

# Fiscal Note

State of Alaska  
2019 Legislative Session

|                     |                  |
|---------------------|------------------|
| Bill Version:       | SCS CSHB 49(FIN) |
| Fiscal Note Number: | 24               |
| (S) Publish Date:   | 5/13/2019        |

Identifier: HB49SCSCS(FIN)AM-DOC-IDO-05-13-19  
 Title: CRIMES; SENTENCING;DRUGS;THEFT;  
 REPORTS  
 Sponsor: RLS BY REQUEST OF THE GOVERNOR  
 Requester: (S)FIN

Department: Department of Corrections  
 Appropriation: Population Management  
 Allocation: Institution Director's Office  
 OMB Component Number: 1381

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

|                               | FY2020                  | Included in               | Out-Year Cost Estimates |                 |                 |                 |                 |
|-------------------------------|-------------------------|---------------------------|-------------------------|-----------------|-----------------|-----------------|-----------------|
|                               | Appropriation Requested | Governor's FY2020 Request | FY 2021                 | FY 2022         | FY 2023         | FY 2024         | FY 2025         |
| <b>OPERATING EXPENDITURES</b> | <b>FY 2020</b>          | <b>FY 2020</b>            |                         |                 |                 |                 |                 |
| Personal Services             |                         |                           |                         |                 |                 |                 |                 |
| Travel                        |                         |                           |                         |                 |                 |                 |                 |
| Services                      |                         |                           |                         |                 |                 |                 |                 |
| Commodities                   |                         |                           |                         |                 |                 |                 |                 |
| Capital Outlay                |                         |                           |                         |                 |                 |                 |                 |
| Grants & Benefits             |                         |                           |                         |                 |                 |                 |                 |
| Miscellaneous                 | 11,078.1                |                           | 24,717.7                | 26,286.6        | 26,344.8        | 26,718.4        | 26,934.1        |
| <b>Total Operating</b>        | <b>11,078.1</b>         | <b>0.0</b>                | <b>24,717.7</b>         | <b>26,286.6</b> | <b>26,344.8</b> | <b>26,718.4</b> | <b>26,934.1</b> |

**Fund Source (Operating Only)**

|                     |                 |            |                 |                 |                 |                 |                 |
|---------------------|-----------------|------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1004 Gen Fund (UGF) | 11,078.1        |            | 24,717.7        | 26,286.6        | 26,344.8        | 26,718.4        | 26,934.1        |
| <b>Total</b>        | <b>11,078.1</b> | <b>0.0</b> | <b>24,717.7</b> | <b>26,286.6</b> | <b>26,344.8</b> | <b>26,718.4</b> | <b>26,934.1</b> |

**Positions**

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

**Change in Revenues**

|              |            |            |            |            |            |            |            |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None         |            |            |            |            |            |            |            |
| <b>Total</b> | <b>0.0</b> |

**Estimated SUPPLEMENTAL (FY2019) cost:** 0.0 *(separate supplemental appropriation required)*

**Estimated CAPITAL (FY2020) cost:** 0.0 *(separate capital appropriation required)*

**Does the bill create or modify a new fund or account?**

*(Supplemental/Capital/New Fund - discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No

If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version/comments:**

Updated to reflect amendments in the SCS. Based on the 2.13.19 Governor's FY2020 request.

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 Agency: Office of Management and Budget

Phone: (907)465-3311  
 Date: 05/13/2019  
 Date: 05/13/19

REPORTED OUT OF  
 SFC 05/13/2019

## FISCAL NOTE ANALYSIS

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## Analysis

*A substantial portion of this legislation reverses changes in sentencing made by SB 91. The Department of Corrections use data from two time periods to project the impact of the legislation on prison population, CY2014 and CY2018. These data were selected because they provide the most current number of offenders (CY2018) and the most accurate length of stay data available (CY2014). CY2014 was used as the baseline data for SB 91.*

*The department calculated the increase in inmates per day as follows:*

*CY2014 length of stay – CY2018 length of stay = projected increase in length of stay*

*Increased length of stay x CY2018 offenders = increase in days of incarceration*

*Increased days of incarceration/365 = projected increase in number of inmates per day, per year.*

*Misconduct Involving a Controlled Substance (MICS) offenses are not calculated in this manner based on Department of Law's projections that reclassifying these offenses will result in an increase in prosecutions and convictions.*

The bill removes marriage as a defense to sexual assault except in cases where there is consent and the conduct is illegal due to the nature of the relationship, but for marriage. Over the last 10 years, the department had an average of 12 inmates each year under the sex offenses added to this section. The department cannot determine how often marriage was used as a defense in the past, but the department projects a small increase in the number of inmates as a result of this change. In the first year the department projects 1.2 additional inmates, in year 2 an additional 2.4 inmates, in year 3 an additional 3.6 additional inmates, in year 4 an additional 4.8 inmates, in year 5 an additional 6.0 inmates, and in year 6 an additional 7.2 inmates.

The bill adds identification documents to fraudulent use of an access device. In CY2018 there were 14 inmates serving time for this crime. This may increase the prison population, but the change cannot be determined by the department.

This bill makes tampering with electronic monitoring (EM) equipment a crime. EM tampering is Escape 3 which has an average stay of 36.5 days. In CY2018 there were 110 instances of EM tampering. The department projects an additional 11.0 inmates per day for year 1 and subsequent years.

This bill makes felons violating conditions of release (felon VCOR) a class A misdemeanor and modifies class A misdemeanor sentencing to "Not more than one year." Felon VCOR has a projected increased length of stay of 38.3 days; in CY2018 there were 883 offenders in this category. The department projects an additional 92.7 inmates per day for year 1 and each subsequent year.

This bill broadens language regarding terroristic threatening. In CY2018 there was one inmate for incarcerated for this offense. With the broadening of the statute there may be an increase in the prison population, but the department projects it will be able to absorb that increase.

This bill increases the presumptive sentence ranges for disorderly conduct. Disorderly conduct has a projected increased length of stay of 2.0 days; in CY2018 there were 405 offenders in this category. The department projects an additional 2.2 inmates per day for year 1 and subsequent years.

This bill reverts misconduct involving a controlled substance offenses to be consistent with what they were in 2015. The department projects an increase in the number of inmates as a result of this change based on conviction counts and length of stay in CY2014. For felony A, felony B and felony C as well as misdemeanor B the department projects an increase in inmates. The department projects an additional 118.9 inmates per day for year 1 and an increase of 260.0 inmates in the second year and each subsequent year.

This bill requires the department to administer a breathalyzer test at the time of release for any offender who is intoxicated and not release that individual until they are below the legal limit of 0.08 or have another individual who is willing and able to care for the offender. This does not impact the department as this is the current policy.

This bill changes the pretrial release and retention procedures. CY2018 saw a number of changes in time spent incarcerated: 1) Depending on the offense type, in CY2018 defendants spent between 1 and 47 fewer days incarcerated than they would have in CY2016 prior to SB91 and the creation of the Pretrial Enforcement Division (PED). 2) In CY2018 more defendants were released pretrial than in CY2016. And 3) In CY2018 defendants assigned to pretrial supervision were incarcerated an average of 5.91 fewer days than non-PED unsentenced defendants. The department projects that with this bill defendants will still be assigned to pretrial supervision, but not at the rate attained in CY2018.

The department projects this bill will result in 4,350 pretrial defendants being incarcerated an average of 2.74 days longer which will result in an increase in both the number of incarcerated inmates and the duration of the pretrial incarceration. The department projects this will increase the daily offender population by 32.7 offenders each year.

This bill removes the caps on the length of time an offender may serve for a technical violation of probation or parole. The department

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assumed the number of technical violations and the length of stay for those violations will return to CY2016 levels (pre-SB91). These changes will add 640 violators and they will serve an additional 53.3 days. The department also projects this change will add 12.8 days to 2,446 violators. This will increase the daily population by 89.5 the first year and 179.0 the second and subsequent years.

This bill increases the presumptive sentence ranges for A felonies:

1st time felony A has a projected increased length of stay of 32 days; in CY2018 there were 48 offenders in this category. The department projects no change in the daily average for years 1 and 2 after the effective date, but an additional 4.21 inmates per day in year 3 and subsequent years.

2nd time felony A has a projected increased length of stay of 50 days; in CY2018 there were 9 offenders in this category. The department projects no change in the daily average for years 1 and 2 after the effective date, but an additional 1.23 inmates per day in year 3 and subsequent years.

3rd time felony A has a projected increased length of stay of 2 days; in CY2018 there were 2 offenders in this category. The department projects no change in the daily average for years 1 and 2 after the effective date, but an additional 0.01 inmates per day in year 3 and subsequent years.

This bill increases the presumptive sentence ranges for B felonies:

1st time felony B has a projected increased length of stay of 59 days; in CY2018 there were 294 offenders in this category. The department projects no change in the daily average for year 1, but an additional 47.52 inmates per day in year 2 and subsequent years.

2nd time felony B has a projected increased length of stay of 36 days; in CY2018 there were 79 offenders in this category. The department projects no change in the daily average for year 1, but an additional 7.79 inmates per day in year 2 and subsequent years.

3rd time felony B has a projected increased length of stay of 11 days; in CY2018 there were 58 offenders in this category. The department projects no change in the daily average for year 1, but an additional 1.75 inmates per day in year 2 and subsequent years.

This bill increases the presumptive sentence ranges for C felonies:

1st time felony C has a projected increased length of stay of 29 days; in CY2018 there were 575 offenders in this category. The department projects an additional 45.68 inmates per day for year 1 and subsequent years.

2nd time felony C has a projected increased length of stay of 61 days; in CY2018 there were 286 offenders in this category. The department projects an additional 47.80 inmates per day for year 1 and subsequent years.

3rd time felony C has a projected increased length of stay of 71 days; in CY2018 there were 520 offenders in this category. The department projects an additional 101.15 inmates per day for year 1 and subsequent years.

This bill adds unlawful exploitation of a minor to a list of presumptive sentencing ranges for crimes against minors. While these changes may increase the department's inmate population, there have not been enough convictions under these statutes to allow the department to be confident in an estimate.

This bill increases the presumptive sentence ranges for class A misdemeanors. Class A misdemeanors have a projected increased length of stay of 9.7 days; in CY2018 there were 5,083 offenders in this category. The department projects an additional 134.6 inmates per day for year 1 and subsequent years.

This bill increases the presumptive sentence ranges for class B misdemeanors. Class B misdemeanors have a projected increased length of stay of 5.2 days; in CY2018 there were 2,120 offenders in this category. The department projects an additional 30.3 inmates per day for year 1 and subsequent years.

This bill lengthens the reporting message for victim notification. There is no cost to the department for the change for notifications made by telephone or via email. However, the longer message included in this bill will increase costs for notification of victims who choose text message notification. In CY2018 the department sent 54,987 text notifications. The first quarter of CY2019 shows a significant increase in text message notifications relative to the first quarter of CY2018. In January through March 2019 there were 9,727 text messages sent compared to just 2,553 for the same period in CY2018. The longer message has the potential to cost the recipient more depending on the specifics of their calling and data plan. The increased cost to the department will only be for a one time implementation fee of \$5.0 to add the new language to the required notification.

This bill increases the incarceration days for a second offense of driving with license suspended, cancelled, or revoked to 10 days. Over the last five years, there have been an average of 264 inmates for a second offense of driving with license suspended, cancelled, or revoked; this includes equivalent municipal offenses. The average length of stay was 2.45 days. Increasing the length of stay to 10 days for all offenders increases the average daily population by 5.5 inmates each year.

This bill adds the option of serving a DUI related sentence at a community residential center (CRC) to the previous option of electronic

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monitoring. If the ratio of those at a CRC versus on EM reverts to that of 2014, 383 people will be added to CRC to serve an additional 3 days and 383 people will be removed from 3 days of EM monitoring each year.

This bill adds the option of serving a DUI refusal related sentence at a community residential center (CRC) to the previous option of electronic monitoring. If the ratio of those at a CRC versus on EM reverts to that of 2014, 5.9 people will be added to CRC to serve an additional 3 days and 5.9 people will be removed from 3 days of EM monitoring each year.

This bill removes eligibility for discretionary parole for offenders convicted of murder 1, murder 2, or manslaughter. Although this change adds a substantial number of incarceration days to a period of incarceration, it impacts a small number of people and, with the exception of manslaughter, the effect will not be seen for at least two decades. There is no impact for manslaughter for years 1-4; in year 5 there are 6.56 additional inmates and in year 6 there are 9.84 additional inmates.

This bill expands the offenses that render an inmate ineligible for discretionary parole to include sexual felonies, class A felonies with a one or more previous felonies, class B felonies with two or more previous felonies, and class C felonies with three or more previous felonies. The department projects the impact of restricting discretionary parole in this manner to be 25.9 additional inmates the first year, 52.6 additional inmates the second year, and 78.4 additional inmates the third and subsequent years.

This bill establishes contemporaneous two-way video conference as a possible appearance mode for some hearings types of hearings when available. The department currently has video conferencing equipment in all of its facilities.

In total, the department projects that this bill increases the department's inmates by 771.0 the first year, 1,086.6 the second year, 1,119.1 the third year, 1,120.4 the fourth year, 1,128.1 the fifth year and 1,132.6 the sixth year. This exceeds the department's current capacity. The current general capacity of the department's institutions is 4,664 inmates. The department averaged 4,314 inmates during CY2018 thus leaving the system with additional capacity for 350 additional inmates.

In the first year the department will need additional capacity for 421.0 inmates, for 736.6 inmates in the second year, 769.1 inmates in the third year, 770.4 inmates the fourth year, 778.1 inmates the fifth year, and 782.6 the sixth year. If the department's projections are correct, it will need to reopen the currently shuttered Palmer Correctional Center (PCC) to accommodate the increased population. PCC has a general capacity of 503 inmates. In year two, when the department's projections show exceeding the capacity in all facilities including PCC, the department will explore alternative options.

Because the system has capacity for 350 additional inmates, costs for those inmates are calculated at the marginal cost of \$44.98 per day for a cost of \$5,746.2 each year. Costs for inmates that exceed the current capacity of the system are calculated at the full cost of care of \$168.74 per inmate per day. In the first year the cost for the 421.0 inmates that exceed existing capacity is \$25,931.1; in the second year the cost for the 736.6 inmates that exceed existing capacity is \$45,364.7; and in the third year the cost for the 769.1 inmates that exceed existing capacity is \$47,371.7; in the fourth year the cost for the 770.4 inmates that exceed existing capacity is \$47,446.3; in the fifth year the cost for the 778.1 inmates that exceed existing capacity is \$47,924.2; and in the sixth year the cost for the 782.6 inmates that exceed existing capacity is \$48,200.1. Thus total increased costs for 771.0 additional inmates in year one is \$31,755.2. Total increased costs for 1,086.6 additional inmates in year two is \$51,183.8. Total increased costs for 1,119.1 additional inmates in year three is \$53,190.9. Total increased costs for 1,120.4 additional inmates in year four is \$53,265.4. Total increased costs for 1,128.1 additional inmates in the fifth year is \$53,743.4. And total increased costs for 1,132.6 additional inmates in the sixth year is \$54,019.3. In year one these costs include \$77.9 for CRC costs and VINE changes; all other years include \$72.9 for CRC costs related to 1st time DUI or refusal offenders.

Health care costs (personal services and health care commodities and services costs), utilities, and the costs for PCC were subtracted from those totals because they are shown in OMB components 2952, 2976, 712 respectively. Health care costs for the additional inmates above existing capacity are projected at \$5,661.4 in year one, \$9,904.2 in year two, \$10,342.4 in year three, \$10,358.7 in year four, \$10,463.0 in year five, and \$10,523.3 in year six. Utilities for PCC are projected at \$876.8 each year. PCC costs were subtracted from the amount calculated using the cost of care. In the first year, PCC costs each year are projected at \$14,137.4.

The projected costs in the Institution Director's Office are:

Year one: \$31,755.2 (new inmates) - \$7,209.1 (health care) & - \$876.8 (utilities) & -\$14,137.4 (PCC) = \$11,078.1.

Year two: \$51,183.8 (new inmates) - \$11,451.9 (health care) & - \$876.8 (utilities) & -\$14,137.4 (PCC) = \$24,717.7.

Year three: \$53,190.9 (new inmates) - \$11,890.1 (health care) & - \$876.8 (utilities) & -\$14,137.4 (PCC) = \$26,286.6.

Year four: \$53,265.4 (new inmates) - \$11,906.4 (health care) & - \$876.8 (utilities) & -\$14,137.4 (PCC) = \$26,344.8.

Year five: \$53,743.4 (new inmates) - \$12,010.7 (health care) & - \$876.8 (utilities) & -\$14,137.4 (PCC) = \$26,718.4.

Year six: \$54,019.3 (new inmates) - \$12,070.9 (health care) & - \$876.8 (utilities) & -\$14,137.4 (PCC) = \$26,934.1.