

# FISCAL NOTE

**STATE OF ALASKA**  
**2009 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB9-ACS-02-20-09  
 () Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Death Penalty RDU Alaska Court System  
 Component Appellate Courts  
 Sponsor Representative Chenault  
 Requester \_\_\_\_\_ Component Number \_\_\_\_\_

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Personal Services			178.7	178.7	178.7	178.7	178.7
Travel							
Contractual			10.0	10.0	10.0	10.0	10.0
Supplies			15.0	5.0	5.0	5.0	5.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING AND CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>203.7</b>	<b>193.7</b>	<b>193.7</b>	<b>193.7</b>	<b>193.7</b>

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

1002 Federal Receipts							
1003 GF Match							
1004 GF			203.7	193.7	193.7	193.7	193.7
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>203.7</b>	<b>193.7</b>	<b>193.7</b>	<b>193.7</b>	<b>193.7</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

## POSITIONS

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

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

See attached.

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 Division: Alaska Court System  
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Alaska Court System

Phone 463-4750  
 Date/Time 2-20-09 @ 11:00 am  
 Date 2/20/2009

Alaska Court System  
Fiscal Note Calculations for HB 9  
2/20/2009

**Personal Services**

	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>
Supreme Court Staff Attorney (24A), Anchorage, PFT		119,306	119,306	119,306	119,306	119,306
Legal Technician (12A), Anchorage, PFT		59,376	59,376	59,376	59,376	59,376
<b>Subtotal Personal Services</b>	0	178,682	178,682	178,682	178,682	178,682

**Contractual**

Software, Conference Fees, Misc Contractual		10,000	10,000	10,000	10,000	10,000
<b>Subtotal Contractual Services</b>	0	10,000	10,000	10,000	10,000	10,000

**Supplies**

Office Supplies, Subscriptions		5,000	5,000	5,000	5,000	5,000
Office Furniture, Equipment (computers, printers)		10,000				
<b>Subtotal Supplies</b>	0	15,000	5,000	5,000	5,000	5,000
<b>Total all Costs</b>	0	203,682	193,682	193,682	193,682	193,682

**Breakdown by Expense Category:**

Personal Services Total	0	178,700	178,700	178,700	178,700	178,700
Contractual Total	0	10,000	10,000	10,000	10,000	10,000
Supplies Total	0	15,000	5,000	5,000	5,000	5,000
<b>Total</b>	0	203,700	193,700	193,700	193,700	193,700

## FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

BILL NO. HB 9

### ANALYSIS CONTINUATION

House Bill 9 adopts a death penalty system for Alaska. The bill establishes a bifurcated jury trial, with a guilt phase and, if the person is convicted of a capital offense, a penalty phase. All death sentences are automatically appealed to the supreme court. The extent to which the court system will be impacted by this bill is largely determined by the number of capital cases charged, the number that go to trial and the number that result in a death sentence. This note is based on the Department of Law's estimate of six death penalty trials a year, with four of those resulting in a sentence of death.

#### Pretrial

As thoroughly explained in the department's fiscal note analysis, a death penalty case is time consuming and resource intensive through every phase and for every part of the criminal justice system. The court system will begin to feel the impact soon after the department first gives its notice of election to seek the death penalty in a particular case. It is at that point that pretrial motion practice begins. Experience from other states shows that the number of pretrial motions filed in a death penalty case far exceed those filed in a non-capital case.

Pretrial motions are not only much more plentiful in capital cases, but they address constitutional issues that are not generally relevant in non-capital cases. Defense attorneys must raise these challenges in the trial court if they are going to preserve them for future federal court review. The prosecution must respond to and the court must rule on these motions.

In order to help with all motions filed both before and during trial, this note adds one superior court staff attorney. Although based in Anchorage, where the majority of cases will likely be filed, the position will work on motions filed in all locations.

#### Trial

Once the pretrial work is completed (and data from other states suggests that it takes an average of one and a half to three years to bring a death penalty case to trial), the trial work begins and it starts with jury selection.

Jury selection in a capital trial is different from jury selection in a non-capital trial. One difference is that capital trials last an average of three months, which is roughly four times the length of a non-capital trial for the same offense. Because few people can afford to sit on a jury for three months, many potential jurors are excused. Additionally, jurors in capital cases must be "death qualified," that is they must be willing to impose the death penalty. This further limits the number of people eligible for jury service.

These two limiting factors result in a much longer jury selection process and a need to call far more people as potential jurors. Evidence from other states suggests that it takes many hundreds of potential jurors and from two to four weeks to seat a jury in a death penalty case. This note assumes 500 potential jurors and a selection process that lasts an average of three weeks.

In addition to jury challenges, long trials require tremendous judicial resources. With three weeks to seat each jury and three months for trial, the department's estimate of six capital trials a year means a total of 22.5 months of trial work each year. That is the equivalent of two superior court judges. The court system will need two new judges to handle this increase in workload. However, because this increase in workload is likely to build over the next three years, this note calls for a pro tem (part-time) judge in year one (FY 10) and the services of a staff attorney to help with the initial pretrial motions. In year two (FY 11), this note calls for a superior court judge in Anchorage to begin with the first trials that we anticipate, and in year 3 (FY 12), when the system is up to its six trial a year level, this note calls for the second judge, who will be seated in Fairbanks.

**ANALYSIS CONTINUATION**

Appeals

At the conclusion of the trial process, all death sentences go directly to the supreme court for review. The record on appeal consists of the record before the trial court and the trial court transcript, which is estimated to average 24,000 pages. The court has estimated a \$3.50 per page expense for transcription services and this note reflects those costs.

As with the other phases of the process, death penalty appeals are different from other appeals. The court conducts a "proportionality review" to ensure that the penalty is being applied in a uniform and non-discriminatory fashion. This process is long and difficult and involves a detailed look at every stage of the process from charging decision through sentencing. It then compares the case against other cases where the death penalty was not charged.

Additionally, and also unlike most other cases, each death penalty case will come before the court multiple times. The state of Arizona reports that each death penalty defendant brings six or seven cases before the Arizona Supreme Court. Similarly, the Florida Supreme Court states that, although they see an average of 15 new death sentence cases each year, because of the multiple appeals and the back and forth with the state trial courts and the federal courts, they currently have before them 75 different appeals in one form or another.

Judicial Training

Finally, this note includes funding for judicial training. Many states require judges to have special death penalty training prior to presiding over a death penalty case. This training helps reduce the number of cases overturned on appeal due to judicial errors that result from a lack of familiarity with the unique complexities of death penalty law.