

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 9  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB009-DOA-PDA-2-20-09  
Title An Act relating to murder, authorizing capital punishment...  
Dept. Affected: Administration  
RDU Legal and Advocacy Services  
Component Public Defender Agency  
Sponsor Representative Chenault  
Requester Judiciary Component Number 1631

## 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	1,078.9		1,618.4	2,157.8	2,157.8	2,157.8	2,157.8
Travel	326.5		437.0	571.2	571.2	571.2	571.2
Contractual	789.5		1,099.7	1,381.5	1,381.5	1,381.5	1,381.5
Supplies	15.0		22.5	30.0	30.0	30.0	30.0
Equipment	67.0		40.2	43.5	43.5	43.5	43.5
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>2,276.9</b>	<b>0.0</b>	<b>3,217.8</b>	<b>4,184.0</b>	<b>4,184.0</b>	<b>4,184.0</b>	<b>4,184.0</b>
<b>CAPITAL EXPENDITURES</b>							
<b>CHANGE IN REVENUES ( )</b>							

## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	2,276.9		3,217.8	4,184.0	4,184.0	4,184.0	4,184.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>2,276.9</b>	<b>0.0</b>	<b>3,217.8</b>	<b>4,184.0</b>	<b>4,184.0</b>	<b>4,184.0</b>	<b>4,184.0</b>

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

## POSITIONS

Full-time	10		15	20	20	20	20
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached pages

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Department of Administration

Phone 907 334-4414  
Date/Time 2/20/2009, 11:30 AM  
Date 2/20/2009

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### ANALYSIS CONTINUATION

#### Summary of HB 9

House Bill 9 establishes a capital crime in Alaska and authorizes the use of capital punishment. The following is a summary of material sections of the framework for the death penalty.

This bill establishes that the district attorney for the district in which the prosecution is occurring, with the concurrence of the attorney general, shall decide whether to seek the death penalty against the defendant. If it is elected, the district attorney shall give notice of the election and the applicable aggravating factor justifying the election to the court, the defendant, and the defendant's attorney within 120 days of arraignment on the capital felony indictment.

If a defendant is convicted of a capital felony, the jury must consider whether a sentence of death should be imposed. Evidence with any probative value as to any aggravating or mitigating factor may be presented, without regard to the rules of evidence. The jury then deliberates and must return written findings; these findings must be unanimous and detail whether at least one aggravating factor exists and that the district attorney noticed that factor; whether, beyond a reasonable doubt, the aggravating factor outweighs any mitigating factors found to exist by a preponderance of the evidence; and whether the defendant shall be sentenced to death.

Once the court considers the evidence and the recommended sentence, it shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a). A court can only impose a death sentence if the jury found no reasonable doubt as to at least one aggravating factor noticed by the district attorney exists, that there is no reasonable doubt that the aggravating factors are not outweighed by any mitigating factors found by a preponderance of the evidence, and that it recommended a sentence of death.

The new section then provides that "If the jury findings include an aggravating factor or factors under AS 12.58.040 that are not outweighed by one or more of the mitigating factors and if the jury recommends a sentence of death, the court shall sentence the defendant to death unless the court finds that the defendant was mentally retarded under AS 12.58.060." If a sentence of death is not recommended, the court shall sentence the defendant to a term of imprisonment.

Following the imposition of a death sentence, the Alaska Supreme court must automatically review the judgment within 60 days, a time period to be extended by the court for good cause. On review, the court shall determine whether the sentence was imposed under the influence of passion, prejudice, or some other arbitrary factor, whether the evidence supports the finding of the aggravating factor and whether the jury properly considered mitigating factors, whether the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, and any other issue the defendant may raise on appeal. If the court upholds the sentence of death, the Alaska Supreme Court must issue a death warrant specifying a date of execution, not less than 30 days nor more than 60 days after the date of the warrant.

#### Basis for Higher Cost

A sentence of death is final and irreversible--mistakes can not be undone. According to the United States Supreme Court, therefore, additional procedures and attention must be devoted to capital cases

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### ANALYSIS CONTINUATION

to ensure the constitutional requirements of due process are met. It is the responsibility of defense counsel to review and litigate cases in a manner that minimizes the possibility that the death penalty is imposed arbitrarily, inappropriately, with bias, or on the innocent.

Moreover, appropriate resources are necessary to protect against what studies from other jurisdictions have indicated are the primary reasons for appellate reversal of trial court proceedings. The following are a list of the typical grounds for reversal of conviction or sentence in a capital case: (1) false eye-witness identification, (2) false confessions, (3) uncorroborated informant testimony, (4) scientific evidence validity and backlog, (5) prosecutorial misconduct, (6) judicial failure to report misconduct, (7) ineffective assistance of counsel and defense attorney misconduct, (8) failure to disclose exculpatory evidence.

#### Procedure and Workload

With death penalty cases, the guilt and penalty phases are treated as separate proceedings with the penalty phase often exceeding the guilt phase in both time and expense. Additionally, the post-conviction process involves both the appellate litigation and the collateral litigation that is more extensive than in non-capital cases.

The guilt phase requires the Agency to conduct a fact investigation and a scientific evidence investigation, conduct legal research and engage in motion practice, as well as jury selection, trial, and post-trial litigation. The sentencing phase requires similar, but separate obligations: sentencing mitigation investigation, additional legal research and motion practice, a sentencing hearing, and post-sentence litigation. Sentencing investigations involved investigating the defendant's entire life and can involved extensive investigation outside the state and the country depending on the defendant's background.

The post-conviction process involves a direct appeal to the Alaska Supreme Court and a petition for certiorari to United States Supreme Court. The collateral litigation requires additional proceedings in the Superior Court. Collateral proceedings involve new and separate investigation, motion practice, and evidentiary presentation. The collateral proceedings also include appeals to the Alaska Court of Appeals and the Alaska Supreme Court.

In addition to the traditional litigation, capital cases also require a petition for clemency to the Governor of Alaska and additional original writs filed with the United States Supreme Court.

#### Cost Estimates

The Agency typically refers 30% of A and Unclassified cases to the Office of Public Advocacy due to legal conflicts of interest. The cost estimates of this fiscal note are based on an estimate of a total of six capital cases a year, four for the Agency. The average time from the imposition of a death sentence to execution ranges from 13 years to over 20 years. Accordingly, the number of open death penalty cases would rise to approximately 78 to 120 before the cases would begin to close if the estimate of six cases per year remained constant.

It is difficult to predict the resources necessary to process this caseload beyond the first one to three years. The positions and costs contained in this fiscal note are an estimate of the resources necessary

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### ANALYSIS CONTINUATION

to create and train two trial teams and two post conviction teams to substantively process no more than 4 capital cases each year.

Based upon the ABA Guidelines, the current standard for death penalty litigation is a trial team consisting of two lawyers, one investigator, and one mitigation specialist; and a post-conviction team consisting of two lawyers, investigator, and a paralegal. A law office assistant has also been included for each team. The fiscal note contains the estimate for salary and related equipment costs for these positions starting with two full teams the first year, increasing to four teams by the third year. In the first year, the emphasis would be on hiring and training trial teams, then in the subsequent two years the emphasis would shift to hiring and training appellate teams. It is expected that the initial death penalty cases will likely take 3 years to complete sentencing.

The fiscal note contains an estimate for the cost of training the attorneys and paraprofessionals. The current standard for defense representation requires that attorneys assigned to death penalty cases be certified to handle a capital case. This will require out-of-state training specific to capital cases. Current standards also require significant continuing legal education and recertification every two years. A training and recertification budget of \$40,000 has been added for each year. Each team, accordingly, would receive training and recertification every two years.

The fiscal note contains an estimate for the costs associated with retaining experts for trial and sentencing. The mean and median costs for experts in federal capital cases are \$158,895 and \$101,592 respectively. This fiscal note contains an estimate of \$100,000 per case. The fiscal note also reflects increase costs for staff travel, witness travel, depositions, and transcript costs. Additionally, the costs associated with reviewing potential death penalty (potential death eligible cases in which the Attorney General does not elect to pursue the death penalty) are also included in this fiscal note.

The cost estimates in this fiscal note are based on the assumption that the Attorney General will elect to secure a sentence of death in 6 cases per year. This note further assumes that these cases will proceed in a timely and efficient manner, with only 1 or 2 of the cases assigned to the Agency proceeding to trial. If more cases become death penalty cases, or more cases go to trial, or trials must be conducted in rural locations, or the workload is underestimated, or involve investigations in other states or outside the United States, these estimates are expected to be inadequate for the Agency to meet its constitutional obligations and could be expected to increase substantially.