

DRAFT FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

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

Identifier (file name): HB9-DOA-OPA-2-20-09
 Title An Act relating to murder, authorizing capital punishment...
 Sponsor Representative Chenault
 Requester Judiciary
 Dept. Affected: Administration
 RDU Legal and Advocacy Services
 Component Office of Public Advocacy
 Component Number 43

Expenditures/Revenues (Thousands of Dollars)

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

| | Appropriation Required | Information | | | | | | |
|-------------------------------|---------------------------|-------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | | FY 2010 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | 512.2 | | 774.6 | 1,189.9 | 1,189.9 | 1,189.9 | 1,189.9 | 1,189.9 |
| Travel | 157.5 | | 172.5 | 193.0 | 193.0 | 193.0 | 193.0 | 193.0 |
| Contractual | 341.9 | | 455.2 | 588.0 | 588.0 | 588.0 | 588.0 | 588.0 |
| Supplies | 7.0 | | 11.0 | 17.0 | 17.0 | 17.0 | 17.0 | 17.0 |
| Equipment | 33.5 | | 26.4 | 45.0 | 28.6 | 28.6 | 28.6 | 28.6 |
| Land & Structures | | | | | | | | |
| Grants & Claims | | | | | | | | |
| Miscellaneous | | | | | | | | |
| TOTAL OPERATING | 1,052.1 | 0.0 | 1,439.7 | 2,032.9 | 2,016.5 | 2,016.5 | 2,016.5 | 2,016.5 |

| | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|

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

FUND SOURCE (Thousands of Dollars)

| | | | | | | | | |
|----------------------------|----------------|------------|----------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | | | | | | | | |
| 1003 GF Match | | | | | | | | |
| 1004 GF | 1,052.1 | | 1,439.7 | 2,032.9 | 2,016.5 | 2,016.5 | 2,016.5 | 2,016.5 |
| 1005 GF/Program Receipts | | | | | | | | |
| 1037 GF/Mental Health | | | | | | | | |
| Other Interagency Receipts | | | | | | | | |
| TOTAL | 1,052.1 | 0.0 | 1,439.7 | 2,032.9 | 2,016.5 | 2,016.5 | 2,016.5 | 2,016.5 |

Estimate of any current year (FY2009) cost: _____

POSITIONS

| | | | | | | | |
|-----------|---|--|---|----|----|----|----|
| Full-time | 5 | | 7 | 11 | 11 | 11 | 11 |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See attached pages

Prepared by: Rachel Levitt, Director Phone 907 269-3504
 Division Office of Public Advocacy Date/Time 2/20/09, 9:30 a.m.
 Approved by: Rachael Petro, Deputy Commissioner Date 2/20/2009
Department of Administration

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 9

ANALYSIS CONTINUATION

This bill provides for the availability of the death penalty as a punishment for certain murders. The costs of pursuing the death penalty have been studied by other jurisdictions with experience in this area, and in preparation of this fiscal note, the agency has drawn heavily from studies of the federal system and the state of Washington where the costs have been closely examined. Murder cases tend to be among the most complex and challenging cases for the attorneys and courts to handle, and capital cases have the additional requirements of added procedures and relevant evidence. Because of the penalty applicable in these cases, additional expectations are placed upon the attorneys providing defense both in terms of the training and qualifications and the substantive work to be performed.

Assumptions

The Office of Public Advocacy is the secondary public criminal defense agency in the state. The agency will only be appointed to capital cases where the Public Defender Agency has a legal conflict of interest precluding it from providing a defendant with services. Based upon our experience with the rate of conflict cases, the agency would expect to receive one-third of the capital cases for trial and direct appeal. Based upon the Department of Law's estimate that it will seek the death penalty in six cases per year, OPA anticipates receiving two pre-trial capital cases per year. After the first year of implementation, the agency expects to handle two cases per year for direct appeal as well. However, because post-conviction relief actions nearly universally include a claim of ineffective assistance of trial or appellate counsel, the agency anticipates handling all or nearly all of the capital post-conviction relief applications. The agency would need to be prepared to take these cases after the first two years of the implementation of capital crimes.

The American Bar Association 2003 Revised Guidelines for capital defense provide in part that no fewer than two qualified attorneys, one investigator, and a mitigation specialist should make up the core of the capital defense team. Further, under these same guidelines, at a minimum attorneys should be required to attend and complete at least once every two years, a specialized training program in capital defense. The Guidelines regarding the qualifications of counsel apply to trial, appellate, and post-conviction relief counsel equally.

The fiscal note contains an estimate of the costs associated with retaining experts for trial and sentencing of \$100,000 per case. The estimate is based upon median costs for experts in federal capital cases. Additionally, the agency estimates \$66,000 in costs associated with witness travel for each trial case, and \$27,000 in transcription and deposition costs for each case.

Implementation

Year One

During the first year of capital litigation, the agency anticipates creating a capital defense unit comprised of one supervising attorney (Attorney V), one staff attorney (Attorney IV), one investigator (Investigator III), one mitigation specialist (Associate Attorney II) and one law office assistant (LOA I). This unit would operate as a separate law firm in order to avoid conflicts from other staff being imputed to the counsel in this firm. This will allow the agency to keep as many cases in-house as possible. During this year the agency would also be required to provide training for this capital unit, and based upon training that is offered by nationally recognized capital defense programs, the agency would anticipate \$2500 in training costs per capital defense professional every two years after the initial training.

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ANALYSIS CONTINUATION

Year Two

During the second year of implementation, the agency anticipates adding an additional two appellate attorneys (Attorney IV) to handle the direct appeals. These attorneys would join the capital defense unit, and would handle all direct appeals generated from the unit's trial caseload.

Year Three

By the third year, the agency anticipates creating a separate capital defense, post-conviction unit to handle the post-conviction relief applications of the OPA clients and those of the Public Defender Agency clients. As previously indicated, because the focus of post-conviction relief litigation is often on whether trial counsel and appellate counsel provided effective assistance of counsel, the agency anticipates that it will receive all or nearly all of the capital post-conviction relief applications. This unit will be comprised of one supervising attorney (Attorney V), one staff attorney (Attorney IV), one investigator (Investigator III) and one law office assistant (LOA I).

Once the cases are in the post-conviction stage, the caseload will continue to increase over time, and it is not possible to predict with accuracy what the staffing and resource needs will be beyond the first two to three years of operations.

The agency anticipates relying to some degree upon the private criminal defense bar to provide representation in cases where legal conflicts prevent the agency from handling the cases with in-house staff. With the small number of cases under consideration, it is not possible to predict what percentage of cases will have to be handled by outside conflict counsel; however, there is data available related to the costs associated with providing counsel in death penalty cases through private counsel. In a 2008 report reviewing the costs associated with defense in capital cases the average per case costs for cases going to trial was \$620,932.00, and the average number of attorney hours spent defending capital cases in the federal system was 3,557 for those that went to trial. A December 2006 report from Washington state noted that the federal rate of \$163/hour for attorneys fees was reasonable, and the report recommended against going below \$125/hour for those services. Because we do not have an accurate way to estimate the number of cases that will be handled by private counsel, it is too early to suggest what the costs for contracting with private counsel would actually be for capital cases.