ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 23, 2009
1:08 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 9
"An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 9
SHORT TITLE: CAPITAL PUNISHMENT
SPONSOR(S): REPRESENTATIVE(S) CHENAULT

01/20/09	(H)	PREFILE RELEASED 1/9/09
01/20/09	(H)	READ THE FIRST TIME - REFERRALS
01/20/09	(H)	JUD, FIN
02/23/09	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE MIKE CHENAULT
Alaska State Legislature

Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 9.

TOM WRIGHT, Staff
House Majority Office
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of HB 9 on behalf of the sponsor, Representative Mike Chenault.

SUSAN S. McLEAN, Acting Deputy Attorney General
Criminal Division
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 9.

QUINLAN G. STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 9.

RACHEL LEVITT, Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 9.

RON ADLER, Director/CEO
Alaska Psychiatric Institute (API)
Division of Behavioral Health (DBH)
Department of Health and Social Services (DHSS)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 9.

GERALD LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: As the drafter, responded to questions during discussion of HB 9.

PHIL SMITH
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 9.

DOUGLAS MERTZ, Clerk
Alaska Friends Conference
Juneau, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 9 and suggested that HB 9 should be rejected.

BILL PELKE, Board Member
Alaskans Against the Death Penalty (AADP);
President
Journey of Hope...From Violence to Healing;
Author
Journey of Hope...From Violence to Healing
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 9.

FRANK W. TURNEY
Fairbanks, Alaska
POSITION STATEMENT: During discussion of HB 9, testified in support of the death penalty.

DARRELL NELSON
(No address provided)
POSITION STATEMENT: During discussion of HB 9, testified in opposition to the death penalty.

PETER STANTON
Ketchikan, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 9.

LOREN K. STANTON
Attorney at Law
Ketchikan, Alaska
POSITION STATEMENT: During discussion of HB 9, testified in opposition to instituting the death penalty.

AMANDA SCOTT
Ketchikan, Alaska

POSITION STATEMENT: During discussion of HB 9, testified in opposition to the death penalty.

MICHAEL A. LaMAY
Homer, Alaska
POSITION STATEMENT: Testified in opposition to HB 9.

TOM LAKOSH
Anchorage, Alaska
POSITION STATEMENT: During discussion of HB 9, testified in opposition to the death penalty.

BARBARA BRINK
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of HB 9.

ACTION NARRATIVE

1:08:54 PM

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:08 p.m. Representatives Ramras, Lynn, Gruenberg, Holmes, Dahlstrom, Coghill, and Gatto were present at the call to order.

HB 9 - CAPITAL PUNISHMENT

1:09:06 PM

CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 9, "An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure." [Included in members' packets was a proposed committee substitute (CS) for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09.]

1:14:01 PM

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, relayed that the impetus for HB 9 stems from what he views as society's inability to reform or rehabilitate certain criminals. People who commit the most monstrous of crimes will not have the

opportunity to reoffend if capital punishment is carried out. Thirty-six states currently have the death penalty on their books, whether they use it or not, and while he doesn't believe the death penalty is a deterrent to crime, he added, he does believe that it should be an option for the justice system to brandish against the most heinous, unremorseful criminals in society. And although the most common argument against capital punishment is that it might result in the execution of an innocent person, he is of the belief, he said, that the death penalty should only be used in cases where there is no question of guilt or innocence - no one supports innocent people being put to death for crimes they did not commit. Advances in technology, however, continue to make it more difficult for criminals to hide their offenses, and safeguards within HB 9 will help ensure that those who are wrongfully convicted won't be sentenced to death.

REPRESENTATIVE CHENAULT noted that the Alaska Territorial Legislature abolished the death penalty in Alaska in 1957, but offered his belief that it is now time to reexamine the issue, discuss advancements made in the judicial system, and once again consider how society can most effectively dispense justice. In conclusion, he said, "I want this legislation to give Alaskans the confidence that we have a system of justice that they can rely on to handle the most heinous members of our society."

1:18:11 PM

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 9, Version 26-LS0036\E, Luckhaupt, 2/18/09, as the work draft. There being no objection, Version E was before the committee.

1:18:48 PM

TOM WRIGHT, Staff, House Majority Office, Alaska State Legislature, on behalf of the sponsor, Representative Mike Chenault, noted that the sectional analysis included in members' packets pertains to Version E. He offered his understanding that Sections 1-20 of Version E only make conforming changes regarding capital felony crimes, whereas Section 21 is the main portion of the bill, adding a new [Chapter 58] regarding capital punishment to Title 12. Version E is meant to address concerns expressed by the Department of Law (DOL) and the drafter, with the goal being to come up with a bill that provides safeguards against sentencing a wrongfully convicted person to death.

MR. WRIGHT, referring to Section 21, explained that proposed AS 12.58.010 - under Article 1, Election to Seek Death Penalty - outlines the procedure by which the attorney general can seek the death penalty, stipulating that the district attorney shall provide notice of that election as well as applicable aggravating factors to the court, the defendant, and his/her attorney within 120 days of arraignment on the capital felony indictment or within 120 days of arraignment if the indictment has been waived. He noted that the original bill authorized the district attorney to seek the death penalty, and contained a shorter notice period.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

1:22:29 PM

MR. WRIGHT explained that proposed AS 12.58.020 - under Article 2, Imposition of Sentence - stipulates that if a defendant is convicted of a capital felony, the court shall conduct a separate sentencing proceeding before the jury to consider imposition of the death penalty, and that aggravating and mitigating factors may be presented regardless of the admissibility of evidence under the Alaska Rules of Evidence as long as the introduction of the evidence is not in violation of either the U.S. Constitution or the Alaska State Constitution. After hearing the evidence, the jury shall deliberate and recommend a sentence that must include a written finding of whether the jury agrees that at least one aggravating factor exists beyond a reasonable doubt and outweighs any mitigating factors existing by a preponderance of the evidence and whether death is the appropriate sentence for the defendant. He noted that the original bill provided for two separate juries, but now the sentencing procedure would occur before the same jury that determined whether the defendant committed the crime.

MR. WRIGHT explained that proposed AS 12.58.030 - also under Article 2 - provides that unless the defendant is found by the court to be mentally retarded as outlined under proposed AS 12.58.060, the court may impose a sentence of death if the jury recommends it after finding that there is no reasonable doubt that at least one aggravating factor exists which is not outweighed by any mitigating factors; a death sentence may not be imposed if the defendant is found to be mentally retarded. Furthermore, under proposed AS 12.58.030, when the court enters a death sentence, the court is to state in writing the jury's findings of aggravating factors and mitigating factors considered but found insufficient to outweigh the aggravating

factors. The sentence of death is subject to automatic review by the Alaska Supreme Court.

MR. WRIGHT explained that proposed AS 12.58.040 and proposed AS 12.58.050 - both under Article 2 - list the aggravating factors and mitigating factors, respectively, that a jury may consider when determining whether a sentence of death should be imposed. Proposed AS 12.58.060 - under Article 2 - stipulates that if a sentence of death is recommended, the court shall determine whether the defendant was mentally retarded at the time the crime was committed, and outlines the procedure for a finding of mental retardation.

1:25:12 PM

MR. WRIGHT explained that proposed AS 12.58.100 - under Article 3, Sentence Review - provides that the Alaska Supreme Court shall review a sentence of death within 60 days after imposition of the sentence, that this time limit may be extended by the court for good cause, and that this review has priority over all other cases, and outlines the review process that must be undertaken by the Alaska Supreme Court. Proposed AS 12.58.110 - under Article 3 - provides that if the Alaska Supreme Court upholds the sentence of death, it shall issue a death warrant that specifies the date of execution, which must be no less than 30 days and no more than 60 days after the date of the warrant, and that the warrant must be delivered to the commissioner of the Department of Corrections (DOC).

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

1:26:05 PM

MR. WRIGHT - referring to Article 4, Administration of the Death Penalty - explained that proposed AS 12.58.200 stipulates that the procedure of execution shall be established by the commissioner of the DOC; that proposed AS 12.58.210 stipulates that after receiving the death warrant, the commissioner of the DOC shall specify the time and place of execution; that proposed AS 12.58.220 stipulates that the punishment of death is to be inflicted by a lethal dose of a substance or substances until death is pronounced by a licensed physician, and is to be carried out within a state correctional facility; and that proposed AS 12.58.230 stipulates that the commissioner of the DOC is to return the death warrant to the Alaska Supreme Court specifying the time and place in which the defendant was executed.

MR. WRIGHT - referring to Article 5, Stay of Execution - explained that proposed AS 12.58.300 stipulates that if the commissioner of the DOC has reason to believe that a defendant sentenced to death has become incompetent to proceed with the execution or is pregnant, the commissioner shall give written notice to the court in which the sentence of death was imposed, the prosecuting attorney, and counsel for the defense, and that the execution shall be stayed pending further order of the court. Proposed AS 12.58.310 and proposed AS 12.58.320 - both under Article 5 - outline, respectively, the procedures pertaining to an examination into competency and disposition pending pregnancy. Proposed AS 12.58.900 - under Article 6, General Provisions - defines the terms "commissioner" and "department" as they apply to AS 12.58.

MR. WRIGHT indicated that Section 22 proposes to amend AS 22.07.020(a) such that the Alaska Court of Appeals wouldn't have jurisdiction over prosecutions of capital felonies for which death sentences are imposed; and that Section 23 proposes to amend AS 22.07.020(b) such that the Alaska Court of Appeals wouldn't have jurisdiction over appeals of death sentences. Section 24 proposes to amend AS 47.12.030(a) such that capital felony would be added to the list of crimes for which a 16-year-old may be tried as an adult. Section 25 proposes to amend AS 47.12.100(c) such that capital felony would be added to the list of crimes for which a minor is rebuttably presumed to not be amenable to treatment. Section 26 - by amending the uncodified law of Alaska - provides for indirect court rule amendments to the Alaska Rules of Criminal Procedure and the Alaska Rules of Appellate Procedure. Section 27 - by amending the uncodified law of Alaska - provides for a review by the Alaska Supreme Court regarding whether a sentence of death is excessive compared to the penalty imposed in similar cases, and provides that under that review such a sentence may not be found excessive based on the fact that a sentence of death has not previously been authorized as a penalty in Alaska.

1:30:07 PM

REPRESENTATIVE HOLMES questioned the sponsor regarding his use of the term, "most heinous" in his opening remarks.

REPRESENTATIVE CHENAULT offered the name of serial killer Robert Hansen as an example, adding that although there are a number of other offenders whom he feels should be subject to the death penalty, they wouldn't be under the proposed legislation. In

response to questions, he said that the bill would not apply to those who commit the crime of sexual abuse of a minor, and that the bill doesn't contain any reference to deoxyribonucleic acid (DNA) evidence.

MR. WRIGHT, in response to a question, reiterated his understanding that the changes being proposed via Sections 1-20 are simply conforming changes.

CHAIR RAMRAS listed other murders the perpetrators of which might have been subject to the death penalty as proposed by the bill. He opined that there are just some instances for which consideration of the death penalty is appropriate.

REPRESENTATIVE COGHILL expressed interest in receiving statistical information regarding how many people who were actually innocent were originally found to be guilty of a crime. Mentioning that he's known family members of murdered people who've been willing to forgive the perpetrators, and that he holds similar beliefs, acknowledged that the government has a different role to play with regard to holding people accountable.

CHAIR RAMRAS offered his understanding that post-conviction DNA testing is not required under current statute, and recounted that recent discussions with various departments have indicated that having sufficient resources to enforce such a requirement might be problematic at this time.

1:40:39 PM

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

SUSAN S. McLEAN, Acting Deputy Attorney General, Criminal Division, Department of Law (DOL), in response to a question, and after relaying that her normal duties involve supervising the Office of Special Prosecutions & Appeals as the chief assistant attorney general, explained that Section 9 proposes to change the classification of the crime of murder such that it would be classified as a capital offense.

REPRESENTATIVE HOLMES surmised, then, that under the bill, any crime that's currently classified as murder in the first degree could be tried as a capital offense.

MS. McLEAN indicated that that would be the case provided that there was at least one aggravating factor.

REPRESENTATIVE HOLMES observed that under current statute, a lot of behavior could warrant a charge of murder in the first degree.

MS. McLEAN concurred that anything that's defined as murder in the first degree [except the crime of murder of an unborn child] could qualify as a capital offense under the bill as it's currently written.

REPRESENTATIVE COGHILL asked how many people have received the 99-year maximum sentence currently authorized by statute.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

1:45:08 PM

MS. McLEAN, noting that she didn't have those statistics with her, said that from a practical standpoint, as with every crime, the prosecution determines at the outset of the case what level of offense to charge the defendant. Many crimes of murder in the first degree, for example, are actually charged as murder in the first degree, but not all of them are.

REPRESENTATIVE COGHILL expressed interest in receiving that statistical information.

MS. McLEAN mentioned that the DOL's fiscal note offers an educated estimate of how many cases of murder in the first degree would actually go forward as capital offense cases under the bill.

REPRESENTATIVE COGHILL expressed interest in investigating possible constitutional issues that might arise with the enactment of a death penalty.

REPRESENTATIVE HOLMES agreed, and offered her concern that a number of provisions in HB 9 might be unconstitutional. For example, she said it appears that the bill would allow for the execution of a 16-year-old, but such would not be allowed by the U.S. Constitution. She then asked whether there is currently anything in statute regarding clemency.

MS. McLEAN said the governor would retain the right of granting clemency.

REPRESENTATIVE HOLMES asked whether it would be possible for certain cases - such as those involving physical abuse of a child that results in the death of that child - to fall under the provisions of the bill.

MS. McLEAN explained that in order for it to do so, that crime - which would be defined as murder in the first degree - plus an aggravating factor would have to be proven beyond a reasonable doubt to a jury. Furthermore, the prosecutor's decision to seek the death penalty in such a case would have had to have been made long in advance of the case ever being tried. In response to a question regarding whether the bill complies with the ruling in the U.S. Supreme Court case, Blakely v. Washington, 124 S. Ct. 2531 (U.S., 2004), said it does because, since that decision came out, the existence of aggravating factors for purposes of sentencing are considered by the same jury immediately after the trial in which guilt was determined.

1:55:12 PM

QUINLAN G. STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), in response to questions, said he doesn't have statistics regarding how many 99-year sentences have been handed down, but he did use certain assumptions when compiling the PDA's fiscal note. Those assumptions were based on information provided in the DOL's fiscal note. For approximately seventeen cases of murder in the first degree, six would be pursued as death penalty cases, and four out of those six cases would be handled by the PDA - with the remaining two cases being handled by the Office of Public Advocacy (OPA); up to 20 new positions would be needed to meet the challenge of handling those four cases.

REPRESENTATIVE COGHILL questioned whether the PDA would be able to provide as good a defense compared to what might be provided by private attorneys.

MR. STEINER said he's not done such a comparison. The fiscal note he's prepared, he explained, assumes an idealized set of circumstances and what would be necessary to take four cases, review them, and prepare, really, only two of those cases for trial. Furthermore, in an ideal set of circumstances, such cases would progress quickly and efficiently and nothing in them would be so unique as to require additional resources. However, he added, he considers such a scenario to be somewhat unlikely; the resources estimated in the PDA's fiscal note are really just meant to get the review process for such cases started, with

specific questions to be answered on a case-by-case basis as they come up. In response to a question, he clarified that the fiscal note estimates that 10 new positions will be necessary the first year, building up to the aforementioned 20 new positions in following years.

MR. STEINER explained that death penalty cases, due to their nature, require at least two attorneys, a mitigation specialist, and an investigator. The PDA's fiscal note accounts for two trial teams and two appellate teams to review and handle death penalty cases, and out of the aforementioned 20 new positions, 9 would be attorney positions and the rest would be support staff positions of various types. In response to a question, he remarked that it would be hard for him to comment on what crimes would be considered "heinous," since that term is not currently defined in the law; he agrees, however, with the DOL, that if a crime fits within the statute pertaining to the crime of murder in the first degree and involves an aggravating factor, it could be charged, pursued, and convicted as a death penalty case.

REPRESENTATIVE HOLMES noted that that statute doesn't require a mens rea of premeditation or even intent to commit murder.

MR. STEINER said that's correct for some provisions of that statute. In response to a question, he indicated that the standard of proving something beyond a reasonable doubt is hard to define, and that the instructions on that standard are subject to some litigation. Nonetheless, it is often noted that proving something beyond a reasonable doubt does not require that something be proven beyond all doubt. So some doubt can remain, and the question then becomes whether that doubt is reasonable. The standard of proving something beyond a reasonable doubt is the highest standard [in criminal cases]. In response to a comment, he agreed to provide the committee with the Alaska Criminal Pattern Jury Instructions pertaining to that standard.

2:02:28 PM

RACHEL LEVITT, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), in response to questions, relayed that the OPA handles criminal case defenses via a combination of staff and outside contractors; that although there are currently 45 attorneys on staff at the OPA, not all of them handle criminal cases; that the OPA anticipates that it would receive two capital felony cases per year; that in order to address those case in the first year, the

OPA would need one trial team composed of two attorneys, an investigator, a mitigation specialist, and one law office assistant; that in the second year the OPA anticipates adding two attorneys to handle the direct appeals of those [first] two cases; and that in subsequent years the OPA would need an additional team to handle the post-conviction relief cases [associated with its capital felony cases].

MS. LEVITT explained that the OPA also anticipates having to handle nearly all of the post-conviction relief cases. Currently the OPA contracts with separate private law firms so as to address potential conflicts of interest. Therefore, should HB 9 be enacted, the OPA would establish one unit - or law firm - to handle capital felony cases in the trial stage and direct appeal stage, and would establish a separate unit - or law firm - to handle the post-conviction relief cases. One variable that the OPA will have to contend with, therefore, is what the cost would be for contracting with outside counsel; currently the OPA's fiscal note provides information related to experiences in the federal system and the State of Washington regarding the number of hours that private attorneys would put into death penalty cases at the trial level, and the costs associated with those private attorneys. She pointed out, though, that in considering such small numbers of possible death penalty cases, it is difficult to estimate how many such cases [would have to be handled by outside counsel].

CHAIR RAMRAS surmised that one could ultimately expect a 15 percent growth rate for the OPA [as a result of HB 9 being enacted].

MS. LEVITT concurred.

REPRESENTATIVE COGHILL asked how many cases of murder in the first degree the OPA has had to defend.

MS. LEVITT agreed to get that information to the committee.

2:09:19 PM

RON ADLER, Director/CEO, Alaska Psychiatric Institute (API), Division of Behavioral Health (DBH), Department of Health and Social Services (DHSS), in response to a question, indicated that proposed AS 12.58.060 - Finding of mental retardation - has caused him confusion. He offered his belief that there is a long-term vision for the API, as the only "24/7" locked facility under the purview of the DHSS, to become the "catchall" for a

variety of problematic adults. In the long run, though, it would be prudent to quantify the population that will need to be institutionalized for life, to have the public discussion regarding where those who are found to be not competent to face the death penalty are going to reside; for example, should such perpetrators be housed in a state psychiatric facility or in a secure, locked facility - which has yet to be developed.

REPRESENTATIVE COGHILL asked whether proposed AS 12.58.060 accurately defines mental retardation.

MR. ADLER said he would research that point. In response to another question, he explained that with regard to capital punishment, the first question to be addressed is whether the defendant is competent to stand trial - in other words, does the defendant understand the charges and their consequences. If the defendant is found to be competent to stand trial, and is then found to be guilty, he/she will be given another test to determine whether he/she is competent to face a death penalty. He indicated that he is not sure how these determinations fit in with the bill's provisions pertaining to mental retardation. In response to comments, he explained that most of the time a mentally ill person can be restored to competency, whereas such is not the case with mental retardation.

2:17:47 PM

GERALD LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), in response to a question, and speaking as the drafter, explained that proposed AS 12.58.060 regarding mental retardation was inserted to comply with a U.S. Supreme Court ruling from a few years ago which said that states cannot execute a mentally retarded person. The issue of mental retardation, he pointed out, has nothing to do with the issue of mental competency; they are completely separate issues, and existing statutes already deal with the issue of mental competency and with the issues of determining competency both before and after trial, and the U.S. Supreme Court has also ruled that states are precluded from executing a person who is found to be incompetent at the time of execution, and the bill complies with that ruling.

MR. LUCKHAUPT, with regard to the issue of mental retardation, predicted that what will occur is that there will be testimony by experts regarding whether the defendant is at a "significantly subaverage general intellectual functioning"

level. And even if a person is found to be mentally retarded, he pointed out, that doesn't mean the person isn't responsible for the act, it just means that he/she cannot be executed for committing it; that person can still be convicted of the crime of murder and still be sentenced to a term of imprisonment in a correctional facility. Such a person would not need to be incarcerated in a psychiatric hospital.

CHAIR RAMRAS asked whether the term "mental retardation" is a legal term of art.

MR. ADLER said he would research that issue.

MR. LUCKHAUPT explained that it's the term the U.S. Supreme Court used, as does medical literature; again, the language of proposed AS 12.58.060 was included in the bill in order to comply with the aforementioned U.S. Supreme Court ruling.

REPRESENTATIVE COGHILL suggested to the sponsor that he research how the standard outlined in proposed AS 12.58.060 has been applied in other jurisdictions.

2:22:42 PM

REPRESENTATIVE GRUENBERG noted that under the bill, a person sentenced to execution would not have the right to appeal that sentence before the Alaska Court of Appeals. He asked whether such a provision would be unconstitutional.

MR. LUCKHAUPT said he didn't see that it would be. The language of that provision is fairly common in those states that have a death penalty; those states bypass their intermediate court of appeals - who's decision is not binding upon their supreme court - and take the issue directly to their state supreme court. In response to a question, he said he not aware of any instance in which that issue has been addressed by the U.S. Supreme Court. In response to another question, he said he doesn't know of any way to protect an executed defendant from future changes in the law.

REPRESENTATIVE HOLMES questioned whether HB 9 would allow a 16-year-old to be executed.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. LUCKHAUPT clarified that a person under the age of 18 cannot be executed, though the U.S. Supreme Court has not addressed the

issue of whether a person over the age of 18 can be executed for a crime he/she committed while over the age of 16 but before he/she turned 18. The DOL, however, is aware that it would not be able to seek the death penalty for a person who is under the age of 18; this is basically a jurisdictional limitation that the DOL is aware of. In response to another question, he assured the committee that he drafted HB 9 such that it would comply with all current court decisions. For example, because the U.S. Supreme Court has recently ruled that a person who does not cause the death of another person could not be executed, the bill does not include the crime of sexual abuse of a minor under the age of 12 as a crime for which the death penalty could be imposed.

VICE CHAIR DAHLSTROM returned the gavel to Chair Ramras.

2:30:30 PM

PHIL SMITH, after relaying that he is against HB 9, said he can remember that when the Alaska Territorial Legislature abolished the death penalty on the eve of statehood, his parents were thrilled and delighted that that enlightened step had been taken. He said he would consider it a tragedy to "give ourselves a birthday present" of what he characterized as the barbarous imposition of the death penalty. He then recounted a personal experience in which a recently retired judge once relayed that he was opposed to the death penalty because he felt that judges make too many mistakes.

2:33:51 PM

DOUGLAS MERTZ, Clerk, Alaska Friends Conference, after noting that the Alaska Friends Conference is the statewide organization of Quaker meetings, said that Quakers believe that life is sacred and should not be taken by others except for only the most compelling of reasons such as to save other lives. If there is a viable way to keep a person in prison for life, then there is nothing to be gained by killing that person. He then noted that he once worked as a prosecutor for the attorney general's office, and has watched carefully the developments in DNA testing and the work of the Innocence Project, which, he proffered, has proven beyond any doubt that many, many innocent people have been convicted and executed or convicted, sentenced to die, and only released just short of execution. If HB 9 passes, he predicted, the State of Alaska will convict and execute innocent people, regardless that that number may be kept

to a minimum; that fact alone mandates that HB 9 should be rejected now.

2:35:54 PM

BILL PELKE, Board Member, Alaskans Against the Death Penalty (AADP); President, Journey of Hope...From Violence to Healing; Author, Journey of Hope...From Violence to Healing, after listing several other organizations to which he belongs, explained that Journey of Hope...From Violence to Healing is an organization led by murder-victims' family members who are opposed to the death penalty in all situations and believe that the death penalty does nothing to heal them and only continues the cycle of violence. Since 1976, he relayed, over 130 people have been sentenced to die for crimes they didn't commit. As long as the decisions regarding who should be sentenced to death are being made by human beings, he opined, there will be mistakes, and when it comes to the death penalty, there is absolutely no room for mistakes.

MR. PELKE shared that his grandmother was murdered in 1985 by four teenage girls, and one of the girls was then sentenced to die. Although he'd originally supported that sentence, he relayed, he came to believe that his grandmother would have been appalled by such a sentence, and he knew then that he could no longer support a sentence of death for the murder of his grandmother. A lot of people support the death penalty as a way of achieving revenge, but revenge is never the answer, he opined; instead, love and compassion for all of humanity is the answer. In conclusion, he noted that a woman who'd had her 7-year-old daughter kidnapped and murdered has said, "No amount of retaliatory deaths will make up for Suzie's murder; to say the death penalty of one malfunctioning individual will repay the inestimable value of my little girl is insulting."

MR. PELKE, in response to a question, offered his understanding that it's generally poor people on death row, and that 80 percent of the victims of those sentenced to death row were white and people of importance. With regard to the term, "heinous", he pointed out that having a loved one murdered is a heinous crime.

2:41:26 PM

FRANK W. TURNEY characterized HB 9 as long overdue, and said he supports the death penalty. He relayed that he's served time in prison and afterwards served as a prison advocate, and that of

those killers and pedophiles he became familiar with, many of them never showed any remorse and never faced the death penalty. If there is clear evidence before a jury that a crime is heinous and the standard pertaining to aggravating factors is met, he opined, then let the jury decide the fate [of the murderer]. With regard to the issue of cost, he suggested that the use of a firing squad would be cost effective and that volunteers for such a squad could be easily found. He opined that serving life sentences or sentences of 99 years is the easy way out for offenders, particularly those who commit heinous crimes.

MR. TURNEY said given that DNA evidence can be used to exonerate the innocent and convict killers, he believes that jurors are capable of determining whether a crime is heinous, and then meting out the death penalty when the statutory standards for doing so are satisfied. Some of the people he's served in prison with, he elaborated, spoke about their crimes over and over again, relishing the details. He surmised that in Alaska there are many perpetrators of heinous crimes who've been allowed to plea bargain the charge down to murder in the second degree or manslaughter. In conclusion, he expressed appreciation for the introduction of HB 9, and offered his hope that any errors in the bill will be found and corrected so that it can continue to move forward through the process.

2:44:15 PM

DARRELL NELSON said he is against the death penalty for a number of reasons. By the time a person is arrested [for a capital offense] and then goes through the appeal process, it can take 20 to 30 years before he/she is actually executed. Furthermore, the cost of expert testimony regarding whether a perpetrator is competent to stand trial, as well as the cost of incarcerating him/her for all that time will be borne by the State. He said he doesn't see how the State will be saving money by instituting a death penalty, and predicted that the State will instead be spending more money than it is now. He said he doesn't see that the death penalty will be any help at all, and offered his understanding that in the 1980s, former Senator Jan Faiks and former Senator Rick Halford were opposed to the death penalty because of the amount of money that would be spent on it.

2:47:22 PM

PETER STANTON, noting that Article I, Section 1, of the Alaska State Constitution, says in part, "This constitution is dedicated to the principles that all persons have a natural

right to life, liberty, the pursuit of happiness ...", he opined that these natural rights are not forfeit for committing certain acts, but are instead absolute rights. For the State to threaten this right to life, he also opined, is an absolute insult to the ideals embodied in both the U.S. Constitution and the Alaska State Constitution, and in the minds of enlightened human beings. In response to a question, he further opined that to give the State of Alaska, or any government, the right to take away life is to justify the kind of action that murderers have taken in the first place; society opposes murder so greatly because humans have an absolute right to their own lives, and there is an inherent hypocrisy in giving government the right to take away lives.

2:49:33 PM

LOREN K. STANTON, Attorney at Law, after relaying that he knows of several reasons to not institute the death penalty in Alaska, said he is absolutely opposed to the institution of the death penalty. He relayed that he is now and has been a trial attorney for 15 years. Referring to the Innocence Project, he offered his understanding that there are hundreds of thousands of pages of evidence illustrating that the death penalty is of no use - in any way, shape, or form - to society, that the death penalty has no deterrent value. Institution of the death penalty would give a weapon to the attorney general's office and the district attorney's office. What currently happens is that prosecutors either over charge defendants or threaten to do so in order to encourage defendants to plead guilty, even to crimes they haven't committed.

MR. LOREN STANTON predicted that with the adoption of a death penalty, a prosecutor could threaten to charge someone with a capital felony and a sentence of death in order to get that person to instead plead guilty to the crime of second degree murder and a prison sentence of 40 years, with the result being that the vast majority of defendants will choose the 40-year sentence. He recounted that he's had clients who've chosen a sentence of 5-10 years when threatened with a sentence of 40 years. If HB 9 passes, it will enable prosecutors to force people to plead guilty to crimes they didn't commit; handing prosecutors such a weapon is not a good thing, he opined. In conclusion, he commented on the lack of state funding for rehabilitation programs.

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AMANDA SCOTT said she is very opposed to the death penalty. Although other states in the Lower 48 do have a death penalty, she said she doesn't see how it would apply in Alaska, or how executing someone is anything other than what Hitler did. It is not the duty of Alaskans to take the lives of other people - humans make mistakes, and others should not have to pay the price of those mistakes - nor is it the duty of Alaskans to ask another person to take the lives of other people. Whoever becomes the executioner would suffer mental [and emotional] scarring for the rest of his/her life. In conclusion, remarking that she doesn't approve of abortion, she cautioned that a woman who does choose to have an abortion shouldn't have to face the death penalty because of that choice.

CHAIR RAMRAS turned the gavel over to Vice Chair Dahlstrom.

2:56:34 PM

MICHAEL A. LaMAY said he is against HB 9. Noting that he operates a small business, opined that it would be bad business for Alaska to involve itself with capital punishment. He offered his recollection that in 1995 it was estimated that the State of Alaska would have to invest $50 million in order to put in place what he called the "state-sponsored machinery of death" - $50 million would have to be spent before a single person would ever be executed. In short, he opined, that would be a very bad business decision for Alaska. To enact a death penalty bill would be fiscally irresponsible, given the many unmet needs already existing statewide. The death penalty does not deter other murderers, and it discriminates against the poor and [racial] minorities. "And why would we kill people," he asked, "to show that killing people is wrong?"

MR. LaMAY pointed out that bills have been introduced in the states of Nebraska, Colorado, New Mexico, Montana, New Hampshire, Maryland, Washington, and Kansas to eliminate their capital punishment statutes. Why would the state of Alaska go in the wrong direction now? To enact HB 9, he opined, would be an insult to Alaska's first 50 years of statehood. Not since territorial days has anyone been "State executed within our borders, and why would we start now," he asked. Alaska's courts, with some frequency, already sentence convicted felons to very long sentences - in some cases without possibility of parole - thus ensuring the protection Alaska's communities deserve; don't try to fix something that isn't broken, he advised. In conclusion, he thanked Senator Gary Stevens and Representative Paul Seaton for opposing HB 9, and offered his

hope that all other legislators would also follow "the better angels" of their nature.

MR. LaMAY, in response to a question, remarked that with regard to capital punishment, if one doesn't have the capital, one receives the punishment.

3:00:01 PM

TOM LAKOSH said he is opposed to the death penalty for several reasons, primarily because it is unconstitutional and violates rights of free speech and due process. He offered his understanding that under the constitution, the legislative process requires a fair legislative investigation, but in order for that to occur in a situation in which the death of Alaskan citizens would be required, the legislature would first have to fully investigate all 130 of the aforementioned Innocence Project cases to ensure that similarly innocent persons would not be executed under HB 9. The question then inherently becomes, can the legislature ensure that only the [guilty] will be put to death. If not, then the legislature is guilty of the very crime it is attempting to punish, and any legislator who votes for HB 9 is consciously performing a premeditated act to kill someone - perhaps even an innocent person - and so would be subject to the same proposed law.

MR. LAKOSH indicated that the death penalty violates the right of free speech because the speech of those who were convicted and sentenced to death but were later found to be innocent after they were executed could no longer be heard. With regard to executing someone, he opined that it is inherently wrong, it is not fair, it is barbaric, and it violates the basic principles of civility. A person convicted of a crime can instead simply be incarcerated in such a way as to protect everybody else; for example, a horrific murderer could be severely isolated. In conclusion, he offered his belief that there will be a lot of repercussions [for enacting a death penalty], and that HB 9 needs a lot more work to ensure that innocent people are not executed, particularly given that the court system is subject to corruption and given that everyone makes mistakes; the [judicial] system is not capable of accurately judging whether a person's life should be taken.

3:04:45 PM

BARBARA BRINK, noting that she was a public defender for the State of Alaska for 23 years, opined that [instituting] the

death penalty would constitute a terrible practical public-policy decision. For 9 years, she relayed, her duties with the State involved administering the PDA's budget and looking at the big picture of criminal justice in Alaska. In response to a question posed earlier, she said Alaska does not have a system of justice that can be relied upon. As others have testified, she remarked, if the death penalty is instituted in Alaska, the State will wind up killing innocent people, though not from a lack of trying, it's just that it's a human system and therefore a fallible system in all aspects, from eyewitness accounts, to investigations, to defense work, to prosecutions, to judging - human beings make mistakes and innocent people have been convicted, both in Alaska and throughout the country.

MS. BRINK explained that at least 8 wrongfully convicted people have been executed since 1972, and that 124 death row inmates have been completely exonerated in 25 different states; nobody has figured out how to have a perfect system. Last week, the National Academy of Sciences issued a report indicating that all of the evidence that the justice system has been relying upon for the last 30 years to convict people and put them in jail is suspect: evidence such as fingerprints, blood splatter, bite mark identification, firearms identification, hair analysis, and handwriting analysis. The National Academy of Sciences also found that evidence was routinely handled by poorly trained technicians who then, in court, exaggerate the accuracy of their methods. There is a complete lack of independence in the field of scientific evidence, which has been dominated by law enforcement, she opined, reiterating that the State will execute innocent people if a death penalty is instituted.

MS. BRINK said that even though analysis of DNA is considered "the science of today," DNA evidence is present in less than 10 percent of all violent crimes. Furthermore, who is to say whether in 10 years, as science increases and technology improves, that [scientists] won't find something wrong with the accuracy of DNA evidence, or find something better than DNA evidence. Trying to prevent an irreversible mistake has resulted in an expensive and cumbersome system. She said she does not disagree with the fiscal note estimates put forward by the PDA and the OPA; however, what should be reemphasized is that those estimates - which are based on the assumption that there will only be six to eight death penalty cases per year - would only address minimal needs and minimal constitutional requirements. She characterized that assumption as questionable, and noted that between 2003 and 2008, 170 charges of murder in the first degree were submitted to the DOL by

prosecutors - in other words, about 35 referrals per year. More than half such cases will end up proceeding through the legal system, engendering all of the associated expenses, and only then will it become known whether someone is not guilty of a capital offense.

MS. BRINK pointed out that in the states of New Jersey, North Caroline, Florida, Texas, and California, there have been independent case assessments performed which illustrate that [the death penalty] is ridiculously costly. For example, since 1983, the State of New Jersey spent $253 million, over and above regular costs, to execute just one person, and the State of California estimates that it is currently spending $137 million extra a year. In times of economic crisis and falling oil prices, she advised, Alaskans need to think about whether such funds would be better spent on public safety, law enforcement, crime prevention, schools, job training, drug treatment, and other things that would be of more help to a murder victim's family such as grief counseling and restitution.

3:09:48 PM

MS. BRINK, in response to a question, pointed out that with any piece of legislation, a cost:benefit analysis must be conducted regarding whether changes proposed by the legislation constitute sound public policy. So with regard to instituting a death penalty, the legislature must consider what it hopes to accomplish by doing so, and then balance that with what doing so will cost in terms of resources. She added:

> I have not understood or grasped what it is that we hope to accomplish - ... certainly a life-without-parole system could protect [the] safety of the public. We know that [the death penalty] doesn't deter crime or homicides, and that those states that have a death penalty actually have higher first degree murder rates than those states that don't have a death penalty. So, I just think cost is one factor, and, because I was limited to three minutes, I only chose to talk about innocence and cost, and I think cost is important - there are other ways that we could spend this money in a more public-safety-minded way.

REPRESENTATIVE HOLMES relayed that when she was going to school in Chicago, the then governor of the State of Illinois - a republican - placed a moratorium on executions because he realized that there were many innocent people on death row.

[HB 9, Version E, was held over.]

3:12:37 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:12 p.m.