

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9564 SENATE • JUDICIARY

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SENATE BILL NO. 41

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR LEMAN

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to environmental audits and health and safety audits to
 2 determine compliance with certain laws, permits, and regulations."

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

4 * Section 1. FINDINGS; INTENT. The legislature finds and intends as follows:

5 (1) as environmental and health and safety regulations evolve, performance-
 6 based standards will increasingly replace the traditional command-and-control approach of
 7 state regulatory practices; this shift is expected to save money for both the state and regulated
 8 entities and to lead to the integration of environmental and health and safety protections and
 9 normal operating procedures for regulated facilities and operations; in order to foster a
 10 partnership between the public and private sectors and promote this integration, it is the intent
 11 of the legislature to establish under this Act a responsible incentive program to encourage
 12 voluntary, critical self-evaluation by regulated entities of their compliance with environmental
 13 and health and safety requirements by authorizing certain qualified privileges and immunities
 14 related to those self-evaluations;

1 (2) the public has a strong interest in encouraging routine self-review of
 2 environmental and health and safety business practices and procedures; this encouragement
 3 can best be achieved by preserving the free flow of information; the free flow of the kind of
 4 information that is generated by self-audits would be curtailed if a privilege for the audits
 5 were not available; therefore, it is the intent of the legislature to recognize an audit privilege
 6 under this Act to protect the confidentiality of communications related to voluntary internal
 7 environmental and health and safety audits; however, the legislature does not intend that audit
 8 reports privileged under this Act may be used to shield a person from liability under
 9 applicable laws and regulations by blocking access to relevant facts;

10 (3) the public also has a strong interest in obtaining cost-effective correction
 11 of inadvertent environmental and health and safety violations; this goal can best be achieved
 12 by offering qualified immunity from administrative and civil penalties to regulated entities that
 13 promptly report known violations of environmental and health and safety regulations that are
 14 uncovered as part of an audit so that the violations can promptly be corrected and a corrective
 15 action plan can be negotiated with the appropriate governmental regulatory agency;

16 (4) an effective enforcement program is also necessary to protect the public
 17 health and welfare and the environment; the legislature intends that the audit privilege and the
 18 immunities established in this Act should be applied in a manner that promotes compliance
 19 with environmental and health and safety laws, whether through voluntary compliance or
 20 through enforcement efforts.

21 * Sec. 2. AS 09.25 is amended by adding new sections to read:

22 **Article 5. Privileges and Immunities**

23 **Related to Disclosure of Certain Self-Audits.**

24 **Sec. 09.25.450. Audit report privilege.** (a) Except as provided in
 25 AS 09.25.455 - 09.25.475, an audit report is privileged and is not admissible as
 26 evidence or subject to discovery in

27 (1) a civil action, whether legal or equitable; or

28 (2) an administrative proceeding, except for workers' compensation
 29 proceedings.

30 (b) A person, when called or subpoenaed as a witness, may not be compelled
 31 to testify or produce a document related to an environmental or health and safety audit

1 if

2 (1) the audit report is privileged under (a) of this section and is
3 inadmissible in the same proceeding;

4 (2) the testimony or document discloses an item listed in
5 AS 09.25.490(a)(1) that was made as part of the preparation of an environmental or
6 health and safety audit report and that is addressed in a privileged part of an audit
7 report; and

8 (3) for purposes of this subsection only, the person is a

9 (A) person who conducted all or a portion of the audit but did
10 not personally observe or participate in the relevant instances or events being
11 reviewed for compliance;

12 (B) person to whom the audit results are disclosed under
13 AS 09.25.455(b); or

14 (C) custodian of the audit results.

15 (c) A person who conducts or participates in the preparation of an
16 environmental or health and safety audit and who has actually observed or participated
17 in instances or events being reviewed for compliance may testify about those instances
18 or events but may not, in a proceeding covered by (a) of this section, be compelled to
19 testify about or produce documents related to the preparation of or a privileged part
20 of an environmental or health and safety audit or an item listed in AS 09.25.490(a)(1).

21 (d) A regulatory agency and an employee of a regulatory agency may not
22 request, review, or otherwise use an audit report that is privileged under (a) of this
23 section during an agency inspection of a regulated facility, operation, or property or
24 an activity of a regulated facility, operation, or property.

25 (e) To facilitate identification, each document in an audit report shall be
26 labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT," or labeled with
27 words of similar import.

28 (f) A party asserting the privilege described in this section has the burden of
29 establishing the applicability of the privilege.

30 (g) This section may not be construed to

31 (i) prevent a regulatory agency from issuing an emergency order.

1 seeking injunctive relief, independently obtaining relevant facts, conducting necessary
 2 inspections, or taking other appropriate action regarding implementation and
 3 enforcement of an applicable environmental or health and safety law, except as
 4 otherwise provided in AS 09.25.475; or

5 (2) authorize a privilege for uninterrupted or continuous environmental
 6 or health and safety audits.

7 Sec. 09.25.455. Exception: waiver. (a) The privilege in AS 09.25.450 does
 8 not apply to the extent the privilege is expressly waived in writing by the owner or
 9 operator who prepared the audit report or caused the report to be prepared.

10 (b) Disclosure of an audit report or information generated by an environmental
 11 or health and safety audit does not waive the privilege established by AS 09.25.450
 12 if the disclosure is made

13 (1) to address or correct a matter raised by the environmental or health
 14 and safety audit and is made only to

15 (A) a person employed by the owner or operator, including
 16 temporary and contract employees;

17 (B) a legal representative of the owner or operator;

18 (C) an officer or director of the regulated facility, operation, or
 19 property;

20 (D) a partner of the owner or operator; or

21 (E) an independent contractor retained by the owner or operator;

22 (2) under the terms of a confidentiality agreement between the person
 23 for whom the audit report was prepared or the owner or operator of the audited
 24 facility, operation, or property and

25 (A) a partner or potential partner of the owner or operator of the
 26 facility, operation, or property;

27 (B) a transferee or potential transferee of the facility, operation,
 28 or property;

29 (C) a lender or potential lender for the facility, operation, or
 30 property;

31 (D) a government official or a state or federal agency; or

1 (E) a person or entity engaged in the business of insuring,
2 underwriting, or indemnifying the facility, operation, or property; or

3 (3) under a claim of confidentiality to a government official or agency
4 by the person for whom the audit report was prepared or by the owner or operator.

5 (c) A party to a confidentiality agreement described in (b)(2) of this section
6 who violates that agreement is liable for damages caused by the disclosure and for
7 other penalties stipulated in the confidentiality agreement.

8 (d) Information that is disclosed under (b)(3) of this section is confidential and
9 is not subject to disclosure under AS 09.25.110 - 09.25.125.

10 (e) Disclosure of a portion of an audit report after waiver of the privilege
11 under (a) of this section, after disclosure under (b) of this section, or through another
12 means may not be construed to waive the privilege established under AS 09.25.450 for
13 another part of the audit report.

14 **Sec. 09.25.460. Exception: disclosure required by court or administrative**
15 **hearing officer.** (a) A court or administrative hearing officer with competent
16 jurisdiction may require disclosure of a portion of an audit report in a civil or
17 administrative proceeding if the court or administrative hearing officer determines,
18 after an in camera review consistent with the appropriate rules of procedure, that the

19 (1) privilege is asserted for a fraudulent purpose;

20 (2) portion of the audit report is not subject to the privilege under
21 AS 09.25.465;

22 (3) portion of the audit report shows evidence of noncompliance with
23 an environmental or health and safety law and appropriate efforts to achieve
24 compliance with the law were not promptly initiated and pursued with reasonable
25 diligence after discovery of noncompliance; or

26 (4) audit report was prepared for the purpose of avoiding disclosure of
27 information required for an investigative, administrative, or judicial proceeding that,
28 at the time of the report's preparation, was imminent or in progress.

29 (b) A party seeking disclosure under this section has the burden of proving that
30 (a) of this section applies.

31 **Sec. 09.25.465. Nonprivileged materials.** (a) The privilege under

1 AS 09.25.450 does not apply to that part of an audit report that contains

2 (1) a document, communication, datum, report, or other information
3 required by a regulatory agency to be collected, developed, maintained, or reported
4 under an environmental or health and safety law, under a permit issued under an
5 environmental or health and safety law, as a requirement for obtaining, maintaining,
6 or renewing a license, or as a requirement under a contract or lease with the state;

7 (2) information that a regulatory agency obtains by observation,
8 sampling, or monitoring;

9 (3) information that a regulatory agency obtains from a source that was
10 not involved in compiling, preparing, or conducting the environmental or health and
11 safety audit report;

12 (4) a document, communication, datum, report, or other information
13 collected, developed, or maintained in the course of a regularly conducted business
14 activity or regular practice other than an environmental or health and safety audit;

15 (5) a document existing before the commencement of, and independent
16 of, the environmental or health and safety audit; or

17 ^{\$} (6) a document prepared after the completion of, and independent of,
18 the environmental or health and safety audit.

19 (b) An audit report is not privileged and is admissible as evidence and subject
20 to discovery in a proceeding relating to pipeline rates, tariffs, fares, or charges.

21 (c) An audit report is not privileged and is admissible as evidence and subject
22 to discovery if the report was commenced after the owner or operator knew of an
23 impending inspection or investigation by a regulatory agency.

24 (d) This section does not limit the right of a person to agree to conduct and
25 disclose an audit report.

26 **Sec. 09.25.475. Voluntary disclosure; immunity.** (a) Except as provided by
27 this section, a person who makes a voluntary disclosure of a violation of an
28 environmental or health and safety law is immune from an administrative or civil
29 penalty for the violation disclosed, for a violation based on the facts disclosed, and for
30 a violation discovered because of the disclosure that was unknown to the person
31 making the disclosure.

1 (b) A disclosure is voluntary for the purposes of this section only if

2 (1) the disclosure is made promptly after knowledge of the information
3 disclosed is obtained by the person;

4 (2) the disclosure is made in writing by certified mail to an agency that
5 has regulatory authority with regard to the violation disclosed;

6 (3) an investigation of the violation was not initiated or the violation
7 was not independently detected by an agency with enforcement jurisdiction before the
8 disclosure was made using certified mail; under this paragraph, the agency has the
9 ~~§~~ burden of proving that an investigation of the violation was initiated or the violation
10 was detected before receipt of the certified mail;

11 (4) the disclosure arises out of a voluntary environmental or health and
12 safety audit;

13 (5) the person making the disclosure initiates, within a reasonable time,
14 an appropriate effort to achieve compliance, pursues that effort with due diligence, and
15 corrects or implements a series of measures designed to remedy the noncompliance
16 within a reasonable time;

17 ~~§~~ (6) the person making the disclosure cooperates with the appropriate
18 agency in connection with an investigation of the issues identified in the disclosure and
19 agrees under terms of a confidentiality agreement to disclose to the agency, on request
20 of the agency, the part of the audit report that describes the implementation plan or
21 tracking system developed to correct past noncompliance, improve current compliance,
22 or prevent future noncompliance; and

23 (7) the violation did not result in substantial injury to one or more
24 persons at the site or substantial off-site harm to persons, property, or the environment.

25 (c) A disclosure is not voluntary for purposes of this section if it is a report
26 to a regulatory agency required solely by a specific condition of an enforcement order
27 or decree.

28 (d) The immunity established by (a) of this section does not apply and an
29 administrative or civil penalty may be imposed under applicable law if

30 (1) the person who made the disclosure knowingly committed the
31 disclosed violation;

1 (2) the person who made the disclosure recklessly committed or was
 2 responsible for the commission of the disclosed violation and the violation resulted in
 3 substantial injury to one or more persons at the site or substantial off-site harm to
 4 persons, property, or the environment;

5 (3) the offense was committed intentionally or knowingly by a member
 6 of the person's management or an agent of the person and the person's policies or lack
 7 of prevention systems contributed materially to the occurrence of the violation; or

8 (4) the offense was committed recklessly by a member of the person's
 9 management or an agent of the person, the person's policies or lack of prevention
 10 systems contributed materially to the occurrence of the violation, and the violation
 11 resulted in substantial injury to one or more persons at the site or substantial off-site
 12 harm to persons, property, or the environment.

13 (e) An administrative or civil penalty that is imposed on a person for violation
 14 of an environmental or health and safety law when the person has made a voluntary
 15 disclosure under (a) of this section but is not granted immunity because of (d) of this
 16 section may, to the extent appropriate and not prohibited by law, be mitigated by

17 (1) the voluntariness of the disclosure;

18 (2) efforts by the disclosing party to conduct environmental or health
 19 and safety audits;

20 (3) remediation;

21 (4) cooperation with government officials investigating the disclosed
 22 violation;

23 (5) the nature of the violation; and

24 (6) other relevant considerations.

25 (f) In order to receive immunity under this section, a facility conducting an
 26 environmental-~~or~~ health and safety audit must give notice by certified mail to an
 27 appropriate regulatory agency of the fact that it is planning to commence the audit.
 28 The notice must specify the facility or portion of the facility to be audited, the date the
 29 audit will begin and end, and the general scope of the audit. Immunity under this
 30 section is available only for violations that are revealed through or discovered as a
 31 result of information and documents first produced or obtained during the time period

1 specified in the notice. The notice may provide notification of more than one
 2 scheduled environmental or health and safety audit at a time. Once initiated, an audit
 3 shall be completed within the time period specified in the notice except that the audit
 4 period may be extended once for up to 60 days if the facility gives notice of the
 5 extension and its duration to the appropriate regulatory agency by certified mail before
 6 the original time period expires.

7 (g) A regulatory agency may not initiate an inspection, monitoring, or other
 8 investigative activity based solely on the receipt of a notice under (f) of this section.
 9 The agency has the burden of proving that an inspection, monitoring, or other
 10 investigative activity initiated after receipt of a notice under (f) of this section was not
 11 initiated based solely on the receipt of the notice.

12 (h) The immunity under this section does not apply if a court or administrative
 13 law judge finds that the person claiming the immunity has

14 (1) repeated an unreasonable number of times or continuously
 15 committed violations that are the same as, or similar to, the violation for which
 16 immunity is sought under this section; and

17 (2) not attempted to bring the facility, operation, or property into
 18 compliance, so as to constitute a pattern of disregard of environmental or health and
 19 safety laws.

20 (i) A violation that has been voluntarily disclosed and to which immunity
 21 applies must be identified in a compliance history report as being voluntarily disclosed.

22 (j) A person is not immune under this section if the disclosure is in a
 23 proceeding relating to pipeline rates, tariffs, fares, or charges.

24 (k) A person may not be required to waive immunity as a condition of a
 25 compliance plan or similar agreement.

26 **Sec. 09.25.485. Relationship to other recognized privileges.** AS 09.25.450 -
 27 09.25.490 do not limit, waive, or abrogate the scope or nature of a statutory or
 28 common law privilege, including the work product doctrine, the attorney-client
 29 privilege, and any other privilege recognized by a court with appropriate authority in
 30 this state.

31 **Sec. 09.25.490. Definitions.** (a) In AS 09.25.450 - 09.25.490,

1 (1) "audit report" means a report that includes each document and
2 communication, other than those set out in AS 09.25.465, produced from an
3 environmental or health and safety audit; general components that may be contained
4 in a completed audit report include

5 (A) a report, prepared by an auditor, monitor, or similar person,
6 that may include a description of the scope of the audit, the information gained
7 in the audit, findings, conclusions, recommendations, exhibits, and appendices;
8 the types of exhibits and appendices that may be contained in an audit report
9 include supporting information that is collected or developed for the primary
10 purpose of and in the course of an environmental or health and safety audit,
11 including

- 12 (i) interviews with current or former employees;
13 (ii) field notes and records of observations;
14 (iii) findings, opinions, suggestions, conclusions,
15 guidance, notes, drafts, and memoranda;
16 (iv) legal analyses;
17 (v) drawings;
18 (vi) photographs;
19 (vii) laboratory analyses and other analytical data;
20 (viii) computer generated or electronically recorded
21 information;
22 (ix) maps, charts, graphs, and surveys; and
23 (x) other communications associated with an
24 environmental or health and safety audit;

25 (B) memoranda and documents analyzing all or a portion of the
26 materials described in (A) of this paragraph or discussing implementation
27 issues; and

28 (C) an implementation plan or tracking system to correct past
29 noncompliance, improve current compliance, or prevent future noncompliance;
30 however, "audit report" does not include formal communications or agreements
31 between an owner or operator and the appropriate agency regarding a

1 compliance implementation plan or strategy;

2 (2) "environmental or health and safety audit" means a voluntary,
3 confidential, critical, internal, and retrospective review, evaluation, or analysis of
4 current or past conduct, practices, and occurrences and their resulting consequences,
5 including an assessment that is a part of the owner's or operator's compliance
6 management system, that is conducted randomly, regularly, or in response to a
7 particular event by an owner or operator or by an employee or independent contractor
8 of an owner or operator and is

9 (A) conducted in the expectation that it will be confidential; and

10 (B) specifically and exclusively designed and undertaken for the
11 purpose of determining compliance with environmental or health and safety
12 laws or a permit issued under those laws;

13 (3) "environmental or health and safety law" means

14 (A) a federal or state environmental or occupational health and
15 safety law; or

16 (B) a rule, regulation, or municipal ordinance adopted in
17 conjunction with or to implement a law described by (A) of this paragraph;

18 (4) "intentionally" has the meaning given in AS 11.81.700;

19 (5) "knowingly" has the meaning given in AS 11.81.900;

20 (6) "owner or operator" means a person who owns or operates a
21 regulated facility, operation, or property;

22 (7) "penalty" means an administrative or civil sanction imposed by the
23 state to punish a person for a violation of a statute or rule; the term does not include
24 a technical or remedial provision ordered by a regulatory authority;

25 (8) "recklessly" has the meaning given in AS 11.81.900;

26 (9) "regulated facility, operation, or property" means a facility,
27 operation, or property that is regulated under an environmental or health and safety
28 law.

29 (b) To fully implement the privilege and immunity established under
30 AS 09.25.450 - 09.25.490, the term "environmental or health and safety law" shall be
31 construed broadly.

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

2 **Sec. 12.45.052. Privilege relating to certain self-audits.** An audit report
3 based on an environmental or health and safety audit is privileged to the extent
4 provided under AS 09.25.450 - 09.25.490.

5 * Sec. 4. **APPLICABILITY.** The privilege created by AS 09.25.450 - 09.25.490, added
6 by sec. 2 of this Act, applies to environmental or health and safety audits that are conducted
7 on or after the effective date of this Act.

**THE PRECEDING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

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FISCAL NOTE

STATE OF ALASKA

BILL NO: 3. 11
 Bill Version: CSSB 58 (HES)
 (S) Publish Date: 4-1-97

1997 LEGISLATIVE SESSION

Revision Date: March 26, 1997 Dept. Affected: Public Safety
 Title: Minor Consuming Alcohol: Penalty Component: DPS Statewide Support
 Sponsor: Senator Taylor Commissioner's Office
 Requestor: S. HESS COMPONENT SERIAL NO. 0523

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

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.)
 No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: 3/26/97
 Approved by Commissioner: *Ronald L. Otte* Date: 3/26/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. 10
Bill Verson: CSSB 58 (HES)
(S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Administration
Title: An Act relating to the privileges to drive of BRU: Motor Vehicles
minors... Component: Driver Services
Sponsor: Senator Taylor
Requestor: (S) HES COMPONENT SERIAL NO. 500

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

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Jay Dulany, Director Phone: 465-2650
Division: Motor Vehicles Date: _____
Approved by Commissioner: Mark Boyer *Almond Seger* Date: 3/25/97
Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 9
Bill Version: CS9B 58 (HES)
(S) Publish Date: 3-26-97

Revision Date: _____
Title: "An Act relating to the privilege to drive of minors and to the penalty for the consumption or possession of alcoholic beverages by persons under 21 years of age."

Department Affected: Administration

Sponsor: Sen. Taylor
Requestor: (S) HES

BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	201.2	201.2	201.2	201.2	201.2	201.2
TRAVEL	8.1	8.1	8.1	8.1	8.1	8.1
CONTRACTUAL	35.1	35.1	35.1	35.1	35.1	35.1
SUPPLIES	3.6	3.6	3.6	3.6	3.6	3.6
EQUIPMENT	0.0	1.5	1.5	1.5	1.5	1.5
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	248.0.0	249.5	249.5	249.5	249.5	249.5

CAPITAL EXPENDITURES	15.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	263.0	249.5	249.5	249.5	249.5	249.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	263.0	249.5	249.5	249.5	249.5	249.5

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would impose a mandatory fine of \$250 for a first offense of minor consuming alcohol. A second or subsequent offense committed within two years of the first offense would be a class B misdemeanor. This would result in an increased caseload for the Public Defender Agency. Currently, minor consuming alcohol is a violation, and the defendant does not have a right to a public defender. Under this change a minor would have a right to an attorney when minor consuming alcohol is charged as a misdemeanor. Assuming 1200 new misdemeanor cases per year, three additional attorneys would be required as well as necessary travel, contractual, supplies, and equipment.

Prepared by: Barbara K. Brink, Director Phone: (907) 264-4414
Division: Public Defender Agency Date: _____

Approved by Commissioner: Mark Boyer *Alison M. Elgee*
Agency: Department of Administration Date: 3/25/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 8
Bill Verson: CSSB 58 (HESS)
(S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Department of Law
Title: "... relating to the penalty for the consumption
or possession of alcoholic beverages by persons under 21 ..." BRU: Criminal Division
Sponsor: Senator Taylor Component: Criminal Division
Requester: Senate HESS Committee COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	107.5	107.5	107.5	107.5	107.5	107.5
TRAVEL	1.4	1.4	1.4	1.4	1.4	1.4
CONTRACTUAL	16.0	16.0	16.0	16.0	16.0	16.0
SUPPLIES	2.1	2.1	2.1	2.1	2.1	2.1
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	133.5	127.0	127.0	127.0	127.0	127.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	133.5	127.0	127.0	127.0	127.0	127.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	133.5	127.0	127.0	127.0	127.0	127.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

CSSB 58 (HESS) provides that a minor convicted for the first time of minor consuming alcohol in violation of AS 04.16.050 must pay a fine of \$250. The committee substitute amends SB 58, lowering the proposed penalty for the second and subsequent offenses of minor consuming alcohol in violation of AS 04.16.050 from a class A to a class B misdemeanor, and limits the effect by requiring the prior conviction have happened within the preceding two years. The bill repeals the provision for court revocation of a driver's license upon conviction of minor consuming alcoholic beverages under state or municipal law. Administrative revocation would remain unaffected. The committee substitute further provides for the development and approval by the Department of Health and Social Services of alcohol information classes targeted at juveniles.

Criminalizing minor consuming by making it a misdemeanor for the second and subsequent offenses of minor consuming alcoholic beverages gives rise to the right to a jury trial and court appointed counsel. Information

Prepared by: Joan M. Kasson
Division: Administrative Services Division
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Phone: 465-5370
Date: 3/24/97
Date: 3/24/97

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ANALYSIS CONTINUATION:

contained in the fiscal note to the bill which decriminalized minor consuming, indicates that in FY 94 there were 3,500 minors who lost their operator's license as a result of minor consuming of alcohol. We estimate that about 1,200 or one-third of those cases of minor consuming will be filed for second or subsequent offenses. We further estimate that about 5 percent of that number of cases will be tried. The resulting 60 jury trials will require one new Attorney III position, to be placed in the Anchorage District Attorney's Office.

Using the department's standard attorney cost, the fiscal impact from this legislation would be \$127,000. This cost includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 is added for this purpose in FY 98. Please note that although no clerical support position is being added, proportionate support position funding is included in the standard attorney cost schedule to reduce clerical support vacancy so that the new attorney's clerical burden can be handled.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

0. 7
Bill Verson: CS9B 58 (HES)
(S) Publish Date: 3-26-97

Revision Date: 03/17/97
Title: Relating to issuance, suspension, limitation
revocation, and reinstatement of driver's license...
Sponsor: Sen. Taylor
Requestor: Senate HES

Dept. Affected: Health and Social Services
BRU: Alcohol and Drug Abuse Services
Component: ADA Admin
COMPONENT SERIAL NO. _____
See also (SN#): #302

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	92.0	95.0	98.0	101.0	104.0	107.0
TRAVEL	4.0	4.0	4.0	4.0	4.0	4.0
CONTRACTUAL	2.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	100.0	103.0	106.0	109.0	112.0	115.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	100.0	103.0	106.0	109.0	112.0	115.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	100.0	103.0	106.0	109.0	112.0	115.0

POSITIONS:

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

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

~~XXXXXXXXXX~~ SEE IDENTICAL ANALYSIS AND CHARTS FROM FISCAL NOTE NO. 6.
See attached.

Prepared by: *Loren A. Jones*
Division: Alcoholism and Drug Abuse
Approved by Commissioner: *Karen Perdue*
Agency: Department of Health & Social Services

Phone: 465-2071
Date: 03/17/97
Date: 3/18/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Verson: 6
CSRB 58 (HES)
(S) Publish Date: 3-26-97

Revision Date: 03/17/97
Title: Relating to issuance, suspension, limitation
revocation, and reinstatement of driver's license...
Sponsor: Sen. Taylor
Requestor: Senate HES

Dept. Affected: Health and Social Services
BRU: Alcohol and Drug Abuse Services
Component: CAASA
COMPONENT SERIAL NO. _____
See also (SN#): #1413

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS	400.0	400.0	400.0	400.0	400.0	400.0
MISCELLANEOUS						
TOTAL OPERATING	400.0	400.0	400.0	400.0	400.0	400.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	400.0	400.0	400.0	400.0	400.0	400.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	400.0	400.0	400.0	400.0	400.0	400.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: 30.0

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED.

Prepared by: Loren A. Jones
Division: Alcoholism and Drug Abuse
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-2071
Date: 03/17/97
Date: 3/18/97

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ANALYSIS (cont.):

This bill would transfer to the Division of Alcoholism and Drug Abuse the responsibility for the approval of alcohol information courses (Alcohol Information Schools (AIS)) for all persons needing such a course as a result of alcohol related crimes, primarily minor consuming, minor in possession and driving while intoxicated. Currently all such AIS classes also contain a driver improvement section and are targeted primarily at adults.

The current curriculum being used has not been reviewed and updated in many years. There are no outcomes or expectations for the AIS (other than to not have repeated the criminal behavior) or for the impact on the individual. It is time that this was updated and specific outcomes and expectations be established.

With the passage of the "Use It and Lose It" law there has been a dramatic increase in the number of minors losing their drivers license and being required to complete an AIS or treatment in order to have their license re-instated. This new law has shown a significant gap in our ability to respond appropriately and to assure that the education received is of value and will result in positive outcomes for the youth. We have attached several charts which shows the number of revocations for the last two calendar years.

A number of these youth, like adults, may need more than an AIS to address their needs. In reviewing the number of minors losing their driver's license the number of second or more offenders is about equal to the first time loss. This would indicate that the law, in and of itself is not stopping repeat offenses. An age appropriate AIS will have an impact but we know that for some persons additional services may be needed.

The Division also feels that to provide appropriate AIS a different curriculum and teaching method is needed for minors. The Division will locate and/or develop an appropriate model for adult and youth Alcohol/Drug Information School (AIS). These courses would be age appropriate and meet the needs of DMV for driving related issues. There will be a different response for the 18-20 year olds than for those under age 18. One major difference will be information on inhalants for the under 18 age group.

The Division of Alcoholism and Drug Abuse would establish a set of policy guidelines and outcomes for communities to use in developing a local approach to establishing the appropriate entry program for these minors. This would include policies on defining appropriate assessment, referral, defining compliance and completion of appropriate services, and evaluation standards for the program. Thus, those who need only AIS would be sent in the correct direction and those who need additional services would also get those.

These policies would include the role of partnership with schools for alternative to suspension programs, for working with courts, working with youth probation, and with local treatment agencies. We would need to address differences for rural villages. We would need to address development of a community based prevention and intervention services.

The Division would require two new positions consisting of 1 probation officer and 1 clerical staff for program & policy development, quality assurance of the AIS classes and staff support. This staff would write the P&P, Regulations and monitor compliance of the AIS providers and the local agencies providing the services.

The Division would propose using the \$400,000 to fund local programs via a competitive process under AS 47.30.470 - AS 47.30.500, which is our grant-in-aid process. In the competitive process we would seek to reach three main objectives: award funds to communities that have a collaborative plan to address the specific needs in their community; assure that the agency receiving the grant will be able to achieve the stated goals; and assure that the funds went to communities with the greatest need.

Data from the Division of Motor Vehicles (CY 1995 and CY 96) show the large majority of minors losing their driver's license occurred in Anchorage, Fairbanks, Juneau, Soldotna, Ketchikan, Sitka and Mat-Su (Palmer and Wasilla). These would be areas in which we would target funding if the other two goals are met.

All Requests for Proposals for substance abuse services should require proposers to specifically discuss prevention strategies either available in the program or in the community. These strategies need to reflect a community-based, risk reduction model and incorporate "best practice" models as supported by the research.

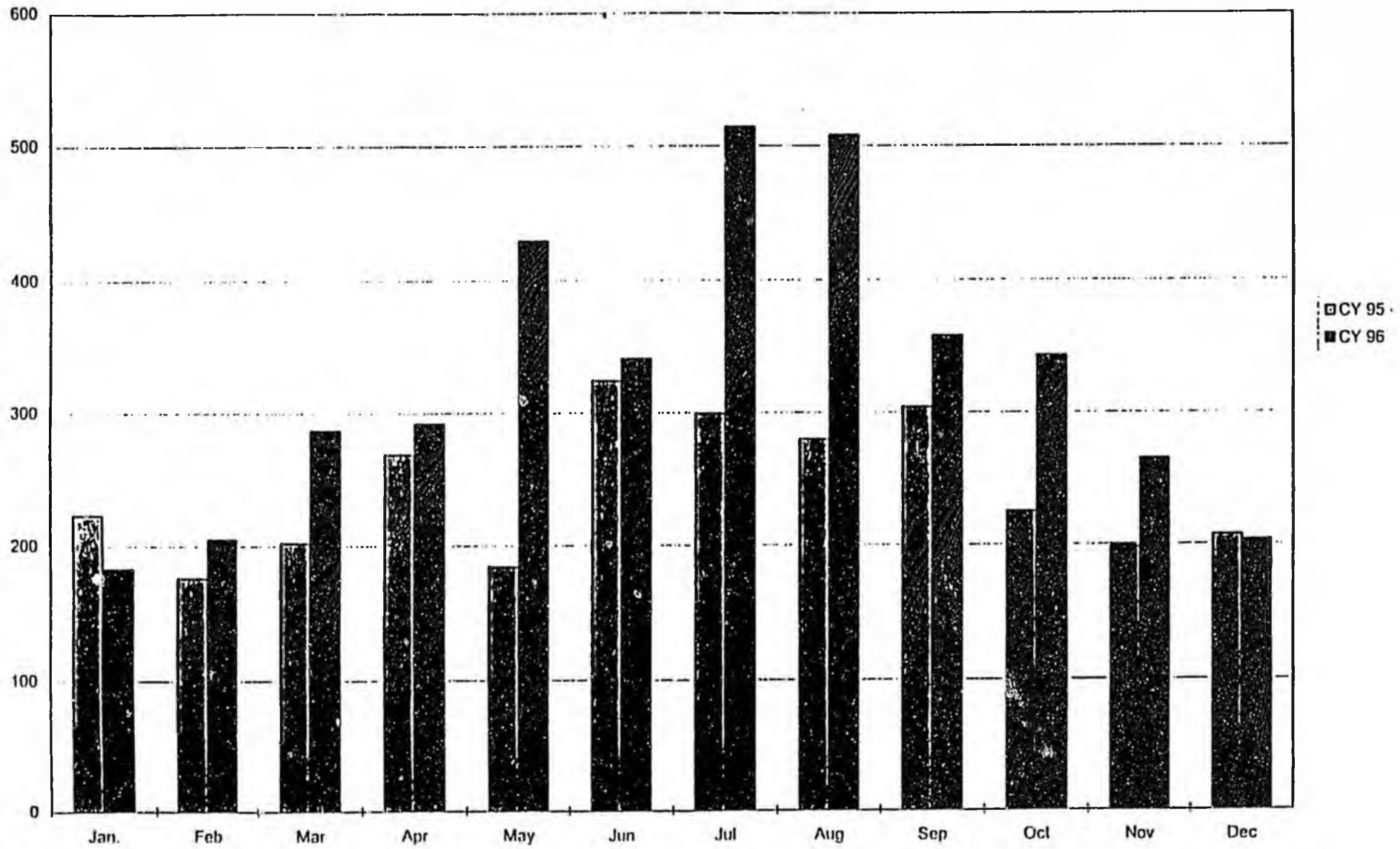
ANALYSIS (cont.):

There needs to be a targeted prevention effort in rural areas of Alaska dealing with inhalant abuse. This would help us get a prevention message out about alcohol and drugs as inhalants tend to be used by youth at an age prior to first use of alcohol or drugs.

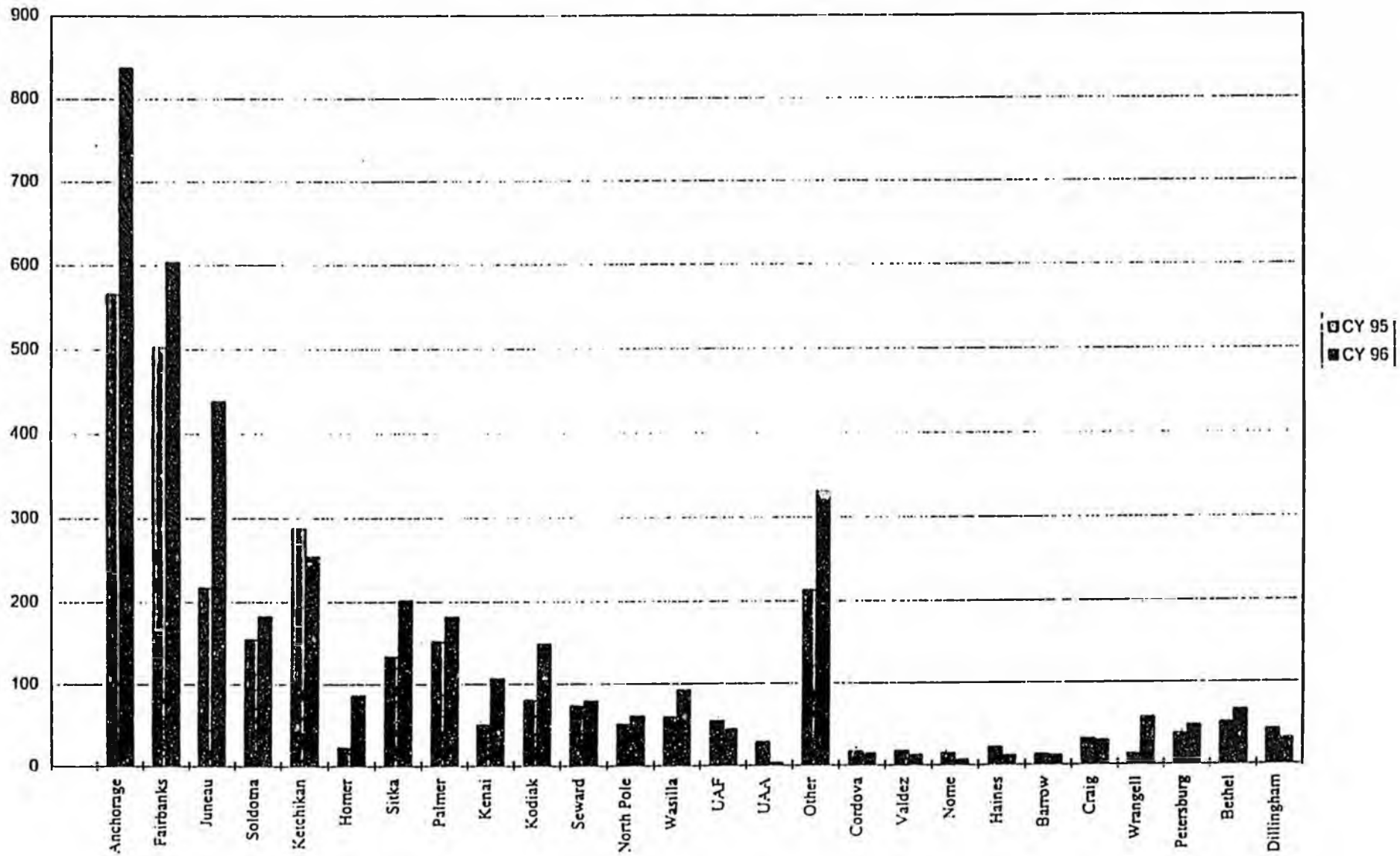
The revenue generated from the increase in the mandatory fines would provide the increase in funds to pay for this new service. In discussions with the Alaska Court System and the Department of Public Safety and Division of Motor Vehicles it is estimated that 2,000 youth would actually be convicted of minor consuming or minor in possession. This would generate the revenue needed to put in place programs that would reduce the number of offenders.

The data on the attached charts are taken from the he Division of Motor Vehicles administrative revocation of the driver's license. Not all these youth have been convicted in court of the offenses as the loss of the driver's license is an administrative procedure.

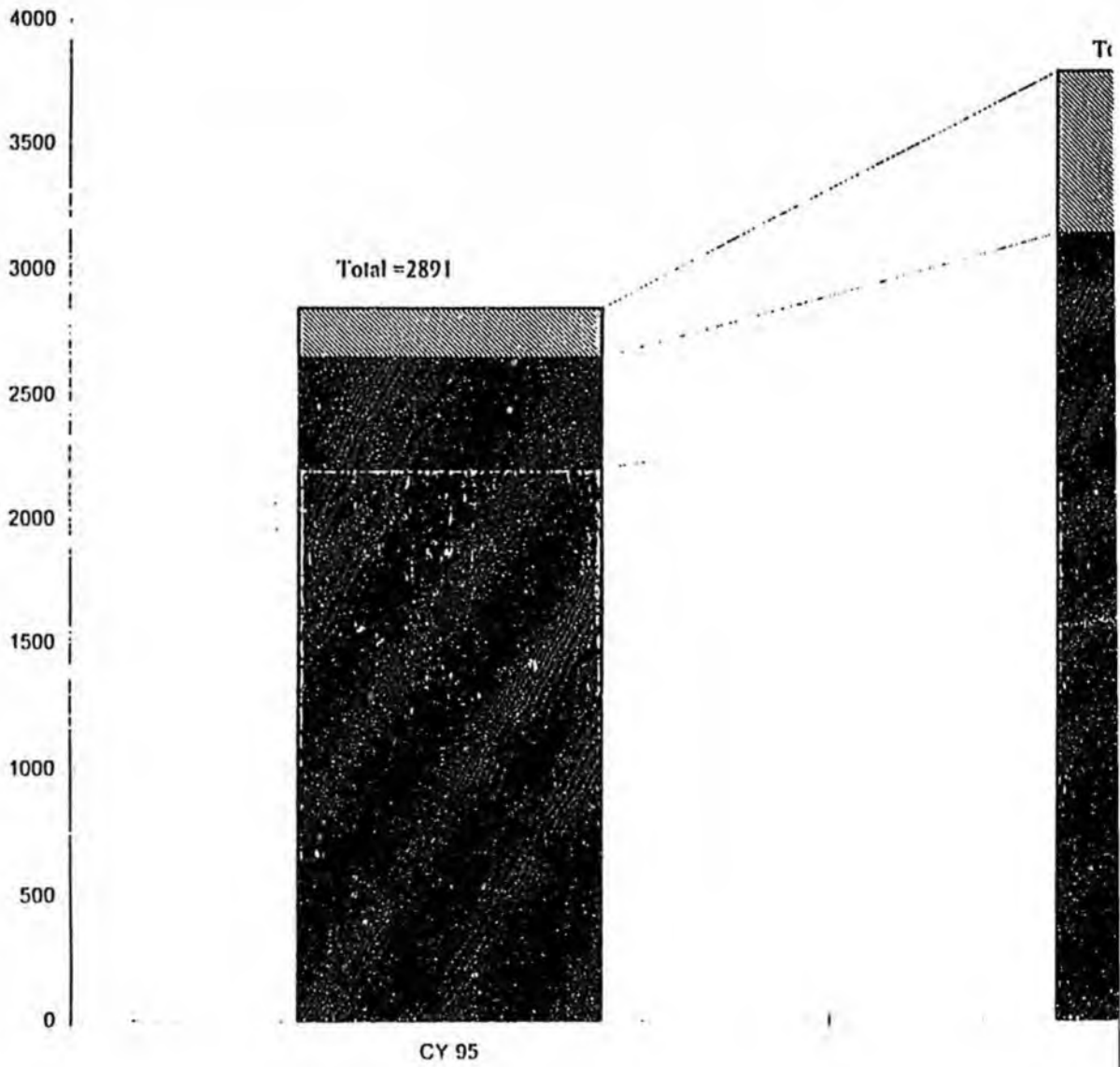
Number Youth Who Lost Drivers License Due to "Use It and Lose It" Law by Month for CY 1995 and CY 1996



Number of Youth Who Lost Drivers License Due to "Use It and Lose It" Law by Community for CY 1995 and CY 1996



Comparison of the Number of Repeat Offenses in CY



6-6

- 3rd + Off
- 2nd Off
- 1st Off

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Jo. 5
Bill Version: SB 58
(S) Publish Date: 3-26-97

Revision Date: 02/03/97
Title: Relating to the privilege to drive of minors
and penalties for consuming alcohol
Sponsor: Sen. Taylor
Requestor: (S) HESS

Dept. Affected: Health and Social Services
BRU: Alcohol and Drug Abuse Services
Component: ASAP
COMPONENT SERIAL NO. 305
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
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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 (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal cost to this bill.

Prepared by: Loren Jones
Division: Alcoholism and Drug Abuse
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-2071
Date: 02/03/97
Date: 2/3/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill No. 4
BILL NO: Bill Version: SB 58
(S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Public Safety
Title: Minor Consuming BRU: Motor Vehicles
Component: Driver Services
Sponsor: Sen. Taylor
Requestor: S. HESS COMPONENT SERIAL NO. 0500

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

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.)

This bill is not expected to have any fiscal impact on DMV.

Prepared By: Juanita M. Hensley Phone: 465-2650
Division: Motor Vehicles Date: 3/5/96
Approved by Commissioner: Ronald L. Otte Date: 3/5/97
Agency: Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: No. 3
 Bill Verson: SB 58
 (S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Public Safety
 Title: Minor Consuming BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Sen. Taylor
 Requestor: S. HESS COMPONENT SERIAL NO. 0799

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

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.)

This bill may cause some increase in the number of minor consuming cases that go to trial and may cause some additional paperwork to be required in some cases, however, it is not expected to a significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 260-5650
 Division: Alaska State Troopers Date: 03/05/97
 Approved by Commissioner: Ronald L. Otte *R. L. Otte* Date: 3/5/97
 Agency: Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 2
Bill Version: SB 58
(S) Publish Date: 3-26-97

Revision Date: _____
Title: "An Act relating to the privilege to drive of minors and to the penalty for the consumption or possession of alcoholic beverages by persons under 21 years of age."

Department Affected: Administration

Sponsor: Sen Taylor
Requestor: (S)HESS

BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	201.2	201.2	201.2	201.2	201.2	201.2
TRAVEL	8.1	8.1	8.1	8.1	8.1	8.1
CONTRACTUAL	35.1	35.1	35.1	35.1	35.1	35.1
SUPPLIES	3.6	3.6	3.6	3.6	3.6	3.6
EQUIPMENT	0.0	1.5	1.5	1.5	1.5	1.5
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	248.0.0	249.5	249.5	249.5	249.5	249.5

CAPITAL EXPENDITURES	15.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	263.0	249.5	249.5	249.5	249.5	249.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	263.0	249.5	249.5	249.5	249.5	249.5

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would make a second or subsequent minor consuming alcohol a Class A Misdemeanor. This would result in an increased caseload for the Public Defender Agency. Currently, minor consuming alcohol is a violation, and the minor does not have a right to a public defender. (However, it should be noted that the Alaska Court of Appeals in State v. District Court, Opinion No. 1504 (December 6, 1996), decided that the drivers license revocation penalties for minor consuming made the offense "criminal," and the defendant had a right to court-appointed counsel.) Assuming 1200 new misdemeanor cases per year, 3 additional attorneys would be required as well as necessary travel, contractual, supplies, and equipment.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Mark Boyer
Date: 3/5/97

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FISCAL NOTE No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Verson: SB 58
(S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Department of Law
 Title: ... relating to the privilege to drive of BRU: Criminal Division
minors . . . penalties for the consumption . . . of alcoholic beverage Component: Criminal Division
 Sponsor: Senator Taylor
 Requester: Senate HESS Committee COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	107.5	107.5	107.5	107.5	107.5	107.5
TRAVEL	1.4	1.4	1.4	1.4	1.4	1.4
CONTRACTUAL	16.0	16.0	16.0	16.0	16.0	16.0
SUPPLIES	2.1	2.1	2.1	2.1	2.1	2.1
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	133.5	127.0	127.0	127.0	127.0	127.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	133.5	127.0	127.0	127.0	127.0	127.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	133.5	127.0	127.0	127.0	127.0	127.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

SB 58 provides that a minor convicted for the first time of minor consuming alcohol in violation of AS 04.16.050 must pay a fine of \$250. SB 58 also provides that it is a class A misdemeanor for the second and subsequent offenses of minor consuming alcohol in violation of AS 04.16.050. The bill repeals the provision for court revocation of a driver's license upon conviction of minor consuming alcoholic beverages under state or municipal law. Administrative revocation would remain unaffected.

Making it a class A misdemeanor for the second and subsequent offenses of minor consuming alcoholic beverages gives rise to the right to a jury trial and court appointed counsel. Information contained in the fiscal note to the bill which decriminalized minor consuming, indicates that in FY 94 there were 3,500 minors who lost their operator's license as a result of minor consuming of alcohol. We estimate that about 1,200 or one-third of those cases of minor consuming will be filed for second or subsequent offenses. We further estimate that about 5 percent of that number of cases will be tried. The resulting 60 jury trials will require one new Attorney III position, to be placed in the Anchorage District Attorney's

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 3/4/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce Botelho* Date: 3/4/97
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 58

ANALYSIS CONTINUATION:

Office.

Using the department's standard attorney cost, the fiscal impact from this legislation would be \$127,000. This cost includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 is added for this purpose in FY 98. Please note that although no clerical support position is being added, proportionate support position funding is included in the standard attorney cost schedule to reduce clerical support vacancy so that the new attorney's clerical burden can be handled.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 12
Bill Version: CSSB 58 (HES)
(S) Publish Date: 4-3-97

Revision Date: _____ Dept. Affected: Alaska Court System
Title: Minor Consuming Alcohol Penalties BRU: Trial Courts
Component: _____
Sponsor: Sen. Taylor
Requestor: Senate Judiciary COMPONENT SERIAL NO. 769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	28.6	28.6	28.8	28.6	28.8	28.6
TRAVEL						
CONTRACTUAL	10.5	10.5	10.5	10.5	10.5	10.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	39.1	39.1	39.1	39.1	39.1	39.1

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	39.1	39.1	39.1	39.1	39.1	39.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	39.1	39.1	39.1	39.1	39.1	39.1

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney
Agency: Alaska Court System

Phone: 264-8228
Date: 04/02/97

Approved by: Stephanie J. Cole, Acting Administrative Director
Agency: Alaska Court System

Date: 04/02/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 58 (HES)

Section 1 of CSSB 58 (HES) amends AS 04.16.050(b) to make second and subsequent violations of AS 04.16.050(a) (consumption or possession of alcohol by a minor) a class B misdemeanor. Section 5 of the bill amends AS 28.15.185(a) by removing the authority of the district court to revoke the driver's license of a minor who is convicted of consumption or possession of alcohol.

At the present time, second or subsequent violations of AS 04.16.050(a) are classified as violations, although the penalty provisions contained in AS 28.15.185(a) require the criminal justice system to treat them as misdemeanors, including right to counsel and jury trial. This fact was overlooked when the statutes were enacted and funded in 1995. Misdemeanors must be handled in court by an assistant attorney general rather than the arresting officer, and the Department of Law is not currently prosecuting these offenses.

The Department of Law has estimated that with passage of CSSB 58 (HES), it will prosecute 60 minor consumption cases each year which result in a jury trial. This note is based upon that estimate, and includes the costs associated with 60 one-day jury trials in district court, offset by the time which a magistrate would have spent on such cases if they were treated as violations.

Alaska Court System
Fiscal Analysis
CSSB 58 (HES)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem District Court Judge, Anchorage, PPT, 3 months	\$13,500	\$8,323	\$21,823
In-Court Clerk, 12A, Anchorage, PPT, 3 months	7,125	1,835	<u>8,960</u>
Total Personal Services			30,784

Personal Services Offset

Magistrate time to conduct 60 one-hour infraction trials, average salary and benefits			<u>(2,143)</u>
Net Personal Services			28,641

Contractual Services

Jury fees for additional 60 one-day, 7-person jury trials at \$25 a day			<u>10,500</u>
---	--	--	---------------

Total estimated annual cost			<u><u>\$39,141</u></u>
-----------------------------	--	--	------------------------

SENATE COMMITTEE REPORT

DATE: 3/26/97

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 4/2/97

Judiciary Committee considered

SENATE BILL NO. 58

"An Act relating to the privilege to drive of minors and to the penalty for the consumption or possession of alcoholic beverages by persons under 21 years of age."

and recommends:

- | be replaced with _____ CS _____ (_____)
- | adopt previous _____ CS SB 58 (HES)
- | attached amendment(s)
- | adopt Letter of Intent by _____ Committee
- | further referral to the _____ Committee

Senate Bill:

same title
new title

House Bill:

same title
technical change
new: SCR# _____

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul Parnell</i>	✓				
<i>Mike Miller</i>	✓				
<i>George</i>	✓				
CHAIR: <i>John L. Taylor</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

#12	COURT	4/2/97		39.1

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

DPS	3/26	⊖		#11
ADMIN/DMV-D5	3/25	⊖		#10
ADMIN/PUBLIC DEFENSE	3/25		✓	#9
LAW/CRIMINAL	3/24		✓	#8
HSS/Alcohol & Drug	3/18		✓	#7
HSS/Alcohol & Drug-COAST	3/18		✓	#6

| APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

RECEIVED APR 1 1997

7541 Sportsmens Point
Anchorage, Alaska 99502
March 25, 1997

Senator Robin Taylor
Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Taylor,

As a health care professional, I am opposed to HB 58. That bill is not just, fair, or reasonable.

A jury should consider each case individually on it's own merits with no caps or limits imposed on pain or suffering. Until you have been seriously injured, you cannot imagine how this affects not only yourself but your family members as well, often for the rest of your life.

Those of us who care for the seriously injured know it is unfair to arbitrarily limit compensation for their suffering. Insurance rate relief is not going to be a result of HB 58 because Alaska is too small to affect rate setting. The seriously injured will suffer even more harm if this bill is passed.

Tort reform should follow the recommendations of the Governor's Task Force. Those proposals were reached by the consensus of multiple professionals from businesses and the community. They seek to improve the justice system while retaining the victim's rights--not add more distress to the plight of the injured.

Very truly yours,

Charlotte Moody
Charlotte Moody, R.N.



**“SHE’S MY PATIENT.
THERE’S NO WAY I’LL LET
ANYONE PUT A PRICE TAG
ON HER LIFE.”**

I can't let financial or political pressures stop me from doing all that's necessary for my patients. That's why I believe that any changes made to the Medicare system must acknowledge that costs cannot take precedence over necessary care and treatment.

The American Medical Association has a plan that does just that. And as members of the AMA we are pledged to fight for the highest quality of care available for all our patients. Our plan also ensures that the Medicare system will remain healthy and viable well into the future.

Call 1-888-AMA-1997 to find out more about the AMA's Medicare proposal and how you can help to get it implemented.

TODAY'S AMA
*Giving Power
To Your Voice*



FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 58 (HES)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Minor Consuming Alcohol Penalties BRU: Trial Courts
 Component: _____
 Sponsor: Sen. Taylor
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	28.6	28.6	28.6	28.6	28.6	28.6
TRAVEL						
CONTRACTUAL	10.5	10.5	10.5	10.5	10.5	10.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	39.1	39.1	39.1	39.1	39.1	39.1
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	39.1	39.1	39.1	39.1	39.1	39.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	39.1	39.1	39.1	39.1	39.1	39.1

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8228
 Agency: Alaska Court System Date: 04/02/97
 Approved by: Stephanie J. Cole, Acting Administrative Director Date: 04/02/97
 Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 58 (HES)

Section 1 of CSSB 58 (HES) amends AS 04.16.050(b) to make second and subsequent violations of AS 04.16.050(a) (consumption or possession of alcohol by a minor) a class B misdemeanor. Section 5 of the bill amends AS 28.15.185(a) by removing the authority of the district court to revoke the driver's license of a minor who is convicted of consumption or possession of alcohol.

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The Department of Law has estimated that with passage of CSSB 58 (HES), it will prosecute 60 minor consumption cases each year which result in a jury trial. This note is based upon that estimate, and includes the costs associated with 60 one-day jury trials in district court, offset by the time which a magistrate would have spent on such cases if they were treated as violations.

Alaska Court System
Fiscal Analysis
CSSB 58 (HES)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem District Court Judge, Anchorage, PPT, 3 months	\$13,500	\$8,323	\$21,823
In-Court Clerk, 12A, Anchorage, PPT, 3 months	7,125	1,835	<u>8,960</u>
Total Personal Services			30,784

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Magistrate time to conduct 60 one-hour infraction trials, average salary and benefits			<u>(2,143)</u>
Net Personal Services			28,641

Contractual Services

Jury fees for additional 60 one-day, 7-person jury trials at \$25 a day			<u>10,500</u>
Total estimated annual cost			<u><u>\$39,141</u></u>

SENATE COMMITTEE REPORT

DATE: 3/26/97

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/2/97

Judiciary Committee considered

SENATE BILL NO. 58

"An Act relating to the privilege to drive of minors and to the penalty for the consumption or possession of alcoholic beverages by persons under 21 years of age."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS SB 58 (H.E.S.S.)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR"

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul Parnell</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>George</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>John T. Tolson</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

1			

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

D.R.S	3/26	0	
ADMIN/DMV-DS	3/25	0	
ADMIN/PUBLIC DEFEND	3/25		<input checked="" type="checkbox"/>
LAW/CRIMINAL	3/24		<input checked="" type="checkbox"/>
HSS/Alcohol & Drug	3/18		<input checked="" type="checkbox"/>
HSS/Alcohol & Drug-CAAS	3/18		<input checked="" type="checkbox"/>
COURTS	4/2		<input checked="" type="checkbox"/>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 58 (HES)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Minor Consuming Alcohol Penalties BRU: Trial Courts
 Component: _____
 Sponsor: Sen. Taylor
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 768

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(Thousands of Dollars)

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MISCELLANEOUS						
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CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES (
----------------------	--	--	--	--	--	--

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(Thousands of Dollars)

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Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/02/97

Approved by: Stephanie J. Cole, Acting Administrative Director
 Agency: Alaska Court System

Date: 04/02/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 58 (HES)

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Alaska Court System
Fiscal Analysis
CSSB 58 (HES)

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Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor

Sponsor Statement

Senate Bill 58

In 1995, the Legislature passed and the Governor signed Senate Bill 46. This bill moved underage drinking offenses out of the juvenile justice system and into adult court. The new law also changed minor consuming from Class A Misdemeanor status to that of a violation with a fine of not less than \$100.

SB 46 was intended to toughen enforcement of underage drinking laws by getting the offenders and their parents or guardians into adult court. Two problems have arisen since that passage of SB 46 which require that this issue be revisited.

Parents in several communities have complained that the new law is not having the intended effect. The \$100 fine seems to have little impact on young people who receive \$1000+ in the form of Permanent Fund Dividend payments each year.

And, District Court Judge Patricia Collins has ruled that minors charged under the MCA statute are entitled to a jury trial and a public defender, if they qualify, because their drivers' licenses are subject to revocation upon conviction. The Court of Appeals upheld that ruling on December 6, 1996.

Senate Bill 58 seeks to restore legislative intent to the process. It would make minor consuming a violation, subject to a fine of \$250, on the first offense. The offense would revert to Class B Misdemeanor status for the second and subsequent offenses.

**Senate Bill 58- Sponsor Statement
Page Two**

Senate Bill 58 would also divorce minor consuming from penalties against drivers' licenses, at least as far as the courts are concerned. Minors who consume alcohol would still lose their licenses through administrative action under the "Use It and Lose It" law, but it would no longer be a court action.

The \$250 fine imposed by SB 58 would also strengthen the message that underage drinking is against the law, while falling below the threshold of fines which establish a "criminal" prosecution. More importantly, the increased fine would allow the establishment of a screening and referral program.

The Senate HESS version would reduce the second and subsequent offenses to class B misdemeanor status if they occur within two years of the first offense. That two year window will give ample opportunity to target problem drinkers. It should also serve to reduce the fiscal impact projected by the Public Defender Agency.

The second provision adopted in Senate HESS would incorporate the "junior" Alcohol Safety Action Program suggested in Senate Bill 71. It would allow the legislature to appropriate the \$250 fines imposed by SB 58 to pay for this screening and referral program.

Adult offenders already pay for the ASAP program and should not be subject to increased drivers license reinstatement fees. Letting the kids pay for their own "junior" ASAP program through the \$250 fine will add some accountability to this effort to address minor consuming.

**Senate Bill 58 - Sponsor Statement
Page Three**

The sponsor takes exception to the fiscal notes submitted for the HES Committee substitute. The Department of Law suggests a annual cost ranging from \$127,000 to \$133,500. The Public Defender Agency says the bill will add between \$263,000 and \$249,500 and necessitate three new full-time positions.

Copies of the fiscal notes submitted for SB 46 in 1995, when MCA was reduced from misdemeanor status to that of a violation, have been provided to the committee. Please note that when MCA was reduced from a misdemeanor, neither agency submitted a fiscal note showing a cost savings. They took no savings then and should not be allowed to show an increase now.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

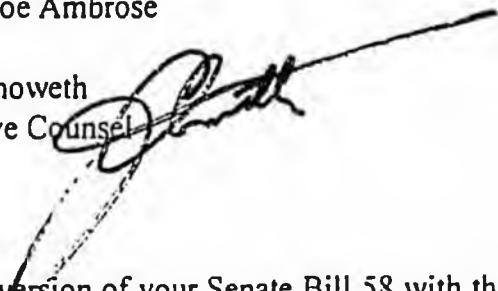
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 17, 1997

SUBJECT: Draft CSSB 58(), amending various laws relating to alcohol and drugs -- sectional analysis (Work Order No. 20-LS0123\K)

TO: Senator Robin Taylor
ATTN: Joe Ambrose

FROM: Jack Chenoweth
Legislative Counsel 

The draft combines a modified version of your Senate Bill 58 with the greater portion of Governor Knowles' Senate Bill 71.

At the outset, I should note a key recent court decision, State of Alaska v. District Court, 927 P.2d 1295 (Alaska App. 1996), wherein the Alaska Court of Appeals concluded that, in conjunction with the conviction of a person under 18 years of age for consuming or possessing alcoholic beverages, because the court must revoke the minor's driver's license, minors are entitled to a jury trial and court-appointed counsel in the disposition of the offense.^{1/}

Sections dealing with possession, control, or consumption of alcoholic beverages by persons under 21 years of age:

Bill section 1: AS 04.16.050(a) defines the offense of possession, control, or consumption of alcoholic beverages by persons under 21 years of age. AS 04.16.050(b), amended by this bill section, prescribes the penalty for the offense. Current law treats the offense as a "violation," and instructs the court to levy a fine of "not less than \$100." The amendment proposed by this bill section keeps the offense of possession, control, or consumption of alcoholic beverages by a person under 21 years of age as a violation, but mandates a fine of \$250. Persons under 21 years of age possessing, controlling, or consuming alcoholic

^{1/} Under AS 47.12.030(b)(5), charges against a minor--a person under 18 years of age--involving an offense under AS 04.16.050 are to be tried in the district court and are not handled as matters that are addressed under procedures set out in the provisions of the juvenile delinquency chapter, AS 47.12.

Senator Robin Taylor

March 17, 1997

Page 2

beverages within two years of being convicted of an earlier offense would be charged with a class B misdemeanor, facing a possible penalty of 90 days in jail (AS 12.55.135(b)) and a maximum fine of \$1000 (AS 12.55.035(b)(4)).

Bill section 2: The bill section adds a new subsection to AS 04.16.050 directing that money collected as fines from the punishment of AS 04.16.050 as a violation be deposited into the state general fund for use by the legislature to make appropriations "for assessment and referral programs that provide substance abuse screening services to and monitor compliance for a minor required to participate in an alcoholism or drug education or rehabilitation program" as a condition of eligibility for reinstatement of the minor's driver's license.

Sections relating to sanctions imposed on a minor's license to drive in the event the minor is charged with and convicted of consumption or possession of alcoholic beverages:

Bill section 3: AS 28.15.183 generally addresses the administrative revocation of a minor's license to drive. Later in the bill, amendments are proposed to change provisions of law relating to court disposition of a matter affecting a minor's license to drive based on the minor's possession, control, or consumption of alcohol. The amendment made in this bill section is intended to underscore that administrative revocations based on incidents that lead to court-ordered revocations of a minor's license to drive under the companion provision, AS 28.15.185, are to run concurrently. Given that later amendments to AS 28.15.185 propose to delete authority for court-ordered license revocations for a minor convicted of possession, control or consumption of alcohol, administrative revocation of the license of a minor based on the minor's possession, control, or consumption of alcohol may be made independently.

Bill section 5: Court-ordered revocations of the license to drive of "[a] person who is at least 13 years of age but not older than 17 years of age"--in other words, of a minor--may be ordered under AS 28.15.185. The principal amendment made in this bill section to AS 28.15.185(a) removes possession or consumption of alcohol under AS 04.16.050 from the purview of the court. In addition, the order of the language in the subsection is revised without intent to change the subsection's meaning, and reference to "adjudication by a juvenile court" is altered to "adjudicated a delinquent minor by a court" to specify the nature of the adjudication and to remove a reference to a court that does not exist.

Bill section 6: The amendments to AS 28.15.185(c) serve a similar purpose. The substantive change removes reference to restoration of a minor's license to drive where restoration is connected to successful completion of an alcohol education or rehabilitation program. Since, in (a), the court is relieved of entering an order revoking the driver's license of a minor for possession or consumption of alcohol, the court is here, in (c), being relieved of the prerogative of providing a minor with a partial license restoration.

The net effect of the amendments made by bill sections 3, 5, and 6 is to shift revocation of a minor's license to drive based on the minor's alleged possession, control, or consumption of alcohol from the purview of the courts to the administrative revocation process.

Sections relating to the education and rehabilitation treatment programs:

The remaining provisions of the draft CS are drawn directly from SB 71. These provisions, according to Governor Knowles' transmittal letter, "[ensure] that minors whose drivers' licenses have been revoked for alcohol-related offenses are properly screened and monitored for compliance with education and treatment programs before their licenses are reinstated." However, a number of the proposed changes go beyond attention given to minors or to persons under the age of 21.

Bill section 10: This amendment to the duties of the Division of Alcoholism and Drug Abuse in the Department of Health & Social Services would extend the division's responsibilities to add the development and approval of alcohol information courses required to be taken by drivers that are required by the drivers' license issuance and reinstatement chapter, AS 28.15, and also to drivers who want to take courses to reduce points assessed for their violations of traffic laws.

Bill section 11: There is in law a "community action against substance abuse grant fund," AS 47.37.045, managed by the Division of Alcoholism and Drug Abuse. This bill section amends the authorized uses of the grant fund to add youth assessment and referral programs providing substance abuse screening services and monitoring compliance with treatment programs covering alcoholism or drug education or rehabilitation treatment in conjunction with complying with requirements for drivers' license reinstatement.

Bill section 4: Current law requires that, as a condition of restoration of a minor's license to drive based on possession or consumption of alcohol, the minor shall have first completed an alcoholism education or rehabilitation program. The amendment proposed in this bill section further qualifies the alcoholism education or rehabilitation program as one that is "approved under AS 47.37."

Bill section 7: The requirements of AS 28.15.211 prescribe the periods of time during which a driver's license may be suspended or revoked. Current law requires that, for a license revoked by a court for operating a motor vehicle while intoxicated or for refusing to submit to a chemical test of breath in conjunction with an arrest for operating a motor vehicle while intoxicated, an applicant for reinstatement of license must present certain proof concerning involvement or completion of an alcoholism education and rehabilitation treatment program. The amendments proposed in this bill section further qualify the alcoholism education or rehabilitation program as one that is "approved under AS 47.37."

Senator Robin Taylor
March 17, 1997
Page 4

Bill section 8: The state maintains a point system "[f]or the purpose of identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic laws." As an offset to points assessed, a driver may provide "adequate proof of successful completion . . . of a driver improvement course approved by [the Department of Public Safety]." The amendments proposed in this bill section extend that option to cover successful completion of "an alcohol information course approved by the Department of Health and Social Services"--I take this to be a reference to what is being proposed in the last clause of the amended material being added in bill section 10--and appear to limit the driver's claim to one driver improvement course or alcohol information course in order to reduce points under the point system within a one-year period.^{2'}

Bill section 9: In conjunction with the point system mentioned in the discussion of bill section 8, under current law, at a certain point--accumulating at least six points within a 12-month period, or accumulating at least nine points in a 24-month period--as part of a criminal sentence, a court may compel a driver to successfully complete a driver improvement course, failing which the Department of Public Safety may suspend, revoke, or deny reinstatement of a driver's license. The amendment made to AS 28.15.283 by bill section 9 expands the court's options to add the driver's successful completion of an "alcohol information course approved by the Department of Health and Social Services," again a reference to the approved program is being proposed in the last clause of the amended material being added in bill section 10.

*

Bill section 12: The provisions of SB 58 covering offenses involving possession, control, or consumption of alcoholic beverages by persons under 21 were drafted partially in response to the appellate court decision noted. An "applicability" provision was included to give clear indication as to offenses to be dealt with under the amendments proposed in the original measure. This bill section adapts the "applicability" provision of the original bill to limit its application to the appropriate sections that have been carried forward into this draft committee substitute from the original measure.

JBC:glc:pl
97-184.glc
Enclosure

^{2'} The amendment made to the last sentence of AS 28.15.241(b) in bill section 8 of the draft CS seems to me to introduce a measure of needless ambiguity about whether the licensee may claim one driver improvement course or one alcohol information course to reduce the points outstanding, but may not claim both. To eliminate the ambiguity, the committee could eliminate the words "driver improvement or one alcohol information" that appear as amending language in that sentence, so that the sentence reads, as it does now: "No more than one course may be used to obtain a reduction in points in any 12-month period."

*page 4
line 25*

SJ 46 1995

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,)	
)	Court of Appeals No. A-6022
Petitioner,)	Trial Court Nos. 1KE-95-6437 Cr
)	and others
v.)	
)	<u>O P I N I O N</u>
DISTRICT COURT,)	
)	
Respondent.)	[No. 1504 - December 6, 1996]

Original Application for Relief from the District Court in various locations within the First and Third Judicial Districts; Patricia A. Collins, Judge, and Deborah Burlinski, Lynn Christensen, Anna Moran, and Ethan Windahl, Magistrates.

Appearances: Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Petitioner. Nancy Shaw, Anchorage, for Respondent.

Before: Bryner, Chief Judge, and Coats and Mannheim, Judges.

MANHEIMER, Judge.

With a few exceptions not relevant here, Alaska law forbids people under the age of 21 from drinking or possessing alcoholic beverages. AS 4.16.050(a). If a person between the ages

The other trial court file numbers are: 3KO-95-587 Cr, 3KO-95-588 Cr, 3KO-95-589 Cr., USO 4590, R 836-956, R 836-957, and

of 13 and 17 is convicted of this offense, the sentencing court must revoke their driver's license (or revoke their privilege to obtain a license, if they do not yet have one). AS 28.15.185(a)-(b). The question presented in this appeal is whether, because the offense carries this penalty, minors charged with under-age drinking or possession of alcohol are entitled to a jury trial and to court-appointed counsel if they are indigent. Based on our supreme court's decision in Baker v. Fairbanks, 471 P.2d 386 (Alaska 1970), we hold that minors charged with this offense are entitled to a jury trial and to court-appointed counsel.

In Baker, the supreme court defined the categories of cases that qualify as "criminal prosecutions" for purposes of applying the right to jury trial under Article I, Section 11 of the Alaska Constitution.¹ The court stated, in pertinent part:

In extending the right to jury trial, we define the category of "criminal" prosecutions as including any offense [which carries] a direct penalty [of] incarceration in a jail or penal institution. [This category] also includes offenses which may result in the loss of a valuable license, such as a driver's license or a license to pursue a common calling, occupation, or business.

Baker, 471 P.2d at 402. Thus, Baker apparently requires a jury trial in any criminal case in which the defendant could lose their driver's license.

¹ Article I, Section 11 provides: "In all criminal prosecutions, the accused shall have the right to ... trial ... by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record." (That is, in the district court.)

The State argues that Baker should not be interpreted literally. The State points out that the supreme court has repeatedly held that there is no right to a jury trial in administrative hearings which might result in loss of a valuable license. See Alaska Board of Fish and Game v. Loesche, 537 P.2d 1122, 1125 (Alaska 1975) (loss of license to guide hunts); In re Cornelius, 520 P.2d 76, 83 (Alaska 1974) (loss of license to practice law). However, Loesche and Cornelius dealt with administrative proceedings conducted by regulatory bodies. The task of those regulatory bodies is to oversee and police a particular business or occupation, not to enforce the criminal law. Even when a regulatory agency takes administrative action based on a licensee's commission of a crime, this is not a "prosecution". The licensee can still be criminally prosecuted in the courts for the same conduct. State v. Zerkel, 900 P.2d 744 (Alaska App. 1995).

We note that the Alaska statutes require the Department of Public Safety to take administrative action against the driver's license of a minor found drinking or possessing liquor. See AS 28.15.183-184. These provisions are, on their face, remedial measures. However, in the present appeal we are dealing with a different statute, AS 28.15.185. This statute is clearly a punitive measure: it specifies a particular punishment that a sentencing court must impose when, in court proceedings, a person is found guilty of a particular criminal offense.

The State argues that it makes essentially no difference whether a person's driver's license is taken by a sentencing court or by an administrative agency. According to the state, the

rationale for imposing this sanction is the same: the minor has demonstrated unfitness to drive. Thus, the State contends, the act of revoking the minor's driver's license is "remedial", not "punitive", regardless of whether the revocation is imposed by a sentencing court or by the Department of Public Safety.

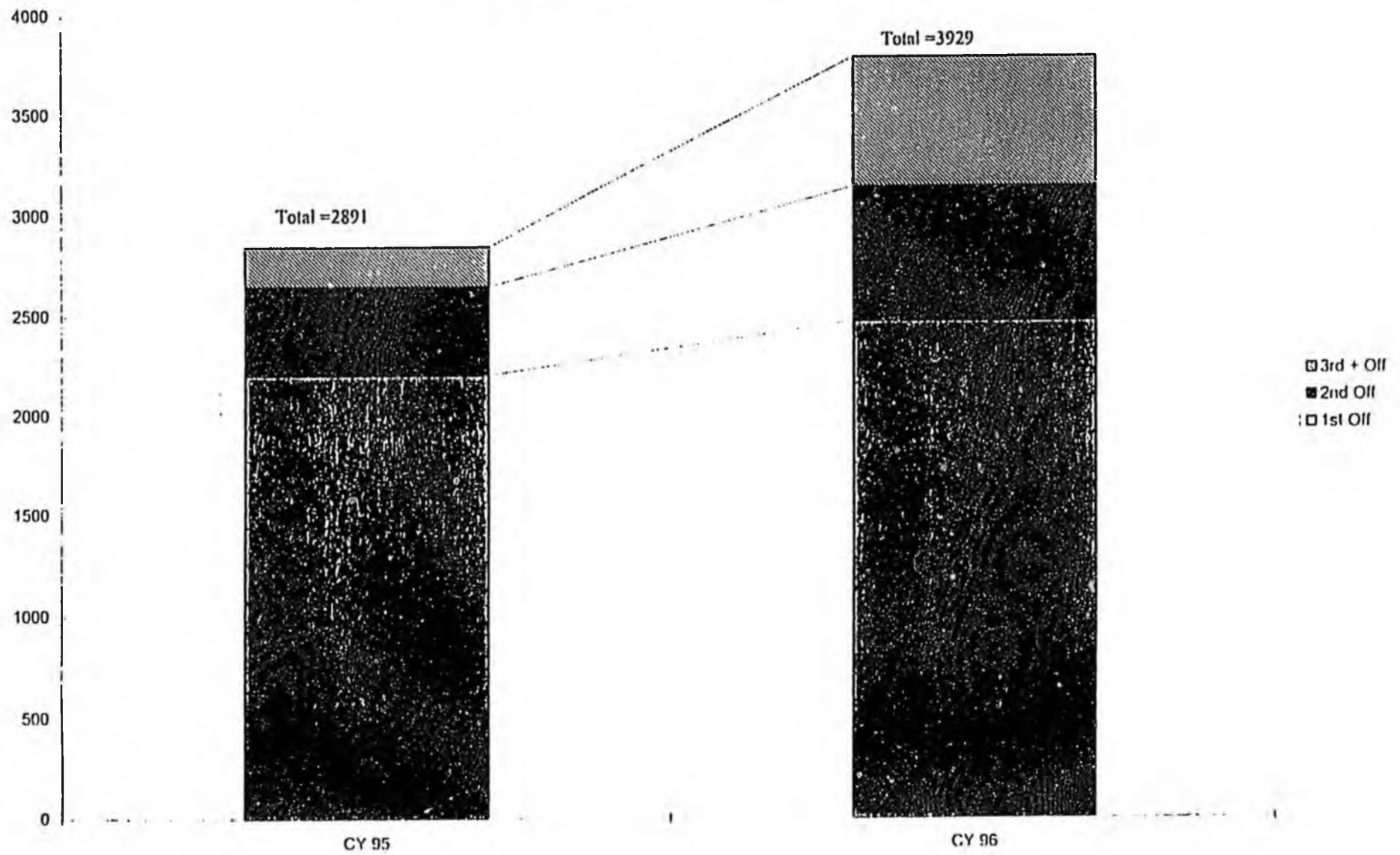
We reject the State's argument because the supreme court's holding in Baker is explicitly based on the distinction between loss of a driver's license in an administrative proceeding and loss of a license as part of a criminal sentence. The court expressly stated that the right to a jury trial would apply only to criminal prosecutions, not to administrative proceedings, even though both might result in the loss of a driver's license. The court distinguished administrative proceedings from criminal prosecutions because an agency's action against a license is based on "criteria other than criminality", on "considerations [apart from] guilt or innocence of crime". Baker, 471 P.2d at 402 n.28.

In the present appeal, we deal with a statute that comes into play only when, and solely because, a person has been found guilty of violating a criminal statute. Baker holds that a person facing the loss of a valuable license under such a statute is entitled to a jury trial.

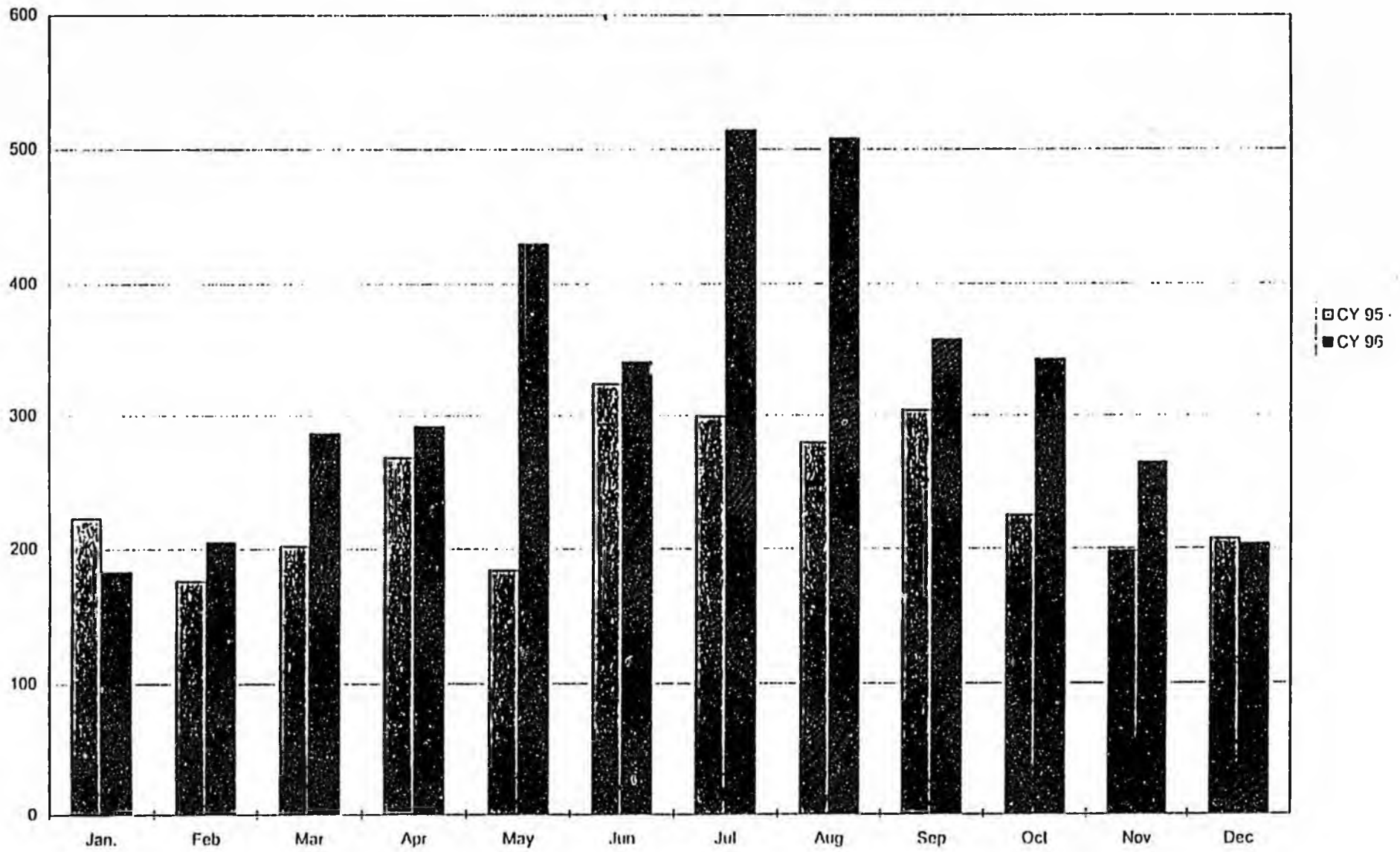
We therefore AFFIRM the decisions of the district court extending the right of jury trial to minors accused of under-age drinking or possession of alcohol. And, based on the same analysis, we AFFIRM the decisions of the district court requiring court-appointed counsel for indigents accused of this crime. See Alexander v. Anchorage, 490 P.2d 910, 913 (Alaska 1971) (holding

that the right to counsel extends to all "criminal prosecutions" as defined in Baker).

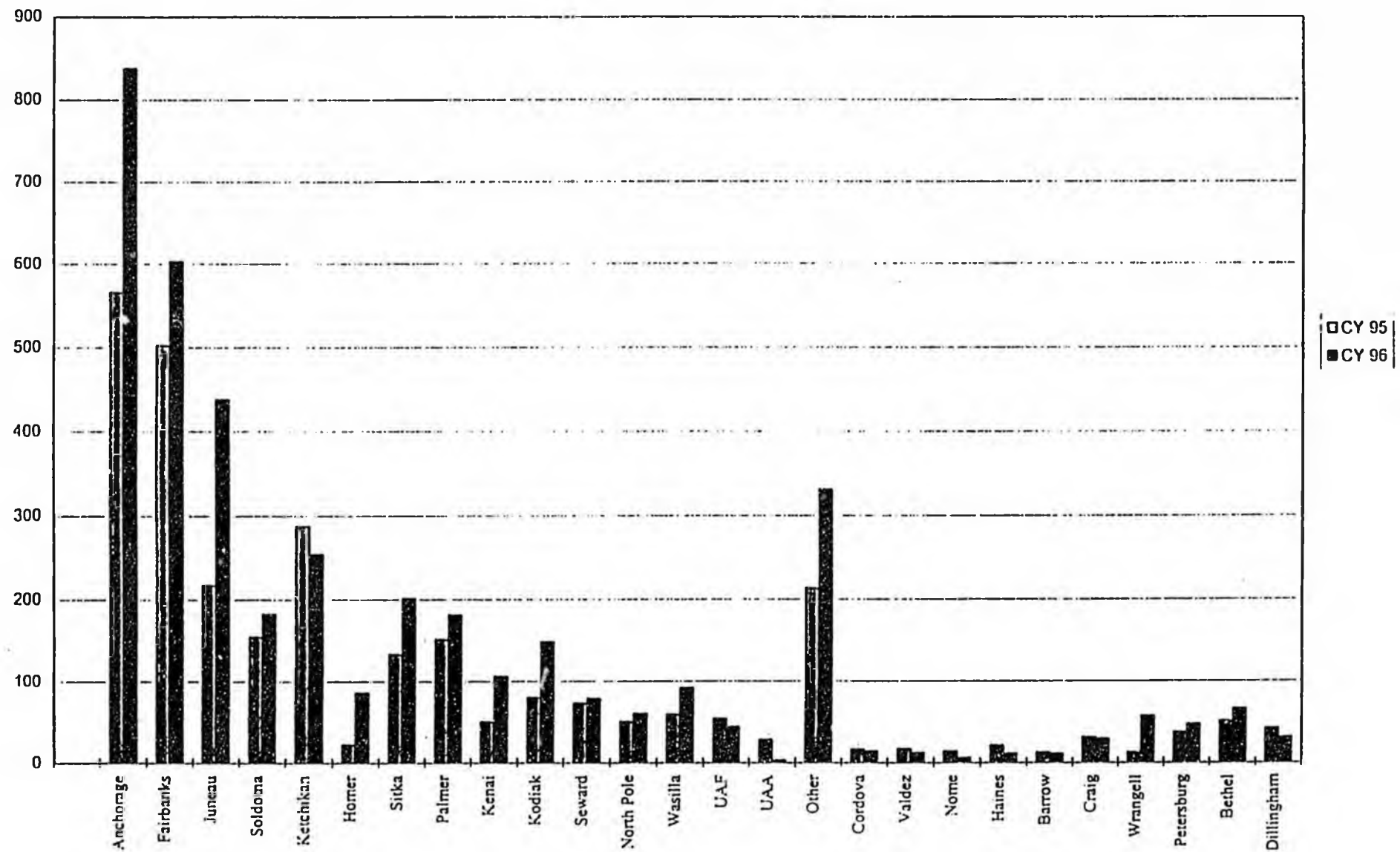
Comparison of the Number of Repeat Offenses in CY 95 and CY 96



Number Youth Who Lost Drivers License Due to "Use It and Lose It" Law by Month for CY 1995 and CY 1996



Number of Youth Who Lost Drivers License Due to "Use It and Lose It" Law by Community for CY 1995 and CY 1996



FISCAL NOTE

No. 7

Bill Version: SB 46 proposed JUD am

(S) Publish Date: 3.6.95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: 3/3/95 Dept. Affected: Department of Law
 Title: "...revising the provisions ... under which a minor BRU: Prosecution
may be charged, prosecuted, and sentenced as an adult ..." Component: All
 Sponsor: Senator Taylor
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Senate Judiciary Committee amendment to SB 46 changes the penalty for possession, control, or consumption of an alcoholic beverage by a minor from a class A misdemeanor to a violation. Consequently, the costs shown in the Department of Law fiscal note analysis of 2/24/95 will not be required, because the large majority of misdemeanor cases expected were for the offense of possession, control, or consumption. Although we anticipate an increase in paperwork and forms processing, this increased work does not warrant fiscal note costs. Generally, violations are presented in District Court by arresting officers and the services of prosecutors (or publically paid defenders) are not required.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/3/95
 Approved by Commissioner: Richard I. Pegues Date: 3/3/95
 Agency: Bruce M. Botelho, Attorney General
Department of Law

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 8

Bill Version: ASSA 46 (F)

(S) Publish Date: 3-22-95

Revision Date: _____
 Title: "An Act revising the provision of law under which a minor may be charged...as an adult in the district court..."
 Sponsor: Sen. Taylor
 Requestor: (S) FIN

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

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

phone: 264-4400

Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/22/95

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FIRST COMMITTEE OF REFERRAL

DATE: 1/23/97

FURTHER: Judiciary

Date of 5-Day Notice: 3/6/97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3/26/97
PH
3/26/97

HESS Committee considered SENATE BILL NO. 58

"An Act relating to the privilege to drive of minors and to the penalty for the consumption or possession of alcoholic beverages by persons under 21 years of age."

Q.F.N.

and recommends:

- be replaced with CS SB 58 (HFS)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Angela Ward</i>	<input checked="" type="checkbox"/>	<i>Phyllis A</i>			
		<i>Lynne Green</i>	<input checked="" type="checkbox"/>		
		<i>Karen D. Jensen</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Gene Wilkin</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
#1 Law	3/4/97		133.5
#2 Admin-Public Defender	3/5/97		248.0
#3 Public Safety	3/5/97	<input checked="" type="checkbox"/>	
#4 Public Safety - DMV	3/5/97	<input checked="" type="checkbox"/>	
#5 H+SS - Alcoholism/Drug	2/3/97	<input checked="" type="checkbox"/>	
#6 CSSB - H+SS Alcoholism/Drug	3/18/97		400.0
#7 CSSB - H+SS - Alcoholism/Drug	3/18/97		100.0

Department	Date	Zero	Fiscal

[] APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

- #8 CSLAW 3/24/97 133.5
- #9 CS ADMIN/FINA 3/25/97 248.0
- #10 CS ADMIN / CIVIL SERVICES 3/25/97

Public Safety | *3/26/97* | } CS F.C.F.N. FORTHCOMING

Previous Committee Report(s)

SB

60

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act providing for an advisory vote on the BRU: Statewide Programs
issue of capital punishment" Component: Spring Creek Correctional Center
 Sponsor: Senator Taylor
 Requester: Senate Judiciary COMPONENT SERIAL NO. #0772

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			68.4	68.4		
TRAVEL						
CONTRACTUAL			1,665.0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				350.0	2,305.4	2,305.4
TOTAL OPERATING	0.0	0.0	1,733.4	418.4	2,305.4	2,305.4

CAPITAL EXPENDITURES				9,435.0		
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF			1,733.4	9,853.4	2,305.4	2,305.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	1,733.4	9,853.4	2,305.4	2,305.4

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME			1	31	30	30
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached explanation.

Prepared by: Bruce Richards Phone: 465-3307
 Division: Commissioner's Office *Margaret M. Pugh* Date: 3/9/97
 Approved by Commissioner: Margaret M. Pugh Date: 3/9/97
 Agency: Department of Corrections

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Assumptions

1. This fiscal note is based on the assumption the proposed advisory vote is approved by the residents of Alaska during the next general election. It further contemplates that the Alaska Legislature would enact a capital punishment law following such an advisory vote.
2. The Dept. of Law estimates that six individuals per year would be prosecuted and sentenced to death for first degree murder. Other states who have instituted the death penalty statute indicate that an individual convicted of a capital felony remains on death row for approximately ten years before execution. Using this estimate the Department of Corrections (DOC) would be required to construct a death row facility capable of housing 60 inmates. The death row facility would require construction that is of the highest security standards. The cost of this type of facility is estimated at \$180,000.00 per bed. The DOC does not expect to house prisoners until the year FY02. Engineering and design (E&D) would begin in FY00. The costs for E&D would be transferred to DOT & PF via an RSA. These costs are estimated to be 15% of the total cost of construction.
4. The DOC would be required to construct an execution facility for administration of the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility is estimated to be in excess of \$300,000.00 assuming it would be built in conjunction with the death row facility.
5. The DOC would not house death row inmates until FY02. A Facilities Manager I position is required to manage the DOC responsibilities in the planning and design phase. This position would begin in FY00 and remain in place until completion of the project in FY02. The cost of this position is \$68.4 per year.
6. Actual operation of the death row facility would begin in FY02, with staff hiring and training to begin in FY01. This cost is estimated to be \$350,000.00. Staffing of the new facility would require twenty-five correctional officers, and five administrative support staff. The average daily cost of housing an inmate is \$105.27 and is shown in the miscellaneous line.

Construction Costs

60 bed death row X \$180,000 per bed + \$300,000 execution facility = \$11,100,000.00

.15 X \$11,100,000 = \$1,665,000 for E&D in FY00

\$11,100,000 total cost - \$1,665,000 E&D = \$9,435,000 for facility completion in FY01

Operating Costs

60 beds X \$105.27 per day X 365 days = \$2,305,413 in FY02 and continuing into the future.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act providing for an advisory vote on the BRU: Criminal Division
issue of capital punishment." Component: Criminal Division
 Sponsor: Senator Taylor
 Requester: Senate Judiciary COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			485.0	834.1	1,265.1	1,265.1
TRAVEL			243.5	465.0	590.0	590.0
CONTRACTUAL			416.8	1,023.4	1,446.9	1,336.9
SUPPLIES			32.4	43.8	62.7	52.2
EQUIPMENT			52.0	39.0	45.5	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	1,229.7	2,405.3	3,410.2	3,244.2

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

1002 Federal Receipts						
1003 GF Match						
1004 GF			1,229.7	2,405.3	3,410.2	3,244.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	1,229.7	2,405.3	3,410.2	3,244.2

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	8.0	14.0	21.0	21.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 131 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Department of Law.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. (See, for example, SB 52, introduced in the 19th Alaska Legislature.)

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 3/10/97
 Date: 3/10/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

In 1994, the department's criminal division had 17 first degree murder cases in which aggravating factors were present that would justify the death penalty, had a similar provision been the law. The number of murders committed in Alaska varies somewhat from year-to-year and, therefore, the assumptions made in this fiscal note are as conservative as possible.

Overview

Capital felony trials would be bifurcated, that is, held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty, whether mitigating factors exist that outweigh the aggravating factors, and whether the defendant should be sentenced to a term of imprisonment or to death. Based on 1994's data, where 17 murders having death penalty aggravators occurred, the department would probably seek the death penalty in ten cases, all of which would require trials. In the remaining seven cases, prosecutors would elect to try the cases as noncapital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. The department expects that nine capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed six times each year.

Thus, the department must be prepared to prosecute capital felonies on ten occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of six cases per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

In its several reviews of capital penalty laws, the United States Supreme Court has taken the position that "death is different." Consequently, the Supreme Court has required that states accord capital defendants procedural and substantive protections that go far beyond those required for noncapital defendants. The Court has, in effect, mandated that capital defendants be accorded "super" due process. The federal courts have consistently held that capital cases demand special consideration, both at trial and on appellate review, because of the exceptional and irrevocable nature of the penalty involved.

In order to meet this heightened level of due process, it will be necessary for the state to employ far greater prosecution resources. Many of the thirty-eight states having a death penalty, for instance, provide two defense attorneys to capital defendants to insure that the due process safeguards required by the courts are met. Likewise, the state's prosecution case must also be properly represented. During and prior to the trial phase, crime scene evidence will have to be examined and presented by highly qualified forensic experts. Psychiatric experts will also be required during the trial phase and during sentencing proceedings, to rebut and overcome competency and psychiatric defenses to both the substantive-charge and the capital sentence. Recent cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about \$60,000 on the average.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding,

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In addition, a five-fold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for capital murder trials.

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out. Current information indicates that nationally an average of 9.6 years elapses from the time a death penalty sentence is imposed to the time the sentence is carried out.

Implementation

The Department of Law anticipates that the time from when an offense is committed until a capital felony trial takes place will be between one and two years after the bill takes effect, although the first phase of a bifurcated trial may begin during the first year. Likewise, the post-conviction appellate review process will not commence until sometime during the second year. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add three attorneys, three paraprofessionals, and two legal secretaries to handle capital felony prosecutions. Although perhaps as few as four bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all 17 potential capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

The "super" due process required by the courts in death penalty cases, and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with noncapital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could not readily be undertaken in any of the department's offices, except for Anchorage and Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even for Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, eight or more additional capital felonies are expected to go to trial, and 17 new potential capital felony offenses will occur. At this point, it will be necessary to add one attorney, one paraprofessional, and one legal secretary to handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to begin the appellate review process. Initially, one attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

During the third year, the number of bifurcated capital murder trials (10) should equal the number of new capital offenses charged, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. The trial staff would be increased by one attorney, one paraprofessional, and one legal secretary. Post-conviction capital felony appeals will have reached eight by year three, and they will continue to increase at the rate of six new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year by adding two attorneys, one paraprofessional, and one legal secretary.

It is not possible to accurately predict the eventual annual costs of a capital felony law beyond its first three or four years. There are simply too many unknowns. However, the costs that have been predicted are conservative. The following factors have been considered in arriving at these costs.

- (1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting first degree murder offenses, at a minimum.
- (2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- (3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- (4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- (5) Witness travel and per diem will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of state travel.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

(6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.

(7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, the total Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs (both personal and non-personal services) of a bifurcated capital felony case has been projected to be nearly \$240,000 or considerably less than one-half of the \$597,000 cost for the first Peel trial.

(8) The cost for appeals is shown only through the fourth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of 10 or more capital felony defendants annually, within 10 years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

(9) Therefore, the following per trial expense estimates have been used to calculate the costs of this fiscal note.

Capital Felony Trials

- Witness travel and subsistence, \$50,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees, \$60,000 per case.
- Standard witness fees paid to others, \$2,500 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney, \$2,500 per paraprofessional, per annum.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cost Summary (First Year, Capital Trials)

ASSUMPTION: 4 trials, trial preparation, preparation on 17 potential capital felonies

OBJECT	(1) <u>Atty V</u>	(2) <u>Atty IV</u>	(2) Assoc <u>Atty I</u>	(1) <u>P/A II</u>	(2) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	166.8	101.1	52.5	75.8	485.0
	<hr/> 88.8	<hr/> 166.8	<hr/> 101.1	<hr/> 52.5	<hr/> 75.8	<hr/> 485.0
200 - Travel						
Staff Travel & Per Diem	7.5	15.0	10.0	5.0	6.0	43.5
	<hr/> 7.5	<hr/> 15.0	<hr/> 10.0	<hr/> 5.0	<hr/> 6.0	<hr/> 43.5
300 - Contractual						
Communications, Copy	3.6	7.2	4.8	2.4	4.8	22.8
Office Space Leases	5.6	11.2	11.2	5.6	11.2	44.8
PC Network Maintenance	1.5	3.0	3.0	1.5	3.0	12.0
Westlaw	1.2	2.4	2.4	1.2	0.0	7.2
	<hr/> 11.9	<hr/> 23.8	<hr/> 21.4	<hr/> 10.7	<hr/> 19.0	<hr/> 86.8
400 - Supplies						
Office Consumables	1.8	3.6	3.6	1.8	2.4	13.2
Law Library	1.2	2.4	2.4	1.2	0.0	7.2
New Position Supplies	1.5	3.0	3.0	1.5	3.0	12.0
	<hr/> 4.5	<hr/> 9.0	<hr/> 9.0	<hr/> 4.5	<hr/> 5.4	<hr/> 32.4
500 - Equipment						
New Position Equipment	2.5	5.0	5.0	2.5	5.0	20.0
Personal Computer	4.0	8.0	8.0	4.0	8.0	32.0
	<hr/> 6.5	<hr/> 13.0	<hr/> 13.0	<hr/> 6.5	<hr/> 13.0	<hr/> 52.0
TOTAL	119.2	227.6	154.5	79.2	119.2	699.7

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cost Summary (Second and Third Year Additions, Capital Trials)

ASSUMPTION:

Year 2 - 8 trials, preparation on 17 new potential capital felonies

Year 3 - 10 trials, preparation on 10 new charges

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	(1) <u>Atty IV</u>	(1) Assoc <u>Atty I</u>	(1) <u>Sec I</u>	TOTAL	(1) <u>Atty IV</u>	(1) <u>P/A II</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
200 - Travel								
Staff Travel & Per Diem	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
300 - Contractual								
Communications, Copy	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Office Space Leases	5.6	5.6	5.6	16.8	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
Westlaw	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
	11.9	11.9	9.5	33.3	11.9	11.9	9.5	33.3
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	2.5	2.5	2.5	7.5
Personal Computer	4.0	4.0	4.0	12.0	4.0	4.0	4.0	12.0
	6.5	6.5	6.5	19.5	6.5	6.5	6.5	19.5
TOTAL	113.8	78.5	59.6	251.9	113.8	80.4	59.6	253.8

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cost Summary (Second and Third Year Additions, Appellate Review Process)

ASSUMPTION:

Year 2 - 4 trials begin appellate review process

Year 3 - 8 trials on appeal, with 6 new cases each following year

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	(1) <u>Atty V</u>	(1) Assoc <u>Atty I</u>	(1) <u>Sec I</u>	TOTAL	(2) <u>Atty IV</u>	(1) <u>P/A II</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
200 - Travel								
Staff Travel & Per Diem	3.5	2.5	0.0	6.0	7.0	2.5		9.5
	3.5	2.5	0.0	6.0	7.0	2.5	0.0	9.5
300 - Contractual								
Communications, Copy,								
Document Production	22.4	22.4	2.4	47.2	44.8	22.4	2.4	69.6
Office Space Leases	5.6	5.6	5.6	16.8	11.2	5.6	5.6	22.4
PC Network Maintenance	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
Westlaw	2.4	2.4	0.0	4.8	4.8	2.4	0.0	7.2
	31.9	31.9	9.5	73.3	63.8	31.9	9.5	105.2
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	3.6	1.8	1.2	6.6
Law Library	1.2	1.2	0.0	2.4	2.4	1.2	0.0	3.6
New Position Supplies	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
	4.5	4.5	2.7	11.7	9.0	4.5	2.7	16.2
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	5.0	2.5	2.5	10.0
Personal Computer	4.0	4.0	4.0	12.0	8.0	4.0	4.0	16.0
	6.5	6.5	6.5	19.5	13.0	6.5	6.5	26.0
TOTAL	135.2	96.0	56.6	287.8	259.6	97.9	56.6	414.0

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Out-of-Pocket Costs - Capital Felony Trials

Year 1: (4 cases underway)

Witness travel and per diem \$50,000 per case X 4 cases	=	200.0
Expert witness fees \$60,000 per case X 4 cases	=	240.0
Witness fees (witnesses of fact) \$2,500 per case X 4 cases	=	10.0
Deposition/court reporter charges \$20,000 per case X 4 cases	=	80.0

Year 2: (8 cases underway)

Witness travel and per diem \$50,000 per case X 8 cases	=	400.0
Expert witness fees \$60,000 per case X 8 cases	=	480.0
Witness fees (witnesses of fact) \$2,500 per case X 8 cases	=	20.0
Deposition/court reporter charges \$20,000 per case X 8 cases	=	160.0

Year 3: (10 cases underway)

Witness travel and per diem \$50,000 per case X 10 cases	=	500.0
Expert witness fees \$60,000 per case X 10 cases	=	600.0
Witness fees (witnesses of fact) \$2,500 per case X 10 cases	=	25.0
Deposition/court reporter charges \$20,000 per case X 10 cases	=	200.0

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Out-of-Pocket Costs - Capital Felony Appeals

Year 2: (4 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
Deposition/court reporter charges \$30,000 per case X 4 cases	=	120.0

Year 3: (8 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
Deposition/court reporter charges \$30,000 per case X 8 cases	=	240.0

Year 4: (14 cases underway)

Deposition/court reporter charges \$30,000 per case X 6 cases	=	180.0
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ANALYSIS CONTINUATION:

Fiscal Analysis HB 131
Cumulative Implementation Cost by Year

OBJECT	<u>Criminal Felony Trial</u>				<u>Appellate Review</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
100 - Salaries & Benefits	485.0	656.9	830.6	830.6	0.0	177.3	434.4	434.4
	485.0	656.9	830.6	830.6	0.0	177.3	434.4	434.4
200 - Travel								
Staff Travel & Per Diem	43.5	59.0	74.5	74.5	0.0	6.0	15.5	15.5
Witness Travel	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
	243.5	459.0	574.5	574.5	0.0	6.0	15.5	15.5
300 - Contractual								
Staff Contractual	86.8	120.1	153.4	153.4	0.0	73.3	178.5	178.5
Outside Services	330.0	660.0	825.0	825.0	0.0	170.0	290.0	180.0
	416.8	780.1	978.4	978.4	0.0	243.3	468.5	358.5
400 - Supplies	32.4	32.1	39.3	34.8	0.0	11.7	23.4	17.4
	32.4	32.1	39.3	34.8	0.0	11.7	23.4	17.4
500 - Equipment	52.0	19.5	19.5	0.0	0.0	19.5	26.0	0.0
	52.0	19.5	19.5	0.0	0.0	19.5	26.0	0.0
TOTAL	1,229.7	1,947.6	2,442.3	2,418.3	0.0	457.8	967.8	825.8
PFT	8	11	14	14	0	3	7	7