the burden of establishing this justification. Section 2 deals with use of non-deadly force in self-defense. Sections 3 and 4 deal with deadly force. Section 4 also provides that a defendant may not claim self-defense for a killing if he brought a deadly weapon to the encounter, and was aware of and disregarded the risk that the encounter would result in combat.

**Section 5** makes use of force in defense of a third person an affirmative defense. As with self-defense, the state would still be required to disprove the defense if the incident occurred on the person's property or the force was used by a peace officer.

**Section 6** provides that an adult who has volunteered to talk to the police must request to be visited by an attorney, relative or friend. Occasionally attorneys people will demand to visit a person under arrest, even if the person has not made a request for the visit. This interrupts the police investigation, but it is allowed under current law. All other provisions in section 6, regarding the right to immediately make phone calls, are unchanged from current law.

**Section 7.** When the law provides that an element of a crime depends on a prior conviction or convictions, such as felony drunk driving, the state must prove beyond a reasonable doubt that the past convictions occurred. But the Alaska courts have said that this must occur in two trials, and that the jury must not be told of the past convictions in the first trial. This section reverses that court decision. Section 7 also provides that the defendant may not again litigate the validity of the prior conviction, unless the defendant was not provided counsel or a jury trial. Prior convictions should not again be subject to attack where the defendant has had the opportunity to appeal, and to exercise post-conviction remedies.

**Sections 8 -12 and 17.** These sections adopt a procedure for making decisions about Fifth Amendment claims and the granting of immunity by the state. Alaska law requires complete, transactional immunity from prosecution for a person who has claimed a privilege; thus, the decision to grant immunity must be made carefully. Currently, the courts hold secret hearings with witnesses who refuse to testify, and then give the state no information that the state needs to decide whether to grant immunity to the witness. Under this bill, the state is allowed the information it needs to make a rational decision about granting immunity from prosecution. Section 8 merely conforms statutory law to a constitutional decision by the Alaska Supreme Court. Sections 9 and 10 are minor clarifying amendments. Section 11 defines a term that explains that the witness can communicate to the court through his or her attorney, rather than speaking directly. Section 12 adopts a procedure where the decision about the privilege is made after an attorney is appointed for the witness, and after input by both the witness and the state. Section 17 clarifies that a witness who claims a Fifth Amendment privilege not to testify is entitled to a public defender if the cannot afford one. This codifies current court practice.

**Sections 13 and 14, 18 - 20.** Sections 13, 18 - 20 are conforming amendments regarding consecutive sentencing. Section 14 gives direction to courts in sentencing for more than one offense. Current law appears to require consecutive sentences, but was not interpreted that way because of bad drafting. This clarifies that for most crimes a court may impose sentences that are concurrent or partially concurrent. However, for homicides, kidnapping and serious sex offenses, this section specifies the minimum amount of consecutive time that must be imposed. For example, for two counts of first degree murder, the court must require the mandatory minimum term of the second offense to be served consecutively. For manslaughter or kidnapping, at least the period of the presumptive term of the second offense must be served consecutively.

**Section 15** is similar to section 7, and provides that in imposing a presumptive sentence (which depends on prior convictions), the defendant may only challenge the validity of a prior conviction if he was denied the right to counsel or the right to a jury trial.

**Section 16** would adopt a new mitigating factor for sentencing in a sexual felonies. Because these trials are so difficult for the victim, it would allow the court to consider whether to impose a lesser sentence if the defendant reduced the impact on the victim by entering a plea of guilty or no contest within 30 days of arraignment.

**Section 21** changes Rule 16 (c)(5), Alaska Rules of Criminal Procedure, to require a defendant to give notice of certain defenses 30 days in advance of trial. Current law requires a shorter notice, and is routinely ignored by defense attorneys and courts.

**Section 22** makes a conforming amendment to Rule 16(e)(1), Alaska Rules of Criminal Procedure, by cross-referencing consequences provided in other law for violation of the discovery rules or an order issued by a court under the discovery rules.

**Section 23** addresses pretrial discovery of expert witnesses by both the prosecution and the defense. It requires that no later than 45 days before trial, both parties provide opposing counsel with the name and curriculum vitae of expert witnesses. The defense must disclose only those experts that it may call at trial. The prosecution must disclose experts that it may call at trial or that have worked on the case. Defense attorneys frequently instruct their experts not to write reports, because the report would have to be turned over to the prosecution. The prosecution has no such luxury, and is required to provide an expert's report. This section provides that if the defense expert has not written a report, the prosecution is entitled to depose the expert at the expense of the defense. It requires the court to disallow expert testimony if disclosure isn't complete seven days before trial or another time ordered by the court.

**Section 24** amends the Alaska Rules of Evidence to provide that a voluntary statement obtained in violation of the technical *Miranda* requirements, may be used to impeach the person who made the statement, if that person testifies differently. Further, evidence that has been suppressed may also be used to impeach a witness. Current law only allows these statements and evidence to be used at a later perjury trial. This makes them available to impeach a witness at the first trial.

**Section 25** extends the time for use of prior convictions for impeachment at trial from five years from conviction, to five years from the date of unconditional discharge.

**Section 26** adopts a new exception to the rule against use of hearsay evidence, by allowing the use at trial of statements made within 24 hours of a crime involving domestic violence, if the statement reports or describes the crime.

**Sections 27 - 31** include conforming repealers, a notice of a court rule change described above, procedural directions, and an effective date, July 1, 2003.

**HB**

**245**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 7, 2003

FURTHER REFERRALS:

Date of Committee Action: 5/8/03

The FINANCE Committee considered:

HB 245

HOUSE BILL NO. 245

SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

"An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date."

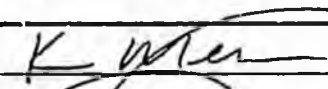


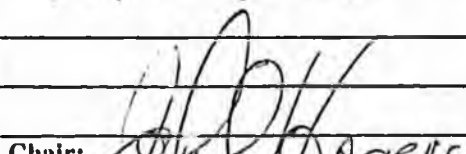
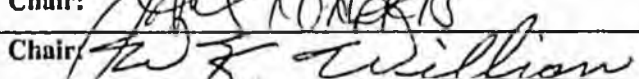
Recommends it be replaced with  HCS or  CS for HB 245 (JUD)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LEG  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	#1			✓
DNR	#2			✓
DOA	#3		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Mayo	✓			
	Foster	X			
	Whitaker	✓		✓	
Chair: 	Harris	✓			
Chair: 	Williams	✓			

A

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 245  
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title: "An Act relating to certain suits and claims by BRU Civil  
members of the military services . . ." Component: Special Litigation  
 Sponsor: Rules Committee  
 Requester: Governor Component No. 2213

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Alaska Supreme Court, in a recent decision, ruled that the State of Alaska may be sued and could be held liable for tort claims by injured members of the Alaska National Guard and a member of the Indiana National Guard for injuries that were incurred during the members' service with the national guard. The Alaska Supreme Court did not adopt the federal rule (known as the *Feres* doctrine) that bars tort claims by military service personnel for injuries arising out of activities that were incident to their service in the federal military or the national guard. While the Alaska Supreme Court did not address tort claims by members of the United States military or other parts of the Alaska organized militia, its ruling could be applied to permit such claims against the State of Alaska. This bill will essentially adopt the federal *Feres* doctrine, and would provide the state and state military personnel with the same protection from tort lawsuits that the federal government and federal military personnel are provided under the *Feres* doctrine. It

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division: Attorney General's Office Date/Time 1/27/03 3:13 PM  
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 1/27/2003  
 Agency: Department of Law

**FISCAL NOTE #1**

**STATE OF ALASKA  
2003 LEGISLATIVE SESSION**

**BILL NO.** HB 245

**ANALYSIS CONTINUATION**

will also make clear that the state can be liable to third parties only for the conduct of militia members on active state service acting in the line of duty under orders of the governor, and not for the conduct of "borrowed" federal employees. Similarly, the bill clarifies that state workers' compensation benefits would only be due for injuries or death of organized militia members ordered into active state service by the governor.

Passage of this legislation will have no fiscal impact on the Department of Law.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 245  
 (1-) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title: Tort Immunity BRU: Statewide Fire Suppression  
 Component: Fire Suppression  
 Sponsor: Rules Component No.: 437  
 Requester: Governor

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Tort immunity legislation will require no operating or capital expenditures. It has the potential of saving the state a significant but undeterminable amount in litigation costs and damages resulting from natural disasters such as wildfire.

Prepared by: Dean Brown Phone 269-8476  
 Division: Forestry Date/Time 4/3/2003  
 Approved by: Tom Irwin, Commissioner Date 4/3/2003  
 Agency: Natural Resources

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: HB 245  
 (H) Publish Date: 4/8/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to certain claims and suits..... BRU Risk Management  
 Component Risk Management  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 71

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 The state's self insurance program for tort liability exposures will be favorably affected by this bill.

The limitation of civil actions arising out of certain claims & suits by members of the military services or regarding acts or omissions of the organized militia, or arising out of certain search & rescue, civil defense, homeland security, and fire management & fire fighting activities will reduce state liability exposure and thereby decrease future defense costs.

Projected costs for a low frequency yet potentially high severity risk is not possible, therefore the fiscal impact is indeterminate. In future years, Risk Management's liability premium assessments will reflect the reductions actually realized as our premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone \_\_\_\_\_  
 Division Risk Management Date/Time 2/14/03 7:46 AM  
 Approved by: Mike Miller, Commissioner Date 2/14/2003  
 Agency Administration



# Alaska State Legislature

REPRESENTATIVE JOHN HARRIS

District 35 - Valdez, Cordova, Whittier, Glennallen, Delta Junction, Tatitlek, Kenny Lake, Paxson, Gakona, Chenega Bay

## SPONSOR STATEMENT HOUSE CONCURRENT RESOLUTION 21 *Relating to establishing the Alaska Energy Policy Task Force*

The purpose of this resolution is to establish a task force composed of non-legislative members to develop a long-term energy plan for Alaska.

The task force will be composed of:

- The chair of the Regulatory Commission of Alaska
- One member of the AIDEA Board of Directors
- The Commissioner of Revenue
- Two members chosen by the Governor
- Two members selected by the President of the Senate
- Two members selected by the Speaker of the House

It is intended that the task force be composed of non-legislative members and that a utility will not have more than one representative. If utility members are selected, at least one must be from a Railbelt electrical utility and at least one member must be from a non-Railbelt electrical utility.

The task force, once selected, is charged with developing a long-term energy plan for the Railbelt area first and submit a report to the legislature by December 31, 2003. Their second task is to develop a long-term energy plan for the non-Railbelt parts of the state and submit a report by March 31, 2004.

A comprehensive long-term energy plan is needed for the state to promote more economic development and technological advancement. A sustainable, affordable and reliable source of power will be required to enhance that growth. A thorough review of existing and long-term needs will assist our state and all electrical power consumers in meeting that goal.

CSHB 245(JUD): providing protection from tort lawsuits  
in four areas of governmental activity

Search and Rescue

- Provides immunity from tort lawsuits for state and local government and their employees.
- There are approximately 400 search and rescues conducted each year in Alaska.
- The Alaska State Troopers coordinate search and rescue activities using state and community resources.
- This provision is found in Section 2 of the bill.

Intra-military Tort Claims

- Bars tort actions for damages against the state and its employees by service members - there is no change to their entitlement to state workers compensation when on state duty and federal benefits when on federal duty.
- Provides the State and its military personnel the same protection from tort lawsuits that the federal government and federal military personnel have under the *Feres* doctrine; consistent with the vast majority of states.
- These provisions are found in Sections 4 - 6 of the bill.
- acts of the organized militia unless the acts were in the line of duty while on active state service under AS 26.05.070.
- This provision is found in Section 3 of the bill.
- Both of these provisions recognize that the federal government, and not the state of Alaska, is responsible for injuries and claims while service members are under federal command and control.

Civil Defense

- Bars tort claims against the government, employees, and authorized volunteers for damages sustained by a civilian defense worker - does not affect the worker's or authorized volunteer's rights to state workers compensation.
- Bars third party tort claims against the government, employees, and authorized volunteers for damages unless malice or reckless indifference is shown by clear and convincing evidence.
- These provisions are found in Sections 7 - 10 of the bill.

Fire Management and Firefighting Activities

- Amends two statutory sections to bar tort claims by third parties against the state, local government, other firefighting groups and their employees.
- Every year the State Division of Forestry is called upon to respond to hundreds of fires throughout the State of Alaska.
- This change is necessary due to two Alaska Supreme Court cases holding that the State may be sued for firefighting activities.

- Litigation disrupts Forestry's day to day operations and diverts substantial state resources to defend lawsuits.
- This provision is consistent with federal and common law in other jurisdictions that immunizes these activities.
- This provision does not affect existing entitlement to workers compensation or the availability of federal or state disaster relief benefits.
- These provisions are found in Sections 11 and 12 of the bill.

Prepared by Office of the Attorney General, Gail T. Voigtlander, Assistant Attorney General

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 245  
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to certain suits and claims by BRU Civil  
members of the military services . . ." Component Special Litigation  
 Sponsor Rules Committee  
 Request: Governor Component No. 2213

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 The Alaska Supreme Court, in a recent decision, ruled that the State of Alaska may be sued and could be held liable for tort claims by injured members of the Alaska National Guard and a member of the Indiana National Guard for injuries that were incurred during the members' service with the national guard. The Alaska Supreme Court did not adopt the federal rule (known as the *Feres* doctrine) that bars tort claims by military service personnel for injuries arising out of activities that were incident to their service in the federal military or the national guard. While the Alaska Supreme Court did not address tort claims by members of the United States military or other parts of the Alaska organized militia, its ruling could be applied to permit such claims against the State of Alaska. This bill will essentially adopt the federal *Feres* doctrine, and would provide the state and state military personnel with the same protection from tort lawsuits that the federal government and federal military personnel are provided under the *Feres* doctrine. It

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division Attorney General's Office Date/Time 1/27/03 3:13 PM  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/27/2003  
 Agency Department of Law

FISCAL NOTE #1

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

BILL NO. HB 245

ANALYSIS CONTINUATION

will also make clear that the state can be liable to third parties only for the conduct of militia members on active state service acting in the line of duty under orders of the governor, and not for the conduct of "borrowed" federal employees. Similarly, the bill clarifies that state workers' compensation benefits would only be due for injuries or death of organized militia members ordered into active state service by the governor.

Passage of this legislation will have no fiscal impact on the Department of Law.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 245  
 (H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title: Tort Immunity BRU: Statewide Fire Suppression  
 Component: Fire Suppression  
 Sponsor: Rules  
 Requester: Governor Component No.: 437

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Tort immunity legislation will require no operating or capital expenditures. It has the potential of saving the state a significant but undeterminable amount in litigation costs and damages resulting from natural disasters such as wildfire.

Prepared by: Dean Brown Phone: 269-8476  
 Division: Forestry Date/Time: 4/3/2003  
 Approved by: Tom Irwin, Commissioner Date: 4/3/2003  
 Agency: Natural Resources

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: HB 245  
 (H) Publish Date: 4/8/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to certain claims and BRU Risk Management  
suits..... Component Risk Management  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 71

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The state's self insurance program for tort liability exposures will be favorably affected by this bill.

The limitation of civil actions arising out of certain claims & suits by members of the military services or regarding acts or omissions of the organized militia, or arising out of certain search & rescue, civil defense, homeland security, and fire management & fire fighting activities will reduce state liability exposure and thereby decrease future defense costs.

Projected costs for a low frequency yet potentially high severity risk is not possible, therefore the fiscal impact is indeterminate. In future years, Risk Management's liability premium assessments will reflect the reductions actually realized as our premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone \_\_\_\_\_  
 Division: Risk Management Date/Time 2/14/03 7:46 AM  
 Approved by: Mike Miller, Commissioner Date 2/14/2003  
 Agency: Administration

CSHB245 (VERSION-D)

Amendment 2 (conceptual) - Adopted.

On page 3, line 31 to line 1 of page 4: Delete "or homeland security"  
Page 4, lines 8,9: delete both "or homeland security" occurrences.

(Jud)

~~Amendment 2 (conceptual)~~

All other references to "Homeland security" workers which would be effected by the deletions in section 7, should be removed from HB245.

Holm