

SB

7

SB 31

Fischer, Kelly + Faiks

Effective Date August 15, 1989
(after state wide vote)

Automatic Review

Supreme Court
issues Death warrant

Lethal Injection ~~or~~
Firing Squad

Limits # of People at
execution (9)

Limits # of Press People (6)

Sets # for firing Squad
(6 peace officers)

SB 7

~~Aboud + Kelly Faik, Faik~~

No Effective Date

Execution 30-60 days after
warrant

After Execution Commissioner
returns warrant to S. Court

Commissioner Regulates

" "

" "

Requires Commissioner + Licensed Physician at Execution

No photo/Recording of

Aggravating Factors

✓ Torture or aggravated Battery

Sexual assault 1st degree
Kidnapping or Assault 1st degree

✓ Risk of imminent physical injury to 2 or 3 or more persons

✓ Death of 2 or more persons

✓ Prior felony - violence to person

✓ Prior conviction for Murder

✓ ~~Pay~~ or Be Paid (Contract Murder)

✓ On Release Felony Charge or conviction having Assault as element

✓ Escaping from Lawful custody of peace officer or confinement

Committed offense avoiding lawful arrest or confinement

~~Killed child of a young~~

Knowingly
Offense of a Officer of Court, Judicial officer, Prosecuting attorney, law

Knowingly, Law Enforcement, judicial officer, Corrections Officer - Official Duties

Member of organization (5 or more)
Further criminal objectives of
Group

knowingly - offense at the
President or Governor

Same ← Mitigating Factors → Same

Under Duress, coercion, threat or
compulsion insufficient to
constitute a defense

influenced by more mature
defendant

acted with serious
provocation by victim

assisted authorities to
detect or apprehend others
how committed the offense

Incompetency or Pregnancy

Same ← → Same

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1987

SUBJECT: Comparison of SB 7 and SB 31, relating
to capital punishment

TO: Senator Paul Fischer
Chairman, Senate Health, Education, and
Social Services Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have requested a sectional analysis of SB 7 and a comparison of that bill to SB 31, both of which relate to capital punishment. Both bills are substantially similar; the differences between the two are detailed below. The sectional analysis of SB 31, prepared for you January 30, 1987, may be used as a reference to compare that bill with SB 7. Please note that a sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections 1, 2, and 4 of SB 7 are identical to sections 1, 2, and 4 of SB 31. These sections make technical amendments to existing provisions of law to refer to the new capital punishment provisions added by other sections of the bill.

Section 3 of SB 7 adds a new provision, AS 12.55.117. Subsection (a) of that section is identical to subsection (a) of AS 12.55.117 in section 3 of SB 31.

Subsection (b) is similar to subsection (b) of SB 31 except that SB 7 requires the date of execution to be set between 30 and 60 days after the death warrant is issued.

Subsection (c) of SB 7 is substantively the same as subsection (f) of SB 31.

Subsection (d) of SB 7 gives the Department of Corrections the authority to adopt regulations governing the procedures

for executions. In contrast, SB 31 sets those details out in other subsections of AS 12.55.117.

Section 5 of SB 7 adds AS 12.55.177, setting out the sentencing procedures for capital felonies. Subsections (a) and (b) are substantively identical to subsections (a) and (b) of AS 12.55.177 as added by section 5 of SB 31.

Subsection (c) of SB 7 is substantively similar to AS 12.55.178 in section 5 of SB 31, except that under SB 7 the jury renders a "recommended sentence" and under SB 31 the jury renders an "advisory sentence."

AS 12.55.179 in SB 7 provides that the court must follow the jury's recommendation. If the jury makes certain findings and recommends the death penalty, the court must impose that penalty. If the jury recommends a sentence of imprisonment, the court may not impose the death penalty. In contrast, SB 31 does not require the court to follow the jury's advisory sentence. If the court makes certain findings regarding aggravating and mitigating factors in SB 31 (see AS 12.55.180 and 12.55.181), it may impose a death sentence independent of the jury's findings.

AS 12.55.180 in SB 7 sets out the aggravating factors the sentencing court may consider. They differ from the factors set out in AS 12.55.180 of SB 31. The SB 7 aggravating factors include:

- (1) the defendant's conduct manifested deliberate cruelty in that it involved sexual assault in the first degree, kidnapping, or assault in the first degree;
- (2) the defendant's conduct caused the death of two or more persons, other than accomplices;
- (3) the defendant had a prior conviction for murder;
- (4) the defendant's conduct was directed at the President of the United States or the Governor of Alaska;
- (5) the defendant's conduct was directed at a law enforcement, judicial, or correctional officer;
- (6) the defendant killed a child nine years of age or younger;
- (7) the offense was committed under an agreement that the defendant pay or be paid for the commission of the offense;

(b) the defendant committed the offense while avoiding lawful arrest or escaping from lawful confinement;

(c) the defendant committed the offense after escaping from lawful custody of a peace officer or place of lawful confinement.

AS 12.55.181 in SB 7 sets out the mitigating factors the court must consider; these are identical to the mitigating factors set out in AS 12.55.181 of SB 31.

AS 12.55.182 of SB 7 deals with incompetency and pregnancy of persons sentenced to death and is substantively the same as AS 12.55.182 of SB 31.

Section 6 of SB 7 is substantively the same as section 6 of SB 31.

Section 7 of SB 7 is a technical amendment dealing with the lack of jurisdiction of the Court of Appeals in death sentence appeals. This section is not found in SB 31, but probably should be added for clarity.

Section 8 of SB 7 requires the Commissioner of Corrections to establish a procedure for execution of the death penalty. This provision is not contained in SB 31.

Section 7 of SB 31 puts the question of the desirability of the death penalty on the ballot as an advisory question in 1988. This provision is not contained in SB 7.

Section 8 of SB 31 makes the bill effective August 15, 1989, giving the legislature the opportunity to respond to the advisory vote before the bill takes effect. In contrast, SB 7 has no effective date provision, and therefore would take effect 90 days after the governor signs it.

KBL:csh
c7/039

Introduced: 1/19/87
Referred: Health, Education and
Social Services, Judiciary
and Finance

5-0092A

SIMILAR
LANGUAGE
DIFFERENT
LANGUAGE

1 IN THE SENATE

BY ABOOD AND KELLY

2

SENATE BILL NO. 7

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing capital punishment, classifying
7 murder in the first degree as a capital felony, and
8 establishing sentencing procedures for capital felo-
9 nies."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 11.41.100(b) is amended to read:

12 (b) Murder in the first degree is a capital [AN UNCLASSIFIED]
13 felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

14 * Sec. 2. AS 12.30.040(b) is amended to read:

15 (b) Notwithstanding the provisions of (a) of this section, if a
16 person has been convicted of an offense that [WHICH] is a capital
17 felony, an unclassified felony or a class A felony, the person may not
18 be released on bail either before sentencing or pending appeal.

19 * Sec. 3. AS 12.55 is amended by adding a new section to read:

20 Sec. 12.55.117. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)
21 A judgment of conviction of a capital felony for which a sentence of
22 death is imposed is subject to automatic review by the supreme court
23 within 60 days after imposition of the sentence. This time limit may
24 be extended by the supreme court. A review under this section has
25 priority over all other cases. The case shall be heard in accordance
26 with rules adopted by the supreme court. On review, the court shall
27 determine whether

28 (1) the sentence was imposed under the influence of pas-
29 sion, prejudice, or other arbitrary factor;

1 (2) the evidence supports the finding of an aggravating
2 factor under AS 12.55.180; and

3 (3) the sentence is excessive or disproportionate to the
4 penalty imposed in similar cases, considering both the crime and the
5 defendant.

6 (b) If the supreme court upholds a judgment of conviction and
7 sentence of death, the court shall ~~issue a death warrant that spec-~~
8 ~~ifies a date of execution. The date of execution shall be not less~~
9 ~~than 30 days nor more than 60 days after the date of the warrant. The~~
10 ~~death warrant shall be delivered to the commissioner of corrections.~~
11 ~~The commissioner shall specify the time, place, and manner of exe-~~
12 ~~cution after providing a person sentenced to death an opportunity to~~
13 ~~choose to be executed by lethal injection or by firing squad.~~

14 (c) After the execution, the commissioner of corrections shall
15 return the death warrant to the court that issued the warrant, with
16 notations as to the time, place, and manner of execution.

17 (d) The Department of Corrections shall adopt regulations gov-
18 erning an execution.

19 * Sec. 4. AS 12.55.125(a) is amended to read:

20 (a) A defendant convicted of a capital felony [MURDER IN THE
21 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
22 at least 20 years but not more than 99 years, or shall be sentenced to
23 death.

24 * Sec. 5. AS 12.55 is amended by adding new sections to read:

25 Sec. 12.55.177. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a)
26 If, after trial by jury, the defendant is convicted of a capital
27 felony, the court shall conduct a separate sentencing proceeding
28 before the trial jury as soon as practicable. If a jury trial has
29 been waived or if the defendant pleads guilty, the sentencing

Time

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1 proceeding shall be held before a jury impaneled for the purpose.

2 (b) In the sentencing proceeding evidence may be presented as to
3 any matter relevant to the nature of the crime, the character of the
4 defendant, or any aggravating or mitigating factor that the court
5 considers to have probative value, regardless of the admissibility of
6 the evidence under the exclusionary rules of evidence, provided the
7 defendant has an opportunity to rebut hearsay statements. The state
8 and the defendant or the defendant's counsel shall be permitted to
9 present oral argument. This subsection does not authorize the intro-
10 duction of evidence secured in violation of the Constitution of the
11 State of Alaska or the Constitution of the United States.

12 (c) After hearing the evidence, the jury shall deliberate and
13 ~~recommend a sentence to the court.~~ The recommended sentence must
14 include written findings of whether

15 (1) aggravating factors exist to justify the death sen-
16 tence;

17 (2) mitigating factors exist that outweigh the aggravating
18 factors; and

19 (3) the defendant should be sentenced to a term of impris-
20 onment or to death.

21 Sec. 12.55.179. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
22 The court, after considering the evidence and the ~~recommended sen-~~
23 ~~tence,~~ shall enter a sentence of death or a term of imprisonment in
24 accordance with AS 12.55.125(a). ~~The death sentence may not be im-~~
25 ~~posed unless the jury finds at least one aggravating factor that is~~
26 ~~not outweighed by the mitigating factors, and the jury recommends that~~
27 ~~the defendant be sentenced to death. If the jury findings include an~~
28 ~~aggravating factor that is not outweighed by the mitigating factors,~~
29 ~~and the jury recommends that the defendant be sentenced to death, the~~

1 court shall sentence the defendant to death. If a sentence of death
2 is not recommended by the jury, the court shall sentence the defendant
3 to a term of imprisonment.

4 (b) If the court enters a sentence of death, it shall make
5 written findings of

6 (1) aggravating factors that exist to justify the sentence;
7 and

8 (2) mitigating factors considered by the court.

9 (c) A judgment of conviction for which a sentence of death is
10 imposed is subject to automatic review under AS 12.55.117.

11 ~~Sec. 12.55.180. AGGRAVATING FACTORS. In determining whether to,~~
12 ~~impose a sentence of death, the following aggravating factors may be~~
13 ~~considered:~~

14 (1) ~~the defendant's conduct during the commission of the,~~
15 ~~offense manifested deliberate cruelty to another person in that it~~
16 ~~involved sexual assault in the first degree, kidnapping, or assault in~~
17 ~~the first degree;~~

18 (2) ~~the defendant's conduct caused the death of two or more~~
19 ~~persons, other than accomplices;~~

20 (3) ~~the defendant has a prior conviction for murder under~~
21 ~~AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or a law~~
22 ~~from another jurisdiction with substantially similar elements;~~

23 (4) ~~the defendant knowingly directed the conduct constitut-~~
24 ~~ing the offense at the President of the United States or the governor~~
25 ~~of this state;~~

26 (5) ~~the defendant knowingly directed the conduct constitut-~~
27 ~~ing the offense at a law enforcement, judicial officer, or correction-~~
28 ~~al officer during or because of the exercise of official duties;~~

29 (6) ~~the defendant killed a child nine years of age or~~

- 1 younger during the commission of the offense;
- 2 (7) the defendant committed the offense under an agreement
- 3 that the defendant either pay or be paid for the commission of the
- 4 offense, or for other pecuniary gain;
- 5 (8) the defendant committed the offense while avoiding
- 6 lawful arrest or escaping from lawful confinement;
- 7 (9) the defendant committed the offense after escaping from
- 8 the lawful custody of a peace officer or place of lawful confinement.

Sam-Jaw
2031 (4)

9 Sec. 12.55.181. MITIGATING FACTORS. In determining whether to
10 impose the death sentence, all mitigating factors shall be considered,
11 including, but not limited to, the following:

- 12 (1) the defendant committed the offense under a degree of
- 13 duress, coercion, threat, or compulsion insufficient to constitute a
- 14 defense, but that significantly affected the defendant's conduct;
- 15 (2) the conduct of a youthful defendant was substantially
- 16 influenced by a person more mature than the defendant;
- 17 (3) the defendant acted with serious provocation from the
- 18 victim;
- 19 (4) the defendant assisted authorities to detect or appre-
- 20 hend other persons who committed the offense with the defendant.

21 Sec. 12.55.182. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
22 DEATH. (a) If, after imposing a sentence of death, there is reason
23 to believe the defendant has become incompetent to proceed with the
24 execution, or is pregnant, the commissioner of corrections shall
25 immediately give written notice to the court in which the sentence of
26 death was imposed, the prosecuting attorney, and counsel for the
27 defendant. The execution of sentence shall be stayed pending further
28 order of the court.

29 (b) On receipt of the notice that the defendant is believed to

1 be incompetent, the mental condition of the defendant shall be ex-
2 amined in the same manner as provided for examining persons for compe-
3 tency to stand trial under AS 12.47.070. If it is found that the
4 defendant is incompetent, the sentencing court shall immediately
5 certify that finding to the supreme court and the commissioner of
6 corrections, and shall enter an order for commitment in the same
7 manner as provided for commitment under AS 12.47.110. If it is found
8 that the defendant is competent, the sentencing court shall immedi-
9 ately certify the finding to the supreme court and the commissioner of
10 corrections. The supreme court shall issue and deliver another war-
11 rant to the commissioner of corrections under AS 12.55.117, together
12 with a copy of the certified finding. The warrant shall specify a
13 date of execution not less than 30 days nor more than 60 days after
14 the date of the warrant.

15 (c) If the defendant is pregnant, the sentencing court shall
16 immediately certify that finding to the supreme court and the commis-
17 sioner of corrections. The supreme court shall issue an order staying
18 the execution of the sentence of death during the pregnancy. When the
19 defendant is no longer pregnant, the sentencing court shall immedi-
20 ately certify the finding to the supreme court and the commissioner of
21 corrections. The supreme court shall issue and deliver another war-
22 rant under AS 12.55.117, together with a copy of the certified find-
23 ing. The warrant shall specify a date of execution not less than 30
24 days nor more than 60 days after the date of the warrant.

25 * Sec. 6. AS 22.07.020(a) is amended to read:

26 (a) The court of appeals has appellate jurisdiction in actions
27 and proceedings commenced in the superior court involving:

28 (1) criminal prosecution, except prosecution for a capital
29 felony for which a death sentence is imposed;

- 1 (2) post-conviction relief;
2 (3) children's court matters under AS 47.10.010(a)(1)
3 including waiver of children's court jurisdiction over a minor under
4 AS 47.10;
5 (4) extradition;
6 (5) habeas corpus;
7 (6) probation and parole; and
8 (7) bail.

9 * Sec. 7. AS 22.07.020(b) is amended to read:

10 (b) Except for appeals of a death sentence, the [THE] court of
11 appeals has jurisdiction to hear appeals of sentences of imprisonment,
12 imposed by the superior court on the grounds that the sentence is
13 excessive or too lenient and, in the exercise of this jurisdiction,
14 may modify the sentence as provided by law and the state constitution.

15 * Sec. 8. AS 33.30 is amended by adding a new section to read:

16 SEC. 33.30.095. ADMINISTRATION OF THE DEATH PENALTY. (a) The
17 commissioner shall establish a procedure for the execution of a sen-
18 tence of death ordered by the state supreme court, at the time and
19 place legally appointed.

20 (b) A death sentence shall be carried out within a state correc-
21 tional facility.

22

MEMORANDUM

TO: Senator Abood

FROM: Darla

RE: Comparison between SB 7 and SB 31, "Authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies.

After reviewing the above bills, it appears that they are basically similar with the exception of the following:

- Sec. 3 12.55.117(b) - SB 7 requires the date of execution to be set between 30 and 60 days after the death warrant is issued.
- Sec. 3 12.55.117(d) - SB 7 gives the Dept. of Corrections the authority to adopt regulations governing the procedures for executions. SB 31 sets out these details in Sec. 3 12.55.117 (c-k).
- Sec. 5 12.55.177(c) - This subsection is substantively similar to AS 12.55.178 in Section 5 of SB 31, except that under SB 7 the jury renders a "recommended sentence" and under SB 31 the jury renders an "advisory sentence".
- Sec. 5 12.55.179 - This section in SB 7 provides that the court must follow the jury's recommendation. If the jury makes certain findings and recommends the death penalty, the court must impose that penalty. If the jury recommends a sentence of imprisonment, the court may not impose the death penalty. In contrast, SB 31 does not require the court to follow the jury's advisory sentence. If the court makes certain findings regarding aggravating and mitigating factors in SB 31 (see 12.55.180 and 12.55.181), it may impose a death sentence independent of the jury's findings.
- Sec. 5 12.55.180 - SB 7 sets out the aggravating factors the sentencing court may consider. They differ from the factors set out in AS 12.55.180 of SB 31. This section is orange highlighted in SB 7 and SB 31.

- Sec. 7 22.07.020(b) - This section of SB 7 is a technical amendment dealing with the lack of jurisdiction of the Court of Appeals in death sentence appeals. This section is not found in SB 31, but, by recommendation from legal counsel, probably should be added for clarity.
- Sec. 7 - This section of SB 31 puts the question of desirability of the death penalty on the ballot as an advisory question in 1988. This provision is not contained in SB 7.
- Sec. 8 33.30.095 - SB 7 requires the Commissioner of Corrections to establish a procedure for execution of the death penalty. This provision is not contained in SB 31.
- Sec. 8 - SB 31 makes the bill effective August 15, 1989, giving the legislature the opportunity to respond to the advisory vote before the bill takes effect. In contrast, SB 7 has no effective date provision, and therefore would take effect 90 days after the governor signs it.
- Sec. 9 - This section of SB 31 would make Section 7 effective immediately under AS 01.10.070(c).

Introduced: 1/19/87
Referred: Health, Education and
Social Services and Judiciary

SIMILAR
LANGUAGE
5-0129A

DIFFERENT
LANGUAGE

1 IN THE SENATE

BY FISCHER, KELLY
AND FAIKS

2

SENATE BILL NO. 31

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies; and providing for an effective date."

7

8

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11

* Section 1. AS 11.41.100(b) is amended to read:

12

(b) Murder in the first degree is a capital [AN UNCLASSIFIED]

13

felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

14

* Sec. 2. AS 12.30.040(b) is amended to read:

15

(b) Notwithstanding the provisions of (a) of this section, if a

16

person has been convicted of an offense that [WHICH] is a capital

17

felony, an unclassified felony or a class A felony, the person may not

18

be released on bail either before sentencing or pending appeal.

19

* Sec. 3. AS 12.55 is amended by adding a new section to read:

20

Sec. 12.55.117. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)

21

A judgment of conviction of a capital felony for which a sentence of

22

death is imposed is subject to automatic review by the supreme court

23

within 60 days after imposition of the sentence. This time limit may

24

be extended by the supreme court. A review under this section has

25

priority over all other cases and the case shall be heard in accor-

26

dance with rules adopted by the supreme court. On review, the court

27

shall determine whether

28

(1) the sentence was imposed under the influence of pas-

29

sion, prejudice, or other arbitrary factor;

1 (2) the evidence supports the finding of an aggravating
2 factor under AS 12.55.180; and

3 (3) the sentence is excessive or disproportionate to the
4 penalty imposed in similar cases, considering both the crime and the
5 defendant.

6 (b) If the supreme court upholds a judgment of conviction and
7 sentence of death, the court shall ~~cause a death warrant to be drawn.~~
8 The death warrant, ~~together with a written opinion of the court,~~ shall
9 be delivered to the commissioner of corrections. The commissioner
10 shall specify the time, place and manner of execution after ~~determin-~~
11 ~~ing whether the defendant chooses to be executed by lethal injection~~
12 ~~or by firing squad.~~

13 (c) ~~An execution by firing squad shall be carried out at a state~~
14 ~~prison designated by the commissioner of corrections. The commis-~~
15 ~~sioner shall select a firing squad of six peace officers. They shall~~
16 ~~be compensated in an amount determined by the commissioner.~~

17 (d) ~~After consulting a licensed physician, the commissioner of~~
18 ~~corrections shall select a method of injection and a drug or com-~~
19 ~~bination of drugs to be used for an execution by lethal injection.~~

20 (e) ~~The commissioner of corrections and a licensed physician~~
21 ~~chosen by the commissioner shall be present at an execution under this~~
22 ~~chapter. The commissioner may invite not more than nine citizens 19~~
23 ~~years of age or older to be present at an execution, including the~~
24 ~~prosecuting attorney, the defense attorney, relatives, friends or~~
25 ~~religious representatives designated by the defendant. None of those~~
26 ~~invited may attend an execution as a matter of right.~~

27 (f) After the execution the commissioner of corrections shall
28 make a return upon the death warrant, showing the time, place and
29 manner in which the defendant was executed.

Time

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*State 40
SB 7 ... C*

1 (g) The commissioner of corrections shall permit at an execution
2 the attendance of not more than six members of the print and broadcast
3 news media selected by the commissioner in accordance with regulations
4 adopted by the Department of Corrections. The selected news media
5 members shall serve as a pool for other members of the news media as a
6 condition of attendance.

7 (h) The use of photographic or recording equipment may not be
8 permitted at the execution site until the execution is completed, the
9 body is removed and the site has been restored to an orderly condi-
10 tion. The physical arrangements for the execution may not be dis-
11 turbed. A person who violates this subsection is guilty of a class B
12 misdemeanor.

13 (i) Persons attending an execution shall be subject to a reason-
14 able search as a condition of attendance.

15 (j) Persons other than the necessary staff designated by the
16 commissioner of corrections and others permitted under (e) and (g) of
17 this section, may not be permitted to attend an execution, nor may any
18 person under the age of 19 attend.

19 (k) The Department of Corrections shall adopt regulations gov-
20 erning the attendance of persons at an execution.

21 * Sec. 4. AS 12.55.125(a) is amended to read:

22 (a) A defendant convicted of a capital felony [MURDER IN THE
23 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
24 at least 20 years but not more than 99 years or shall be sentenced to
25 death.

26 * Sec. 5. AS 12.55 is amended by adding new sections to read:

27 Sec. 12.55.177. SENTENCING PROCEDURE FOR CAPITAL FELONY. (a)

28 If, after a trial by jury, a defendant is convicted of a capital
29 felony, the court shall conduct a separate sentencing proceeding

1 before the trial jury as soon as practicable. If the defendant waived
2 a jury trial or pleaded guilty the sentencing proceeding shall be held
3 before a jury impaneled for the purpose.

4 (b) In the sentencing proceeding evidence may be presented as to
5 any aggravating or mitigating factor that the court determines has
6 probative value regardless of the admissibility of the evidence at
7 trial, provided that the defendant has an opportunity to rebut hearsay
8 statements and to assert any evidentiary privileges available under
9 the Alaska Rules of Evidence. The state and the defendant or the
10 defendant's counsel shall be permitted to present oral argument. This
11 subsection does not authorize the introduction of evidence secured in
12 violation of the Constitution of the State of Alaska or the Constitu-
13 tion of the United States.

14 Sec. 12.55.178. ADVISORY SENTENCE FOR CAPITAL FELONY. After
15 hearing the evidence, the jury shall deliberate and give an advisory
16 ~~sentence to the court.~~ The advisory sentence shall include findings
17 whether

18 (1) aggravating factors exist to justify the death sen-
19 tence;

20 (2) mitigating factors exist that outweigh the aggravating
21 factors; and

22 (3) the defendant should be sentenced to a term of impri-
23 sonment or to death.

24 Sec. 12.55.179. SENTENCE FOR CAPITAL FELONY. (a) The court,
25 after considering the evidence and the ~~advisory sentence~~ shall enter a
26 sentence of death or a term of imprisonment in accordance with AS 12.-
27 55.125(a). If the court imposes a sentence of death, it shall make
28 written findings of

29 (1) aggravating factors that exist to justify the sentence;

1 and

2 (2) mitigating factors considered by the court.

3 (b) A judgment of conviction for which a sentence of death is
4 imposed is subject to automatic review under AS 12.55.117.

5 Sec. 12.55.180. AGGRAVATING FACTORS. The death sentence may not
6 be imposed unless at least one of the following aggravating factors is
7 found to exist and is not outweighed by mitigating factors:

8 (1) the defendant's conduct during the commission of the
9 offense manifested deliberate cruelty to another person in that it
10 involved torture or an aggravated battery;

11 (2) the defendant's conduct created a risk of imminent
12 physical injury to three or more persons, other than accomplices;

13 (3) the defendant has a prior conviction for a felony that
14 involved the use of violence to a person;

15 (4) the defendant committed the offense pursuant to an
16 agreement that the defendant either pay or be paid for the commission
17 of the offense, or for other pecuniary gain;

18 (5) the defendant was on release for another felony charge
19 or conviction having assault as a necessary element;

20 (6) the defendant knowingly directed the conduct constitut-
21 ing the offense at an active officer of the court or at an active or
22 former judicial officer, prosecuting attorney, law enforcement offi-
23 cer, correctional employee, or fireman during or because of the exer-
24 cise of official duties;

25 (7) the defendant was a member of an organized group of
26 five or more persons, and the offense was committed to further the
27 criminal objectives of the group.

28 Sec. 12.55.181. MITIGATING FACTORS. The death sentence may not
29 be imposed if mitigating factors are found to outweigh aggravating

1 factors. All mitigating factors shall be considered including the
2 following:

3 (1) the defendant committed the offense under a degree of
4 duress, coercion, threat, or compulsion insufficient to constitute a
5 defense, but that significantly affected the defendant's conduct;

6 (2) the conduct of a youthful defendant was substantially
7 influenced by a person more mature than the defendant;

8 (3) the defendant acted with serious provocation from the
9 victim;

10 (4) the defendant assisted authorities to detect or appre-
11 hend other persons who committed the offense with the defendant.

12 Sec. 12.55.182. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
13 DEATH. (a) If, after imposing a sentence of death, there is reason
14 to believe the defendant has become incompetent to proceed with the
15 execution, or is pregnant, the commissioner of corrections shall
16 immediately give written notice to the court in which the sentence of
17 death was imposed, the prosecuting attorney and counsel for the defen-
18 dant, and the execution of sentence shall be stayed pending further
19 order of the court.

20 (b) On receipt of the notice that the defendant is believed to
21 be incompetent, the mental condition of the defendant shall be ex-
22 amined in the same manner as provided for examining persons for compe-
23 tency to stand trial under AS 12.47.070. If it is found that the de-
24 fendant is incompetent, the sentencing court shall immediately trans-
25 mit a certificate of findings to the supreme court and the commis-
26 sioner of corrections, and shall enter an order for commitment in the
27 same manner as provided for commitment under AS 12.47.110. If it is
28 found that the defendant is competent, the sentencing court shall
29 immediately transmit a certificate of the findings to the supreme

1 court and the commissioner. The supreme court shall draw and have
2 delivered another warrant to the commissioner under AS 12.55.117,
3 together with a copy of the certificate of the findings. The warrant
4 shall specify a date of execution not less than 30 days nor more than
5 60 days after the date of the drawing of the warrant.

6 (c) If the defendant is pregnant, the sentencing court shall
7 immediately transmit a certificate making that finding to the supreme
8 court and the commissioner of corrections. The supreme court shall
9 issue an order staying the execution of the sentence of death during
10 the pregnancy. When the defendant is no longer pregnant, the sentenc-
11 ing court shall immediately transmit a certificate of the finding to
12 the supreme court and the commissioner of corrections. The supreme
13 court shall draw and have delivered another warrant under AS 12.55.-
14 117, together with a copy of the certificate of the finding. The
15 warrant shall specify a date of execution not less than 30 days nor
16 more than 60 days after the date of the drawing of the warrant.

17 * Sec. 6. AS 22.07.020(a) is amended to read:

18 (a) The court of appeals has appellate jurisdiction in actions
19 and proceedings commenced in the superior court involving:

20 (1) criminal prosecution, except prosecution for a capital
21 felony for which a death sentence is imposed;

22 (2) post-conviction relief;

23 (3) children's court matters under AS 47.10.010(a)(1)
24 including waiver of children's court jurisdiction over a minor under
25 AS 47.10;

26 (4) extradition;

27 (5) habeas corpus;

28 (6) probation and parole; and

29 (7) bail.

1 * Sec. 7. The lieutenant governor shall place before the qualified
2 voters of the state at the next statewide election the question advisory to
3 the legislature of whether capital punishment for murder in the first
4 degree as now authorized by law should go into effect on August 15, 1989.
5 The question shall appear on the ballot in substantially the following
6 form:

7 Q U E S T I O N

8 Shall capital punishment for murder in the first degree
9 as now authorized by law go into effect on August 15, 1989?

10 Yes [] No []

11 * Sec. 8. Sections 1 - 6 of this Act take effect August 15, 1989.

12 * Sec. 9. Section 7 of this Act takes effect immediately under AS 01.-

13 10.070(c).

SB 7 Death Penalty

Jan Rutherford

Amnesty Int'l

Opposes

Death penalty sends wrong message. Says murder is legitimate. Killing child who hits. Homicides increase by 2 ex mo in NYC after death pen. Rate doubled in Oregon when death penalty was reimposed in 1920.

Children incap of counsel conseq. Reverse consequences: people kill knowing they will die.

Death penalty costs 2^x as much as life imprisonment
Discrimination

Innocent ppl may be exec
23 ppl since 1980 were
exec but innoc.

Seriously mentally impaired
victimized

Doesn't help the victim

Continues cycle of vengeance

Can be applied to children

in Alaska bec of jur waiver

exceptions to this in USA
Libya China

Objection to putting to a vote

Bishop Kinney -
Horrified.

Not only bec of what it does
to executed but also to what it
executioners. ^{does to}

Degrades and deforms us as a
people. Teaches young people
that the way to respond is
to lash out. Contrary to
measure & reason.

Not a healthy way to deal
with passions within.

Would like to see people
move to keep the death penalty
out of the state.

Halford - I agree with you but
I am conc. abt killing of
a witness & hw we provide
a way to say that killing
is worse than rape & that
eliminating witness is not
OK.

Kinney - You are equating death penalty w/ deterrence. Where is logic?

Helf - If you reduce penalty w/o increasing the penalty the equation is all on one side.

Kinney - Deterrent.

Helford - I haven't made up my mind.

Josephson - Ironic that W Germans worried about how we treat our debts. When you look at

Kinney - Not to protect society: look @ total picture, the thing that has convinced me is that we simply continue cycle of violence.

Many acting in passion, most alone. When we see it is deliberate planned and policy.

It is an act by a society that claims to be civilized. It affects our thinking.

I can vent my rage in a brutal way.

Halford - Articles abt exec in
S state - exec wasn't a
positive act - article
pointed out that he had
raped and murdered 2
children and a woman ^{what} do y do?

Kettula - Problem with errors
in judgment. He would allow
cap punishment if prosec-
jury & judge would
receive same punishment

Halford - Sometimes we have
to accept the handicap of
having ideals

Ed Whittaker - Constitution gov life
Inapprop for any govt to
take a life

Sen. Abood - Prime sponsor
Majority demands it: 85%



Legislative Information and Teleconference Networks

Legislative Teleconference Network SIGN-IN SHEET

START TIME: 7:00 P.M.

DATE: 4-13-87

END TIME: 9:00

PLACE: Anch.

SPONSOR/SUBJECT: SHISS Comm / Leg Public Hearing SB7

Please Print

HERE TO
OBSERVE
TESTIFY

NAME/REPRESENTING

ADDRESS

PHONE

NAME/REPRESENTING	ADDRESS	PHONE	HERE TO OBSERVE	TESTIFY
① Fred B. Morgan	MAIL: BX-201623, V Anch. - 99501-1623	279-8760	✓	
② Shara Nahorney	203 E. 5th 99501	279-3793	✓	
③ BRANT WOOD	900 W. 5th Ave #525 ANCHORAGE AK 99501	277-1684	✓	
④ Martin Blackley	10.TVU	KTUU		
TERRY E JOHNSON	7101 Shoreside Cir	337-6771		✓
Michelle S Johnson	7101 Shoreside Cir	337-6771		✓
⑤ Janice Senhart	3100 Mt View Dr.	337-5201	✓	
⑥ Adrian S. Smith	3100 Mt View Dr	337-4586	✓	



Legislative
Information and
Teleconference Networks

Legislative Teleconference Network SIGN-IN SHEET

START TIME: _____

DATE: _____

END TIME: _____

PLACE: _____

SPONSOR/SUBJECT: _____

Please Print

HERE TO
TESTIFY

HERE TO
OBSERVE

NAME/REPRESENTING

ADDRESS

PHONE

NAME/REPRESENTING	ADDRESS	PHONE	HERE TO TESTIFY	HERE TO OBSERVE
2 Linda Gorman-Johnson	2909 Klamath	248-6522	X	
FRANCES HALL	Pox 200074 - 99520	272-4820		X
HELEN BOTHMAN	1425 WINTERGREEN	279-2825		
3 SHEFFIELD BARKWELL	2221 MILDWOOD RD #293 99520	3376947	X	
6 Thomas H. H. FELU	Pox 201844 Anch. AK	276-2258	X	
Marcia J. Clark	2814 Alder Dr	279-7179		X
Patricia A. Robar	1931 Sunrise Dr	279-3981		X



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

302 K Street
Anchorage, Alaska 99501

(907) 264-8228

February 3, 1987

Senator Paul Fischer
Chair, Senate HESS Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Fischer:

I writing with regard to Senate Bill 7 and Senate Bill 31, both relating to capital punishment.

The court system anticipates submitting fiscal notes on these two measures. To some extent, the fiscal impact will reflect the impact on the Department of Law, since the court's workload would depend on the number of capital punishment cases which are filed. However, the court's fiscal note will also reflect costs incurred separately by the court system in processing these cases, such as the cost of increased courtroom security.

Once the administrative office has an opportunity to review executive branch fiscal notes on these measures, we will prepare appropriate fiscal notes and forward them to the Legislature. In the meantime, if you have any questions or need additional information from the court system, please let me know.

Sincerely,

Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Senator Tim Kelly
Senator Jan Faiks
Senator Mitchell Abood
Senator Jay Kerttula
Arthur H. Snowden, II, Administrative Director
Robert Fisher, Fiscal Officer

2/3/87-9

PUBLIC OPINION MESSAGE

DEAR: SENATOR KERTTULA

Jan 30th

NAME: ARCH BISHOP FRANCES HURLEY
TITLE:
ADDRESS: 225 CORDOVA STREET
CITY: ANCHORAGE
PHONE: 258-7898
BILL NO: SB 31
SUBJECT: CAPITAL PUNISHMENT; RELATED PROCEDURES
MESSAGE: I REGRET THAT NOTICE WAS NOT GIVEN ON THE PROPOSED BILL FAVORING CAPITAL PUNISHMENT. I PERSONALLY OPPOSE CAPITAL PUNISHMENT AND REQUEST TIME TO SUBMIT A WRITTEN INTERVENTION.

ZIP: 99501

POIID: 03110950
DATE: 03/03/87
TIME: 11:09:50
LIONAME: ANCHORAGE LIO

COPIES: SENATORS

FISCHER
HALFORD
JONES
JOSEPHSON

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 7
Publish Date: _____

Revision Date: _____
Title: "An Act authorizing capital punishment..."
Sponsor: Abood, Kelly, Faiks
Requestor: Senate Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	-0-	226.6	235.7	245.1	254.9	265.1
TRAVEL		35.0	36.4	37.9	39.4	40.1
CONTRACTUAL		546.2	568.0	590.7	614.3	638.9
SUPPLIES		4.0	4.2	4.4	4.6	4.8
EQUIPMENT		14.1	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	825.9	844.3	878.1	913.2	948.9

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	825.9	844.3	878.1	913.2	948.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	825.9	844.3	878.1	913.2	948.9

POSITIONS:

FULL-TIME		4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: 2/24/87

Approved by Commissioner: Garrey Peska
Agency: Department of Administration

Date: 3/4/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB7

The passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy. The OPA is purely reactive agency and must provide legal representation when appointed by the court. The OPA is responsible for providing representation to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

This office's estimate that it will be responsible for three capital cases in FY88 is dependent upon the following two assumptions: (1) a slight numerical increase in the number of first degree murder cases which fall within the OPA statutory mandate, and (2) the Department of Law will request the death penalty in only one-third of all First Degree Murder cases.

The Office of Public Advocacy would assign at least two experienced attorneys to each capital case in accordance with the policy of numerous states in which the death penalty has become law. Each case will necessitate an exhaustive pretrial investigation, contracts with numerous expert witnesses, and extensive litigation of legal issues during pretrial proceedings, trial, and numerous appellate stages.

The New York Defender Association estimated expert witness fees at \$60,000 per case. Further, travel costs will be extraordinary high because this Anchorage-based death penalty team must provide statewide representation.

It is anticipated that the Office of Public Advocacy will have to contract for representation in at least one death penalty case per year. Such a case would arise when OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB7

SB31 continued:

Personal Services

Anchorage

Attorney V Salary & Benefits	=	76.1
Attorney IV Salary & Benefits	=	71.4
Investigator III Salary & Benefits	=	48.9
Legal Secretary I	=	<u>30.2</u>
Subtotal Personal Services		226.6

Travel¹

Necessary travel for court hearings, investigation, expert witnesses, etc.		35.0
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Contractual

Additional office for four positions in Anchorage = 16,200		16.2
Expert witness fees based on three cases per year at 60,000 per case		180.0
Contract representation for one case per year where OPA has a conflict of interest at 350,000 per case		<u>350.0</u>
Subtotal Contractual		546.2

Supplies

Stationary, library and office supplies for four new positions at 1,000 per position = 4,000		4.0
--	--	-----

Equipment

Office furniture & equipment for three professional positions at 2,429 each and one legal secretary at 6,838		<u>14.0</u>
--	--	-------------

TOTAL: 825.9

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Justification				
The Anchorage office of OPA is presently staffed with 3 legal secretaries who provide clerical support to 12 professional positions. The addition of 2 attorneys and 1 investigator will increase the Anchorage clerical workload dramatically. The complex issues involved in death penalty cases and the length of each case through sentencing and appeal necessitates the addition of a legal secretary to handle the increased workload.				
Type of Expenditure		Amount		
1	2	3		
Salary	22,020			
Benefits	3,164			
Premium Pay				
Other				
Total Personal Services		30,184		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		30,184		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	30,184		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 4 of 7
 Revised Date _____

FY 88

Position Title Investigator III		No. of Positions 1	Range/Step 18/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	37,356			
Benefits	11,570			
Premium Pay				
Other				
Total Personal Services		48,926		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		48,926		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	48,926		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
Justification				
<p>This position will perform all investigative duties in death penalty cases. Extensive experience in all areas of criminal investigations will be required to assure that defendants facing execution receive a thorough and effective investigation. This position will interview witnesses, examine the crime scene and all physical evidence, arrange transportation, serve subpoenas, follow-up and review the prosecution investigation and coordinate witness testimony.</p> <p>The OPA current has no investigator positions. It is anticipated that the position will work full time on death penalty cases.</p>				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 5 of 7
 Revised Date _____

FY 88

Position Title Attorney IV		No. of Positions 1	Range/Step 24/A	Barg. Unit X
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	56,244			
Benefits	15,177			
Premium Pay				
Other				
Total Personal Services		71,421		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		71,421		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	71,421		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
Justification				
<p>This position will act as co-counsel to the Attorney V position in all death penalty cases. As part of the death penalty team, this position will prepare motions, interview witnesses, write appellate briefs and assist the lead attorney in conducting the guilt and penalty phases of all death penalty cases. Two attorneys are required for each case in order to share the enormous workload and to assure effective representation of the accused.</p>				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 6 of 7
 Revised Date _____

FY 88

Position Title Attorney V		No. of Positions 1	Range/Step 25/A	Barg. Unit X
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	60,252			
Benefits	15,808			
Premium Pay				
Other				
Total Personal Services		76,060		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		76,060		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	76,060		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
Justification				
<p>This position would be the lead attorney of the death penalty team consisting of an additional lawyer, an investigator, and a legal secretary. The position is required to supplement the current attorney staff which falls short of LEAA national caseload standards.</p> <p>This position would be responsible for supervising the investigator, the preparation of all pretrial and trial motions and the filing of appeals in state and federal court. The requirement of extensive court hearings and a lengthy trial in each case will necessitate that this position be assigned exclusively to death penalty cases.</p>				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 7 of 7
 Revised Date _____

FY 88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____
 Revision Date: _____
 Title: "An Act authorizing capital punishment..."
 Sponsor: Sen. Abood, Sen. Kelly
 Requestor: Senate Judiciary

Bill Version: SB7
 Publish Date: _____
 Agency Affected: Dept. of Administration
 BRU: Public Defender Agency
 Components: Third Judicial District
Fourth Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		743.1	772.8	803.7	835.9	869.3
TRAVEL		225.0	234.0	243.4	253.1	263.2
CONTRACTUAL		450.0	468.0	486.7	506.2	526.5
SUPPLIES		27.0	28.1	29.2	30.4	31.6
EQUIPMENT		60.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		1505.1	1502.9	1563.0	1625.6	1690.6

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		1505.1	1502.9	1563.0	1625.6	1690.6
FEDERAL FUNDS						
OTHER						
TOTAL		1505.1	1502.9	1563.0	1625.6	1690.6

POSITIONS:

FULL-TIME		12.0	12.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: Dana Fabe, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: Feb. 25, 1987

Approved by Commissioner: Garrey Peska Date: 2/14/87
 Agency: Department of Administration

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

If this death penalty bill is enacted, representation of the poor in death cases must be adequate. The United States Supreme Court has recognized that death penalty cases require greater due process procedural safeguards than do non-capital cases. This is due to the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. Some degree of mistake is of course a potential problem in all criminal cases. In non-death cases, the system stands ready to correct those mistakes where they become known. An execution can never be corrected.

Due to these considerations, the processing of a death case is much more complex and expensive than other criminal cases. Not only are extraordinary amounts of attorney time and substantial expert fees necessary in the guilt phase of a trial, but the penalty phase, in which a jury determines whether or not to put a person to death, takes on tremendous significance. This penalty phase requires extensive preparation, the use of psychiatric experts and family and friends from out-of-state, as well as other necessary expenditures.

Finally, even after the death penalty has been imposed, the appeal procedures in death penalty cases are lengthy and time consuming. After guilt and penalty phases of a case, the following procedures would be routinely necessary:

1. Motion to modify before trial judge.
2. Appeal of conviction and sentence to Alaska Supreme Court.
3. Writ of certiorari to the United States Supreme Court.
4. Post-conviction relief proceedings in state court.
5. Appeal of post-conviction relief proceedings in the Court of Appeals.
6. Petition for hearing of post-conviction relief proceedings to the Alaska Supreme Court.
7. Petition for Writ of Habeas Corpus in the Federal District Court.
8. Appeal to the United States Court of Appeals.
9. Rehearing in the United States Court of Appeals.
10. Writ of certiorari to the United States Court of Appeals.
11. Commutation applications to executive branch.
12. Emergency stays to the United States Supreme Court.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

The figures in this fiscal note are based on an estimation of the number of cases which would have qualified under the bill as capital cases. This agency handles approximately 30 first degree murder cases each year. On the assumption that one third or 10 of these cases would qualify as capital cases under this bill, the specific figures were arrived at as follows:

1. Personal Services

Given the complexity and intensity of effort involved in each death penalty trial and penalty phase, many states recommend or require by statute that a minimum of two attorneys handle each death penalty case. Based on an estimated 10 cases per year, this agency would need two death penalty teams of two attorneys each to handle the trial and penalty phases of these cases. Two appellate attorneys would be necessary to handle the appeals of these cases. In addition, each team of attorneys would require an investigator and legal secretary.

Use of this death penalty team concept will be needed to adequately represent a client who faces the death penalty. Substantially more attorney time is required in a death penalty case than in a non-capital case. Extensive pre-trial motion practice would be required in each case. Given the lack of plea bargaining in Alaska, jury trials will be conducted in all capital murder cases. These jury trials will be longer and more complex than in non-capital cases. The penalty phase of each case will require tremendous expenditures of attorney time in preparing for sentencing and coordinating professional and lay witnesses to testify. Finally, appeals of death penalty cases require extraordinary amounts of attorney time. The New York Defender Association estimates that preparation and argument before the United States Supreme Court alone would be equivalent to 883 hours attorney time.

2. Travel and Contractual Fees.

The New York State Defender Association has estimated that a minimum figure for expert witness fees and travel must be \$30,000 for the penalty phase per case. Experts in forensics, ballistics, blood analysis, hair analysis, eyewitness identification, psychiatry, and psychology could be necessary during the trial phase in each case, and many of these would be traveling from out-of-state. During the penalty phase friends and family members of the defendant as well as psychiatrists, psychologists and social workers would be involved. Thus the contractual and travel costs for expert witnesses has been calculated at \$60,000 per case. This figure does not include any expert fees which might be necessary at the appellate stages. The amount of contractual fees estimated in this fiscal note is based on an estimated 10 cases per year.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

3. Equipment and Supplies.

Other costs include expanded office space as well as equipment and supply money for additional personnel.

BUDGET SUMMARY

Personal Services:

Guilty and Penalty Team-Anchorage			
Attorney V	79.7		
Attorney IV	74.8		
Investigator III	51.1		
Legal Secretary I	31.5		
Appellate Team - Anchorage			
Attorney V	79.7		
Attorney IV	74.8		
Investigator III	51.1		
Legal Secretary I	31.5		
Guilty and Penalty Team-Fairbanks			
Attorney V	90.7		
Attorney IV	85.0		
Investigator III	58.1		
Legal Secretary I	<u>35.1</u>	TOTAL	743.1

Travel:

Based on 10 Capital cases per year Employee and non-employee (experts)	225.0
---	-------

Contractual:

Based on 10 Capital cases per year			
Experts	400.0		
Office space			
Anchorage, Fairbanks	40.0		
Printing	5.0		
Communications	<u>5.0</u>	TOTAL	450.0

Supplies:

Office, law library	27.0
---------------------	------

Equipment:

Office furniture and machines	<u>60.0</u>
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TOTAL 1505.1

Position Title Attorney V		No. of Positions 1	Range/Step 25A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary \$5021/mo	60,252			
Benefits	19,437			
Premium Pay				
Other				
Total Personal Services		79,689		
Travel		50,000		
Contractual		110,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		245,189		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		245,189		
I-A Receipts 1006				
CIP Receipts 1061				
Other				
<p>This Attorney V will serve as a death penalty team leader in the guilt and penalty phases of capital cases in Anchorage and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.</p>				

**Request For
New Position**

Agency Department of Administration
 BRU Public Defender Agency
 Component Third Judicial District

Page 5 of 16
 Revised Date 2/25/87

FY 88

Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX	
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92	
Type of Expenditure		Justification			
		<p>This Attorney IV will serve as a death penalty team member in the guilt and penalty phases of capital cases in Anchorage and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.</p>			
Amount					
1	2				3
Salary	\$4687/mo				56,244
Benefits					18,551
Premium Pay					
Other					
Total Personal Services					74,795
Travel					50,000
Contractual					110,000
Commodities					3,000
Equipment					2,500
Other					
Total Cost		240,295			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	240,295			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

**Request For
New Position**

Agency Department of Administration
 BRU Public Defender Agency
 Component Third Judicial District

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Position Title Investigator III			No. of Positions 1	Range/Step 18A	Barg. Unit GG	
Time Status PFT	Staff Months 12.0		Location Anchorage	Election District 92		
Type of Expenditure			Justification			
			<p>This Investigator III will serve as a death penalty team member in the guilt and penalty phases of capital cases in Anchorage and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities. The travel and contractual are included in the requests for attorneys.</p>			
1		2				3
Salary	\$3113/mo	37,356				
Benefits		13,763				
Premium Pay						
Other						
Total Personal Services						51,119
Travel						-0-
Contractual						-0-
Commodities						-0-
Equipment			2,500			
Other						
Total Cost			53,619			
Funding Source for Total Cost						
Federal Receipts	1002					
G. F. Match	1003					
General Fund	1004		53,619			
I-A Receipts	1006					
CIP Receipts	1061					
Other						

**Request For
New Position**

Agency Department of Administration
 BRU Public Defender Agency
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Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage .		Election District 92
Justification				
This Legal Secretary I will provide support services to a death penalty team in Anchorage and other parts of the state. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor				
Type of Expenditure		Amount		
1	2	3		
Salary \$1835/mo	22,020			
Benefits	9,431			
Premium Pay				
Other				
Total Personal Services		31,451		
Travel		-0-		
Contractual		-0-		
Commodities		3,000		
Equipment		12,500		
Other				
Total Cost		46,951		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	46,951		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
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 BRU Public Defender Agency
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Position Title Attorney V		No. of Positions 1	Range 2 A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Type of Expenditure		Justification		
		This Attorney V will serve as a death penalty team leader in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year. Travel will be to Seattle for the Ninth Circuit Court of Appeals and to Washington, D.C. for the United States Supreme Court. Contractual is to cover printing costs for motions and briefs to the Federal Appellate Courts.		
Amount				
1	2	3		
Salary \$5021/mo	60,252			
Benefits	19,437			
Premium Pay				
Other				
Total Personal Services		79,689		
Travel		10,000		
Contractual		5,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		100,189		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		100,189		
I-A Receipts 1006				
CIP Receipts 1061				
Other				

**Request For
New Position**

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 BRU Public Defender Agency
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Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Justification				
This Attorney IV will serve as a death penalty team member in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year. Travel will be to Seattle for the Ninth Circuit Court of Appeals and to Washington, D.C. for the United States Supreme Court. Contractual is to cover printing costs for motions and briefs to the Federal Appellate Courts.				
Type of Expenditure		Amount		
1	2	3		
Salary \$4687/mo	56,244			
Benefits	18,551			
Premium Pay				
Other				
Total Personal Services		74,795		
Travel		10,000		
Contractual		5,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		100,189		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		100,189		
I-A Receipts 1006				
CIP Receipts 1061				
Other				

**Request For
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 BRU Public Defender Agency
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Position Title Investigator III		No. of Positions 1	Range/Step 18A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage.		Election District 92
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary	\$3113/mo	37,356		
Benefits		13,763		
Premium Pay				
Other				
Total Personal Services		51,119		
Travel		5,000		
Contractual		-0-		
Commodities		-0-		
Equipment		2,500		
Other				
Total Cost		58,619		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	58,619		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

This Investigator III will serve as a death penalty team member in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year.

**Request For
New Position**

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Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Justification				
This Legal Secretary I will provide support services to the appellate death penalty team in all parts of the state. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor.				
Type of Expenditure		Amount		
1	2	3		
Salary \$1835/mo	22,020			
Benefits	9,431			
Premium Pay				
Other				
Total Personal Services		31,451		
Travel		-0-		
Contractual		-0-		
Commodities		3,000		
Equipment		12,500		
Other				
Total Cost		46,951		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	46,951		
i-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
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 BRU Public Defender Agency
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Position Title Attorney V		No. of Positions 1	Range/Step 25A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94
		Justification		
Type of Expenditure		Amount		
1		2		3
Salary	\$5773/mo	69,726		
Benefits		21,432		
Premium Pay				
Other				
Total Personal Services				90,708
Travel				50,000
Contractual				110,000
Commodities				3,000
Equipment				2,500
Other				
Total Cost				256,208
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			256,208
I-A Receipts	1006			
CIP Receipts	1061			
Other				

This Attorney V will serve as a death penalty team leader in the guilt and penalty phases of capital cases in Fairbanks and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.

**Request For
New Position**

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Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94
		Justification		
Type of Expenditure		Amount		
1	2	3		
Salary \$5385/mo	64,620			
Benefits	20,403			
Premium Pay				
Other				
Total Personal Services		85,023		
Travel		50,000		
Contractual		110,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		250,523		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	250,523		
i-A Receipts	1006			
CIP Receipts	1061			
Other				

This Attorney IV will serve as a death penalty team member in the guilt and penalty phases of capital cases in Fairbanks and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.

**Request For
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Position Title Investigator III		No. of Positions 1	Range/Step 18A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94
Type of Expenditure		Justification		
		This Investigator III will serve as a death penalty team member in the guilt and penalty phases of capital cases in Fairbanks and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities. The travel and contractual are included in the requests for attorneys.		
Amount				
1	2	3		
Salary \$3565/mo	42,768			
Benefits	15,291			
Premium Pay				
Other				
Total Personal Services	58,059			
Travel	-0-			
Contractual	-0-			
Commodities	-0-			
Equipment	2,500			
Other				
Total Cost	60,559			
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	60,559		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
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Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GG	
Time Status PFT	Staff Months 12.0	Location Fairbanks.		Election District 94	
Type of Expenditure		Justification			
		<p>This Legal Secretary I will provide support services to a death penalty team in Fairbanks and other parts of the state. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor</p>			
1	2				3
Salary \$2072/mo	24,864				
Benefits	10,235				
Premium Pay					
Other					
Total Personal Services					35,099
Travel					-0-
Contractual					-0-
Commodities					3,000
Equipment		12,500			
Other					
Total Cost		50,599			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	50,599			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

**Request For
New Position**

Agency Department of Administration
 BRU Public Defender Agency
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POSITION PAPER

SB7

"An Act authorizing capital punishment. . ."

This bill authorizes capital punishment for first degree murder and establishes procedures for imposing death sentences.

The enactment of capital punishment would have an enormous impact upon the Alaska judicial system. Such cases will consume prosecution and defenses resources, as well as those of the judicial system, out of all proportion to their actual numbers. Even after costly and lengthy proceedings in the trial court have been completed both federal and state appeals will continue for years.

The Office of Public Advocacy and the Public Defender Agency oppose the establishment of capital punishment in Alaska. Aside from any moral consideration of the issue, the evidence compels the conclusion that it will not protect the public and its extreme cost will divert budget resources from other law enforcement goals. This opposition is based upon the following reasons:

1. Considerable research in the United States has provided no evidence that the death penalty deters crime more effectively than other punishments.
2. The evidence suggests that race -- especially that of the victim -- has an important bearing on the eventual likelihood of a death sentence. Research in Florida, Georgia, Texas and other states has shown that homicides involving white victims are far more likely to be charged as capital offenses and result in death sentences than those involving black victims.
3. The death penalty is irrevocable and can be inflicted on an innocent person despite the most stringent judicial standards. A recent study collected information on over three hundred cases in the United States this century in which innocent people were wrongly convicted of offenses punishable by death; some fifty of them occurred after 1970. Since 1900 twentythree wrongly convicted prisoners have been executed.
4. The cost and length of proceedings in capital cases have placed heavy burdens on the criminal justice system. The enormous concentration of law enforcement, prosecution, defense, and judicial resources on a relative handful of cases diverts resources from more effective areas of law enforcement.

5. Although most capital punishment bills contain guidelines intended to eliminate arbitrary sentencing in capital trials, the possibility of the death sentence is largely determined by decisions taken by prosecutors at an early stage of the judicial process. Prosecutors have wide discretion in whether or not to seek the death penalty in criminal homicide cases, and in practice, only a minority of crimes which death is a possible penalty are tried as capital offenses. Decisions to seek the death penalty may be largely determined by factors beyond the circumstances of the crime, including the financial resources available at the time of the prosecution, local feeling about the death penalty and the level of publicity or community pressure in a particular case.

Brant McGee

Brant McGee, Public Advocate
Office of Public Advocacy

2/22/87

Date

Garrey Peska

Commissioner Garrey Peska
Department of Administration

3/4/87

Date

COMMITTEE BILL FILE WORK-UP ON:

Bill #: SB7 Capital Punishment
 Sponsor: C. Wood
 Room #: C423 Phone #: 4522

Durlo

- 1/19 1 Receive Original Bill and Log In.
- 1/19 2 Duplicate Work Copies for Committee File and Senator's File.
- 1/19 3 File Original Bill in Special Locking File.
- 1/20 4 Set-Up Weekly Schedule of Hearings (2 Weeks in Advance if possible).
- 1/30 5 Notify Senate Secretary (5 Day Rule Applies - Allows Time to Get it Printed in Journal). A Copy of the Committee Agenda is Sufficient.
- 1/30 6 Move Work File to "Active" File Drawer.
- _____ 7 Notify the Following Persons of the Hearing Date: *7N 2/23*

Committee Members	_____	Department	<u>Br. Fischer/Courts</u>	<u>264-0545</u>
	_____	Liaisons	<u>Mr. Mappranath</u>	<u>Public Safety</u>
	_____		<u>Bill Kuhnig</u>	<u>Corrections</u>
Bill Sponsor	<input checked="" type="checkbox"/>	Governor	_____	_____
	<u>1/30</u>	If Necessary	_____	_____

Durlo 1/30

- 1/30 8 Request Back-Up Information from Bill Sponsor As Soon As Possible.
- _____ 9 Request Witness Roster of Persons the Sponsor Has Notified or Desires to Have Notified.
- _____ 10 If First Committee of Referral, Request Fiscal Note from Pertinent Department Liaison(s) for each bill change (ie. SS, CS etc) - (5 Day Rule Applies).
- 1/30 *2/1 Rec*
12 Durlo 11 If Necessary, Prepare or Request Sectional Analysis from Legal (3867) when pertinent for each change (ie. SS, CS etc). This is Pretty Much a Judgement Call.
- _____ 12 Research and Prepare Back-Up Material as Necessary.
- _____ 13 Prepare Committee Files (8 Copies: 1 ea for: Committee Members, Committee Aide, Senate Pol Secretary).
- _____ 14 Prepare 10-15 Copies of All Documents to Hand Out to Public During the Hearing (ie. Bill, Short Synopsis, Others at Sponsor's Request). *1/31*
- 1/30 15 Distribute Committee Agenda (Schedule).
- _____ 16 If Requested, Provide Files As Soon As Possible On the Day of the Hearing. Otherwise, Provide the Files at the Beginning of the Hearing in the Committee Room.

WITNESS ROSTER WORK SHEET

Bill # Title Date of Hearing

1. Name: Sen Abood
Address: _____ Phone #: 4714
Representing: _____ Title: Sen.

2. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

3. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

4. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

5. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

6. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

7. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

8. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

9. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

10. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

11. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

12. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 4, 1987

SUBJECT: Sectional Analysis of CSSB 7(HESS),
authorizing capital punishment

TO: Senator Mitch Abood

FROM: Keith B. Levy ^{KB}
Legislative Counsel

You have requested a sectional analysis of the above described bill. As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends AS 11.31.100(d) to provide that an attempted capital felony is a class A felony.

Section 2 amends AS 11.31.110(c) to provide that solicitation of a capital felony is a class A felony.

Section 3 amends AS 11.41.100(b) to designate murder in the first degree as a capital felony punishable under AS 12.55.125 rather than an unclassified felony.

Section 4 amends AS 12.55.117 to include a capital felony conviction among those under which a defendant may not be released on bail before sentencing or during the appeal process.

Section 5 amends AS 12.55 by adding a new section, 12.55.117. Subsection (a) provides that a sentence of death for a capital crime must be given a priority review by the Alaska supreme court within 60 days of sentencing unless extended by the supreme court. On review the court must determine whether the sentence was imposed under the influence of passion, prejudice, or arbitrary factors, whether the evidence sup-

ports the finding of the required aggravating factor, and whether the sentence was excessive in comparison to similar cases and defendants.

Subsection (b) requires that after affirming a death sentence, the Supreme Court issue a death warrant specifying a date of execution between 30 and 60 days after the date of the warrant. The warrant goes to the Commissioner of Corrections who is required to specify the time, place and manner of execution. Before determining the manner, the commissioner must provide the defendant an opportunity to choose to be executed by lethal injection or by firing squad.

Subsection (c) provides that execution by firing squad is to take place at a state prison designated by the Commissioner of Corrections. The firing squad will consist of six peace officers, compensated in an amount determined by the commissioner.

Subsection (d) provides for the selection of a drug to be used in executions by lethal injection.

Subsection (e) requires the Commissioner of Corrections and a licensed physician to be present at an execution and permits the commissioner to choose up to nine citizens to also be present, although no individual may attend an execution as a matter of right.

Subsection (f) requires the commissioner to return the death warrant showing the time, place, and manner of the execution.

Subsection (g) requires the commissioner to permit up to six members of the media to attend the execution.

Subsection (h) prohibits the use of photographic or recording equipment at the execution until it is completed. Violation of this provision is a class B misdemeanor.

Subsection (i) provides that persons attending an execution are subject to a reasonable search as a condition of attendance.

Subsection (j) specifically prohibits individuals under 19 years of age and other unauthorized people from attending an execution.

Subsection (k) requires the Department of Corrections to adopt regulations regarding attendance at executions.

Section 6 amends AS 12.55.125(a) to provide that a person convicted of a capital felony must be sentenced to a term of imprisonment between 20 and 99 years, or to death.

Section 7 amends AS 12.55 by adding several new sections.

Section 12.55.177 (a) provides that after a defendant is convicted of a capital offense, the court must conduct a separate sentencing proceeding before the trial jury as soon as practicable. If the defendant was not tried by a jury, or if the defendant pleads guilty, a jury must be impanelled for the sentencing proceeding.

Subsection (b) permits the presentation at sentencing of evidence that the court considers probative, regardless of admissibility at trial, as long as the defendant has an opportunity to rebut hearsay statements and assert any evidentiary privileges available under the Alaska Rules of Evidence. The subsection prohibits the introduction of evidence secured by unconstitutional means. It requires that both the prosecution and defense be permitted oral argument at sentencing.

Section 12.55.178 requires that the jury deliberate after the sentencing hearing and give an advisory verdict to the judge that includes findings whether an aggravating factor justifies death, whether mitigating factors outweigh aggravating factors, and whether the defendant should be sentenced to prison or death.

Section 12.55.179(a) provides that after considering the evidence and advisory verdict of the jury, the court must pass a sentence of imprisonment or death. The death sentence may not be imposed unless the jury recommends it and finds an aggravating factor that is not outweighed by mitigating factors. If the jury does not recommend the death penalty, the court must sentence the defendant to a term of imprisonment.

Subsection (b) provides that, upon a sentence of death, the court must make written findings of the aggravating factors that justify the sentence and of the mitigating factors that were considered.

Subsection (c) provides for automatic review by the Alaska Supreme Court upon a judgment of death.

Section 12.55.180 provides that a death sentence may not be imposed unless one of a list of aggravating factors is found to exist and that factor is not outweighed by mitigating factors. The aggravating factors are

- (1) deliberate cruelty involving sexual assault in the first degree, kidnapping, assault in the first degree, torture, or an aggravated battery;
- (2) the death of two or more people, other than an accomplice;
- (3) a risk of imminent physical injury to three or more people, other than an accomplice;
- (4) a prior conviction for a felony involving violence or murder;
- (5) the offense was knowingly directed at the President of the United States or the Governor of Alaska;
- (6) the offense was knowingly directed at an active or former officer of the court, prosecuting attorney, law enforcement officer, correctional employee, or fireman during or because of the exercise of that person's official duties; and
- (7) the offense was committed pursuant to an agreement that the defendant pay or be paid for the commission of the offense; and
- (8) the defendant was on release for another felony charge or conviction having assault as an element.

Section 12.55.181 requires the court and the jury to consider all mitigating factors, including the following:

- (1) the offense was committed under a significant degree of duress, coercion, threat, or compulsion insufficient to constitute a defense;
- (2) the conduct of a youthful defendant was substantially influenced by a person more mature than the defendant;
- (3) the defendant acted with serious provocation from the victim; and

(4) the defendant assisted authorities to detect or apprehend other persons who committed the offense with the defendant.

Section 12.55.182(a) provides that the Commissioner of Public Safety must inform the court, the prosecutor, and the defense attorney in writing if a defendant awaiting execution is believed to be pregnant or incompetent. The execution must then be stayed pending further order of the court.

Subsection (b) provides that upon notice of possible incompetency of a defendant sentenced to death the defendant must be evaluated for competency under AS 12.47.070 as if being evaluated for competency to stand trial. Upon a finding of incompetency, the sentencing court must inform the Supreme Court and the Commissioner of Public Safety and order the defendant committed under AS 12.47.110. Upon a finding of competency, the court must inform the Supreme Court and the Commissioner of Public Safety. The Supreme Court must then deliver another death warrant to the Commissioner of Public Safety specifying a date of execution between 30 and 60 days ahead.

Subsection (c) provides that upon a finding that a defendant awaiting execution is pregnant, the sentencing court must inform the Supreme Court and the commissioner. The Supreme Court then issues a stay during the pregnancy. After the pregnancy ends the sentencing court informs the Supreme Court and the commissioner. The Supreme Court then delivers another death warrant to the commissioner specifying a date of execution between 30 and 60 days ahead.

Sections 8 and 9 amends AS 22.07.020 to except from the jurisdiction of the state court of appeals a prosecution for a capital offense for which a death sentence is imposed.

Section 10 requires the lieutenant governor to place before the voters during the next general election the question of whether capital punishment for murder in the first degree as authorized by law should go into effect on August 15, 1989. The vote is advisory and not binding on the legislature.

Section 11 provides for an effective date of August 15, 1989 for sections 1-9 of the Act. This allows the legislature one session to respond to the advisory vote before the bill becomes effective.

Senator Abood
February 4, 1987
Page 6

Section 12 provides for an immediate effective date for section 10 of the Act.

KBL:mkr
m8/089

MEMORANDUM

February 20, 1987

TO: Senator Mitch Abood

FROM: Senator Paul Fischer, Chairman
Senate Health, Education & Social Services Committee
by: Margaret A Leavitt, *ML*

SUBJECT: Research Request

I have requested research on the following aspects of the impact of capital punishment legislation if the services could be contracted out of State as is presently done with our maximum security prisoners. I specifically requested that they draw a parallel between the fiscal requirements for services for a convicted criminal both with and without the death penalty. (ie under the present system requiring incarceration and in the event the capital punishment legislation should pass)

- 1) What is the average number of years each criminal will spend in incarceration?
- 2) What is the average cost per year, per each inmate of contracting with another state for the correction services required?
- 3) Specifically, what additional costs would be incurred to accommodate the actual death of an inmate under the penalty of capital punishment? (ie over the standard housing, food, clothing allowances, etc.)
- 4) Finally, what savings would this represent to the State of Alaska for each inmate and for the annual corrections program for each year.

I will forward a copy to your office as soon as it arrives.

MEMORANDUM

February 23, 1987

TO: Senate Advisory Council

FROM: Senator Paul Fischer, Chairman
Senate Health, Education & Social Services Committee
by: Margaret A Leavitt *MAL*

SUBJECT: Research Request

I would like to have you research the following aspects of the impact of capital punishment legislation if the services could be contracted out of State as is presently done with our maximum security prisoners. Please draw a parallel between the fiscal requirements for services for a convicted criminal both with and without the death penalty. (ie under the present system requiring incarceration and in the event the capital punishment legislation should pass)

- 1) What is the average number of years each criminal will spend in incarceration?
- 2) What is the average cost per year, per each inmate of contracting with another state for the correction services required?
- 3) Specifically, what additional costs would be incurred to accommodate the actual death of an inmate under the penalty of capital punishment? (ie over the standard housing, food, clothing allowances, etc.)
- 4) Finally, what savings would this represent to the State of Alaska for each inmate and for the annual corrections program for each year.

M E M O R A N D U M

February 20, 1987

TO: Representative Alyce Hanley

FROM: Senator Paul Fischer, Chairman
Senate Health, Education & Social Services Committee
by: Margaret A Leavitt *MLK*

SUBJECT: Research Request

As per our phone conversation today, following is the context of the request that I would like to have submitted to the House Research Agency. Thank you very much for your help.

* * * * *

I would like to have you research the following aspects of the impact of capital punishment legislation if the services could be contracted out of State as is presently done with our maximum security prisoners. Please draw a parallel between the fiscal requirements for services for a convicted criminal both with and without the death penalty. (ie under the present system requiring incarceration and in the event the capital punishment legislation should pass)

- 1) What is the average number of years each criminal will spend in incarceration?
- 2) What is the average cost per year, per each inmate of contracting with another state for the correction services required?
- 3) Specifically, what additional costs would be incurred to accommodate the actual death of an inmate under the penalty of capital punishment? (ie over the standard housing, food, clothing allowances, etc.)
- 4) Finally, what savings would this represent to the State of Alaska for each inmate and for the annual corrections program for each year.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

February 3, 1987

Senator Paul Fischer
Chair, Senate HESS Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Fischer:

I writing with regard to Senate Bill 7 and Senate Bill 31, both relating to capital punishment.

The court system anticipates submitting fiscal notes on these two measures. To some extent, the fiscal impact will reflect the impact on the Department of Law, since the court's workload would depend on the number of capital punishment cases which are filed. However, the court's fiscal note will also reflect costs incurred separately by the court system in processing these cases, such as the cost of increased courtroom security.

Once the administrative office has an opportunity to review executive branch fiscal notes on these measures, we will prepare appropriate fiscal notes and forward them to the Legislature. In the meantime, if you have any questions or need additional information from the court system, please let me know.

Sincerely,

Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Senator Tim Kelly
Senator Jan Faiks
Senator Mitchell Abood
Senator Jay Kerttula
Arthur H. Snowden, II, Administrative Director
Robert Fisher, Fiscal Officer

2/3/87-9

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE

DRAFT

Bill Version: CSSB 7 (HESS)

Publish Date: _____

REQUEST: _____

Revision Date: _____

Title: An Act authorizing capital

capital punishment....

Sponsor: Sen. Abood, Kelly, & Faiks

Requestor: Sen. Abood

Agency Affected: Public Safety

BRU: DPS Administration

Alaska State Troopers

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Kathy Niles, Admin Assistant

Phone: 465-4336

Division: Commissioner's Office

Date: 2/09/87

Approved by Commissioner: [Signature]

Date: 2-9-87

Agency: Public Safety

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

page _____ of _____

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : CSSB 7 (HESS)

Publish Date : _____

Revision Date: _____

Agency Affected: Department of Law

Title: "An Act authorizing capital punishment."

BRU: Prosecution

Sponsor: Sen. Abood

Components: Criminal Appeals and

Requestor: Sen. Abood

Special Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES				214.4	220.8	227.4
TRAVEL				42.5	43.8	45.1
CONTRACTUAL				120.7	124.3	128.0
SUPPLIES				14.4	8.7	9.0
EQUIPMENT				12.5	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING				404.5	396.7	409.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND				404.5	396.7	409.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME				4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: Feb. 6, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.

Date: Feb. 6, 1987

Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and it was not outweighed by mitigating factors. Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist to justify the death sentence; whether mitigating factors exist to outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death.

The Department of Law estimates that three or four first degree murder convictions, with aggravating factors sufficient to justify a death sentence (and where a sentence of death is imposed) will occur each year. The department also estimates it will probably attempt to obtain the death penalty in one or two additional first degree murder cases, where it may not be successful. The experience in other states is that capital cases require far more in the way of prosecution and investigative resources than ordinary murder cases. Because a human life is at stake, the defense of these cases is extremely vigorous and no expense is spared. It is entirely conceivable that the same level of state resources needed for the John Peel and Neil MacKay cases will be needed for many of the capital cases.

At the appellate level some contractual assistance from constitutional law experts will be needed to defend against initial challenges to the law based on due process, equal protection and the cruel and unusual punishment doctrine. Such challenges should be expected during the first one or two years after the provisions of this bill go into effect. Otherwise the bill provides for a straightforward appeals process to the Alaska Supreme Court, but capital sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues that are available to defendants in capital cases in the federal court system. That system includes original applications to the U.S. District Court, appeals from these proceedings to the U.S. Circuit Court of Appeals, and further appeals from both state and federal proceedings to the U.S. Supreme Court. Typically, appeals move both up and down through the federal system on remands for rehearings and additional fact finding. Consequently, it should be expected that years can pass before a capital sentence is carried out.

Based on these considerations, at least two full-time attorneys, together with paraprofessional and secretarial support elements, will be required to handle the additional work made necessary by capital cases, sentencing trials, and the appeals that result from death sentences. Other fiscal note costs include witness travel and subsistence (\$25.0) that will be required by the provision for sentencing trials. The cost for U.S. Supreme Court and U.S. Circuit Court of Appeals brief printing (\$30.0, each), which is a new required

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

expense, has also been included. The positions required by this bill will be located in the Office of Special Prosecutions and Appeals at Anchorage.

Substantial additional costs would be incurred by the Department of Corrections for facilities and staff for inmates who have been sentenced to death and are awaiting execution.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

Cost Summary

<u>Object</u>	<u>Atty IV</u>	<u>Atty IV</u>	<u>P/A II</u>	<u>Leg Sec I</u>	<u>Total</u>
<u>100</u> - Salaries & Benefits	70.6	70.6	42.5	30.7	214.4
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	70.6	70.6	42.5	30.7	214.4
 <u>200</u> - Travel					
Witness travel and subsistence for sentencing trials	10.0	10.0	5.0	-0-	
Travel instate for sentencing trials and out-of-state trial to defend appeals in the U.S. Circuit Court of Appeals and the U.S. Supreme Court.	7.5	7.5	2.5	-0-	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	17.5	17.5	7.5		42.5
 <u>300</u>					
Communications, copy & document production	3.6	3.6	2.4	2.4	
U.S. Supreme Court and U.S. Court of Appeals brief printing	15.0	15.0	-0-	-0-	
Expert witness	30.0	30.0	-0-	-0-	
Office space leases	4.1	4.1	3.3	2.2	
WP Maintenance	-0-	-0-	-0-	1.4	
Westlaw	1.2	1.2	1.2	-0-	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	53.9	53.9	6.9	6.0	120.7
 <u>400</u> - Commodities					
Office consumables	1.2	1.2	1.2	1.2	
Law Library	1.2	1.2	1.2	-0-	
New Position Supplies	1.5	1.5	1.5	1.5	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	3.9	3.9	3.9	2.7	14.4
 <u>500</u> - Equipment					
New Position Equipment	1.5	1.5	1.5	1.5	
Word Processor	-0-	-0-	-0-	6.5	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	1.5	1.5	1.5	8.0	12.5
 TOTAL	 147.4	 147.4	 62.3	 47.4	 404.5

Costs beyond FY 90 include a 3 per cent inflation factor.

Position Title Attorney IV		No. of Positions 2	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 24	Location EBA - Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	112,488			
Benefits	28,616			
Premium Pay				
Other				
Total Personal Services		141,104		
Travel		35,000		
Contractual		142,800		
Commodities		7,800		
Equipment		3,000		
Other				
Total Cost		329,704		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	329,704		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
Justification				
<p>This is to request two Attorney IV positions that will be required to handle capital punishment sentencing trials and to handle the appeals that arise from death sentences. Sentencing trials are expected to nearly double the time now required for murder trials. Substantial appeals work will also be required as defendants seek to have death sentences overturned in the federal court system. First degree murder trials require highly skilled prosecutors and that is why the department has requested the full working level prosecutor classification of Attorney IV.</p>				

**Request For
New Position**

Agency Department of Law
 BRIT Prosecution
 Component Criminal Appeals & Special Prosc.

Page 1 of 3
 Revised Date

FY 88

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 6A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Justification				
This paralegal assistant position is requested to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. Furthermore, the position will also assist in legal research necessary in defending against appeals seeking to overturn death penalty sentences. Allocation to the full-working paraprofessional level of Paralegal Assistant II is recommended.				
Type of Expenditure		Amount		
1	2	3		
Salary	32,424			
Benefits	10,093			
Premium Pay				
Other				
Total Personal Services		42,517		
Travel		7,500		
Contractual		6,900		
Commodities		3,900		
Equipment		1,500		
Other				
Total Cost		62,317		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	62,317		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Criminal Appeals & Special Prosc.

Page 2 of 3
 Revised Date

FY 88

Position Title Legal Secretary I			No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12		Location EBA - Anchorage	Election District 8	
Justification					
Type of Expenditure			Amount		
1	2	3			
Salary	22,716				
Benefits	8,033				
Premium Pay					
Other					
Total Personal Services		30,749			
Travel		-0-			
Contractual		6,000			
Commodities		2,700			
Equipment		8,000			
Other					
Total Cost		47,449			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	47,449			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

This Legal Secretary position is needed to provide office services support for the two attorneys and one paralegal who will be required to handle capital punishment trials and appeals that arise from death sentences. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs at both the state and federal levels, requiring full-time secretarial support.

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Criminal Appeals & Special Prosc.

Page 3 of 3.
 Revised Date _____

FY 88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSSB 7
Publish Date: _____

Revision Date: _____
Title: "An act authorizing capital
punishment, classifying murder...."
Sponsor: Senator Mitch Abood
Requestor: Senate Judiciary

Agency Affected: Dept. of Corrections
BRU: Southcentral Region
Components: Spring Creek C.C.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES			473.1	993.5	1043.2	1095.3
TRAVEL			4.0	8.4	8.8	9.3
CONTRACTUAL			17.5	36.8	38.6	40.5
SUPPLIES			4.0	8.4	8.8	9.3
EQUIPMENT			3.1			
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	501.7	1047.1	1099.4	1154.4
CAPITAL	-0-	2683.5	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2683.5	501.7	1047.1	1099.4	1154.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	2683.5	501.7	1047.1	1099.4	1154.4

POSITIONS:

FULL-TIME	-0-	-0-	20	20	20	20
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

It is not anticipated that the Committee Substitute to Senate Bill 7 will appreciably alter the cost of this legislation.

See Attached

Prepared by: Susie Riley, Program Budget Analyst
Division: Administrative Services

Phone: 465-3376
Date: Feb. 4, 1987

Approved by Commissioner: William W. Ludwig
Agency: Department of Corrections

Date: 2/4/87

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7

ANALYSIS

A. Assumptions:

Enactment of Senate Bill 7 would change the State law to permit capital punishment for a capital felony. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 5 or 6 years. The fact that the sentence is subject to review within 60 days by the State Supreme Court is not expected to appreciably affect the average length of time spent on death row since most cases proceed immediately to the federal courts. Therefore, we are predicting the need for a maximum of 20 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.
2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.
3. Two fixed guard posts will be required plus one post for roving patrol, and one post for shift supervisor due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 personnel.
4. Inflation is estimated at 5% per year.
5. The unit will be available for occupancy January 1989.

B. Estimated Costs

1. Capital Expenditures

- a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 20-cell complex.
- b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 7

- c. Assumes only the usual 6% equipment factor and does not include costs for whatever type of equipment would be appropriate for the specified method of execution.
- d. It is estimated that the cost will be \$300 per square foot, considering the fact that this unit must be more secure than other facilities under construction and the relatively small size of the building. No indoor recreation room has been projected.

<u>Area Identification</u>	<u>Square Footage</u>
Core Area (44' x 44')	1936
-Control Room, Sallyport	
-Visitation (Attorney, Secure)	
-General Movement	
-Storage	
-Mechanical Room	
Housing Wings	
(2 @ 37' x 47' + 200 sq. ft.)	3678
-20 Cells @ 80 sq. ft. gross each	
-Three Shower Areas	
-Two Movement/Indoor Recreation Area	
Execution Area	1000
Total (Gross)	6614/sq. ft.
	x \$300/sq. ft.
Cost of Structure	\$1,984,200
Secure Outdoor Recreation	
(2 @ 16' x 20')	
-640 sq. foot @ \$125/sq. foot	80,000
Total Building Cost	\$2,064,200
-30% Administration/Overhead	619,260
TOTAL PROJECTED COST	\$2,683,460

- 2. Salaries and related costs are detailed on "Request for New Positions" attached. It is estimated that Operating Costs would not begin until January of 1989 due to time needed for construction, so funds are included for only six months of FY89.

Position Title Correctional Officer II		No. of Positions 15	Range/Step 13B	Barg. Unit GGU
Time Status PFT	Staff Months 90	Location Seward		Election District
Type of Expenditure		Justification		
1	2	3		
Salary	249,885	This facility, even though attached to an existing institution, would require two additional fixed guard posts and one post for roving patrol, due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires at least 5 Correctional Officer II's. Three additional posts will require a minimum of 15 CO II's. The cost for one-half FY89 is as follows:		
Benefits	96,285			
Premium Pay				
Other				
Total Personal Services		346,170	\$16,659 Salaries 6,419 Benefits <u>\$23,078</u>	
Travel		3,000	200 Travel (training) 200 Standard Supplies (\$400 per year) 150 Equipment <u>\$23,628</u>	
Contractual				
Commodities		3,000		
Equipment		2,250		
Other				
Total Cost		354,420		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	354,420		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Department of Corrections
 BRU Southcentral Region
 Component Spring Creek Correctional Center

Page 4 of 5
 Revised Date

FY 88

SECTIONAL ANALYSIS FOR SB 7

"An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies." -

SECTION 1 - Amends AS 11.41.100(b) by making murder in the first degree a capital felony.

SECTION 2 - Amends AS 12.30.040(b) so that a person may not be released on bail either before sentencing or pending appeal when convicted of a capital felony.

SECTION 3 - Adds a new section (AS 12.55.117) which makes the death penalty subject to automatic review by the supreme court within 60 days after the sentence is imposed, but the 60 days may be extended by the court. If the sentence is upheld the execution would take place not less than 30 days nor more than 60 days after the date of the death warrant. The person sentenced to death could choose to be executed by lethal injection or by firing squad. The Department of Corrections would be responsible for adoption of regulations governing an execution.

SECTION 4 - Amends AS 12.55.125(a) by adding language which has a person convicted of a capital felony sentenced to at least 20 years, but not more than 99 years of imprisonment, or sentenced to death.

SECTION 5 - Amends AS 12.55 by adding new sections as follows:

Sec. 12.55.177. SENTENCING PROCEDURE FOR A CAPITAL FELONY. Sets up a separate sentencing procedure for capital felonies. After a jury convicts someone of a capital felony the court is required to conduct a separate sentencing proceeding before the trial jury as soon as possible. Sentencing before a jury would be required even if a jury trial has been waived or if the defendant pleads guilty. Evidence and character testimony and oral arguments could be presented as well as any aggravating or mitigating factor the court considers valuable for proving guilt or innocence, "regardless of the admissibility of the evidence under the exclusionary rules of evidence, provided the defendant has an opportunity to rebut hearsay statements." Would not authorize the introduction of evidence secured in violation of state or federal constitutions.

Sec. 12.55.179. SENTENCE IMPOSITION FOR CAPITAL FELONY. A death sentence could not be imposed unless the jury finds "at least one aggravating factor that is not outweighed by the mitigating factors and the jury recommends that the defendant be sentenced to death." If the death sentence is not

PAGE TWO
SECTIONAL ANALYSIS FOR SB 7

recommended by the jury, the court shall set a term of imprisonment.

Se. 12.55.180. AGGRAVATING FACTORS. Lists aggravating factors to be considered: deliberate cruelty involving sexual assault, kidnapping, or first degree assault; the death of two or more people; prior murder convictions; assassination of the President or Alaska's governor; murdering of law enforcement, judicial or corrections officer during the exercise of official duties; killing a child under the age of nine; contract murders; killing someone while avoiding arrest or during or after an escape.

Sec. 12.55.181. MITIGATING FACTORS. Lists mitigating factors to be considered: committed the offense under duress, coercion, threat, or compulsion; a youthful defendant was substantially influenced by an older person; the defendant was seriously provoked by the victim; the defendant assisted authorities to detect or apprehend other persons involved.

Sec. 12.55.182. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO DEATH. An execution could be stayed if a defendant is incompetent or pregnant. When the defendant was no longer considered to be incompetent or pregnant the execution would proceed.

SECTION 6 - Amends AS 22.07.020(a) by excluding prosecution for a capital felony in which the death sentence is imposed from the Court of Appeals.

SECTION 7 - Amends AS 22.07.020(b) by excluding prosecution for a capital felony in which the death sentence is imposed from the Court of Appeals.

SECTION 8 - Adds a new section to AS 33.30.

Sec. 33.30.095. ADMINISTRATION OF THE DEATH PENALTY. The Commissioner of Corrections will establish the procedure for execution of the death sentence and provides for the death sentence to be carried out in a state correctional facility.

This bill does not provide for an effective date (becomes law 90 days after governor signs bill).

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: Senate Bill 7
Publish Date: _____

Revision Date: _____
Title: "An act authorizing capital punishment, classifying murder...."
Sponsor: Senator Mitch Abood
Requestor: Senator Mitch Abood

Agency Affected: Dept. of Corrections
BRU: Southcentral Region
Components: Spring Creek C.C.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES			473.1	993.5	1043.2	1095.3
TRAVEL			4.0	8.4	8.8	9.3
CONTRACTUAL			17.5	36.8	38.6	40.5
SUPPLIES			4.0	8.4	8.8	9.3
EQUIPMENT			3.1			
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	501.7	1047.1	1099.4	1154.4
CAPITAL	-0-	2683.5	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2683.5	501.7	1047.1	1099.4	1154.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	2683.5	501.7	1047.1	1099.4	1154.4

POSITIONS:

FULL-TIME	-0-	-0-	20	20	20	20
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Susie Riley, Program Budget Analyst Phone: 465-3376
Division: Administrative Services Date: Jan. 27, 1987

Approved by Acting Commissioner: William W. Ludwig Date: 2/3/87
Agency: Department of Corrections

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

ANALYSIS

A. Assumptions:

Enactment of Senate Bill 7 would change the State law to permit capital punishment for a capital felony. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 5 or 6 years. The fact that the sentence is subject to review within 60 days by the State Supreme Court is not expected to appreciably affect the average length of time spent on death row since most cases proceed immediately to the federal courts. Therefore, we are predicting the need for a maximum of 20 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.
2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.
3. Two fixed guard posts will be required plus one post for roving patrol, and one post for shift supervisor due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 personnel.
4. Inflation is estimated at 5% per year.
5. The unit will be available for occupancy January 1989.

B. Estimated Costs

1. Capital Expenditures

- a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 20-cell complex.
- b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

- c. Assumes only the usual 6% equipment factor and does not include costs for whatever type of equipment would be appropriate for the specified method of execution.
- d. It is estimated that the cost will be \$300 per square foot, considering the fact that this unit must be more secure than other facilities under construction and the relatively small size of the building. No indoor recreation room has been projected.

e. <u>Area Identification</u>	<u>Square Footage</u>
Core Area (44' x 44')	1936
-Control Room, Sallyport	
-Visitation (Attorney, Secure)	
-General Movement	
-Storage	
-Mechanical Room	
Housing Wings	
(2 @ 37' x 47' + 200 sq. ft.)	3678
-20 Cells @ 80 sq. ft. gross each	
-Three Shower Areas	
-Two Movement/Indoor Recreation Area	
Execution Area	1000
Total (Gross)	6614/sq. ft.
	x \$300/sq. ft.
Cost of Structure	\$1,984,200
Secure Outdoor Recreation	
(2 @ 16' x 20')	
-640 sq. foot @ \$125/sq. foot	80,000
Total Building Cost	\$2,064,200
-30% Administration/Overhead	619,260
TOTAL PROJECTED COST	\$2,683,460

- 2. Salaries and related costs are detailed on "Request for New Positions" attached. It is estimated that Operating Costs would not begin until January of 1989 due to time needed for construction, so funds are included for only six months of FY89.

Position Title Correctional Officer II		No. of Positions 15	Range/Step 13B	Barg. Unit GGU																																																											
Time Status PFT	Staff Months 90	Location Seward		Election District																																																											
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**Request For
New Position**

Agency Department of Corrections
 BRU Southcentral Region
 Component Spring Creek Correctional Center

Page 4 of 5
 Revised Date

FY 88

Position Title Correctional Officer III		No. of Positions 5	Range/Step 15A	Barg. Unit GGU																																																		
Time Status PFT	Staff Months 90	Location Seward		Election District																																																		
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**Request For
New Position**

Agency Department of Corrections
 BRU Southcentral Region
 Component Spring Creek Correctional Center

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 Revised Date

FY 88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB 7

Publish Date: _____

Revision Date: _____

Title: "An Act authorizing capital punishment..."

Agency Affected: Public Safety

BRU: DPS Administration
Alaska State Troopers

Sponsor: Sen. Abood and Kelly

Requestor: Sen. HESS

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

JNR
2/3/87

Prepared by: Kathy Niles, Admin. Assistant

Phone: 465-4336

Division: Commissioner's Office

Date: 2/03/87

Approved by Commissioner: [Signature]

Date: 2/3/87

Agency: Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Chapter

4

CRIMINAL JUSTICE

Is the Death Penalty Just?

VIEWPOINT

1

"The death penalty will deter, in my firm opinion, some murders."

Arguments For the Death Penalty

Evelle J. Younger

On July 15, 1977, Evelle J. Younger, then California Attorney General, spoke before the Commonwealth Club of California. Younger's address was a strong plea favoring the reintroduction of the death penalty in California. The following viewpoint is an excerpt from that speech.

Consider the following questions while reading:

1. What does Younger mean when he says that his position in support of capital punishment "has to do with cost?"
2. List some of the arguments against the death penalty which the author says are invalid. Why does the author believe that they are invalid?
3. Do you agree with the author's arguments? Why or why not?

Evelle J. Younger, "Capital Punishment: The Peoples' Mandate", *Vital Speeches of the Day*, September 1, 1977. Reprinted by permission.

So far as I'm concerned, I'm human enough to think my position in support of capital punishment is a valid one, and simply stated, has to do with cost...

A few years ago, I strongly supported an amendment to the law making the sale of heroin a mandatory prison sentence, because absent that mandatory prison sentence, 80 percent of those who sold heroin were getting probation. And it's a little hard being Attorney General charged with the responsibility of enforcing laws relating to the sale of heroin, if those violating the law get probation in four out of five cases. The price isn't high enough in other words to discourage someone who wants to go into the business of selling heroin.

PRICE MUST BE HIGH

Ditto absent capital punishment, the price for killing someone under certain circumstances isn't high enough. For example, absent capital punishment, there is no reason for a rapist to leave his victim alive. Because a rape calls for life imprisonment, absent capital punishment, murder calls for the penalty of life imprisonment. So the rapist can murder his victim and eliminate a witness, and increase his chances of avoiding successful prosecution, all secure in the knowledge that if he is caught and punished, he hasn't increased the price of his crime one whit.

Ditto a person who holds up a filling station, and binds and gags the attendant. Absent capital punishment, there's no reason for the gunman to not execute the attendant. I'd like to give the gunman a reason for leaving the attendant bound, gagged and alive on the floor of the filling station.

That's my rationalization. That's my reason for strongly supporting capital punishment. I don't believe the death penalty will deter all murders. It won't even deter most murders. It will deter, in my firm opinion, some murders. And, when you're talking about deterring the murder of innocent people, I don't think you have to deal in thousands before you can justify what I believe to be a very realistic penalty...

PUBLIC SUPPORT

I want to identify some of those reasons for opposing capital punishment that I regard as unsupportable. I just think the arguments are not valid. For example, one of the favorite arguments for anyone who opposes capital punishment is that it really doesn't have public support. If people were asked a

question by someone taking a poll, they'll say 'I'm for capital punishment,' but if they're put on a jury where they have to act on it as a juror or a private citizen, they don't really support the concept.

That argument is absolutely and completely untrue. It's rather remarkable that the argument was stated so forcefully by our own state Supreme Court in 1972. They said in an attempt to rationalize their legislatively abolishing the death penalty in California, that although death penalty statutes remain on the books of many jurisdictions, the frequency of its application suggests that among persons called upon to carry out the death penalty, it's being repudiated with ever increasing frequency...

Capital punishment has been infrequently applied because Appellate Courts have repeatedly interfered. In 1972, when the California Supreme Court struck down this state's death penalty, 107 persons whom judges or juries had sentenced to death, including Charles Manson and Sirhan Sirhan, were spared. In that same year, the United States Supreme Court invalidated the as then applied death penalty laws nationwide, and approximately 600 persons under sentence of death could not be executed.

Before the California Supreme Court again struck down the last law in December of 1976, approximately 69 additional persons had been condemned to die. Therefore, it's hard to see how anybody could conclude the death penalty lacks public support...

A DETERRENT TO CRIME

Nearly all the evidence we have shows capital punishment is a general deterrent to deadly crime...

M. Stanton Evans, *Human Events*, February 3, 1980.

EQUAL JUSTICE

Another false concept that's been foisted on substantial portions of our population relates to the concept that only the

poor and friendless get the death penalty. Of course, the argument that juries are likely to inflict the death penalty on the indigent rather than the wealthy is just not valid.

Under California's death penalty law struck down last December, the death penalty was possible only for those first degree murderers in which aggravating special circumstances occurred, such as hired killings, killing more than one person, killing while committing rape, child molesting, kidnapping, robbery or burglary, killing a witness to prevent his testimony, or killing a peace officer in line of duty where proved beyond a reasonable doubt.

ELIMINATES REPEAT CRIMES

The idea that capital punishment "deters no one" does not explain the rapid rise of homicides in America while the death penalty was virtually outlawed. Deterrent or not, it effectively eliminates the possibility of a repeat crime.

Jenkin Lloyd Jones, *Human Events*, June 23, 1979

Seven of the inmates on death row were there because they agreed to pay others to commit murders. The occupations of the 69 persons on death row at that time were seven owners of businesses, one housewife, 35 skilled workers, eleven laborers, 12 unemployed and three unknown. Makes it pretty clear that California's judges and juries haven't been concerned just with the occupation or economic status of the killer in applying the death penalty.

They're really concentrated on the aggravated nature of the murder instead. I think it's also significant that of those 69 on death row, when the decision commuted their sentences to life imprisonment, 24 were on death row because they had killed a witness to avoid prosecution for some other crime. It's true there are not many millionaires on death row. That's true but not valid, because millionaires do not commit crimes that rate a position on death row. Millionaires do not hold up filling stations and execute the attendant.

PAROLE A SAFETY VALVE

Another argument, a favorite of those who oppose the death penalty, is that we can accomplish the same thing by life imprisonment without possibility of parole. There's several things wrong with that. There is no such thing in our nation or in our state as true life imprisonment, nor should there be.

The governor has, and always should have, the power to commute. In any civilized system, the chief executive has to have the power to pardon. That's the safety valve that will work when everything else fails. So I wouldn't be in favor of, if we could, and it would be impossible, to try and take away the governor's power to commute. Given that power to commute, there's no such thing as life imprisonment. You simply substitute the governor's clemency hearing for a parole hearing now...

Also, another argument for not having in your system the concept of life imprisonment without parole, is that there is always the possibility of escape. Now those who favor life imprisonment without possibility of parole minimize that.

There's one other reason why life without possibility of parole is not a realistic alternative, and that is that you cannot run a prison without giving those in prison some hope of eventual release. Heavens knows it's bad enough in prison now...If everyone in prison, or even a substantial portion, were there literally for life, there'd be no way you could maintain any degree of order.

The one thing that makes most prison communities manageable now is the fact that the vast majority of persons are on good behavior looking forward to that day when someone says, "O.K., we're going to put you on parole."

Of course, there are arguments to the effect that mistakes are always possible, and if a person is executed there is no way to correct the mistake. Well, maybe. But as a practical matter, it's impossible, inconceivable that an innocent person would ever be executed.

The system tilts heavily, and properly so, in favor of a person accused of crimes. We have so many checks and protections now that didn't exist 20 years ago. The problem today is not that we are going to convict an innocent person of murder, the problem is how do you convict those that are admittedly guilty?

"One of these days we are going to look at the death penalty and strike it from our statutes."

Arguments Against the Death Penalty

Clinton T. Duffy

Clinton T. Duffy is one of the most prominent and respected penologists in the U.S. The son of a prison guard at San Quentin prison, "Duffy of San Quentin" began his corrections work there as secretary to the warden. His career includes 11 years as warden of San Quentin, followed by three terms on the California state parole board. Mr. Duffy, a staunch opponent of the death penalty, has served as vice-president of the National League to Abolish Capital Punishment. The following viewpoint is taken from a 1978 interview of Duffy by James Breig.

Consider the following questions while reading:

1. Why did Duffy's conversations with condemned prisoners lead him to conclude that capital punishment does not deter murder?
2. Do you agree with Duffy that public executions would lead to the abolition of the death penalty? Why or why not?

James Breig interviewing Clinton T. Duffy, "Does Killing Criminals Stop Crime?" May 1978. Reprinted with permission from *U.S. Catholic*, published by Claretian Publications, 221 W. Madison Street, Chicago, IL 60606.

Many people who support capital punishment rely on the argument that it deters crime. What's been your experience on that?

I have talked with every man and the two women who came under my jurisdiction to be executed and asked them if they thought about the death penalty prior to the commission of their act. I have yet to have one tell me they thought about it. They would say it was a crime of passion, jealousy, rage, or hatred; that it was temporary insanity; or, in a few cases, 'I didn't expect to get caught.' I have also talked to hundreds of lifers in the big yard and got the same answers from them and from second- and third-degree murderers and potential murderers, people who committed crimes with weapons.

Why are you opposed to the death penalty?

The number-one reason can be put down in a very short sentence, easy for everyone to understand: it is wrong to kill. It is wrong for these people to have killed in the community, but it is also wrong for the state to premeditate another murder. Two wrongs do not make a right.

Also, it is not equal justice. I could take you into San Quentin, Sing Sing, Folsom, Joliet, you name it, and I'll find many men and women whose crimes are just as bad — and sometimes worse — as the crimes of those on condemned row...

You can't bring back the victim either, many people argue. I am sure you have had people accuse you of being more concerned for the criminal than for the victim.

I do think of the victims. The victims are important people. Their lives should not have been taken from them. I've talked with the loved ones of victims — parents, wives, children. I've counseled them, tried to direct and guide them; I've prayed with them and cried with them. I thoroughly understand that when someone you know is brutally murdered you feel that the person who did it should be executed.

But you have to look at the other side also. If your son or daughter or husband or friend committed a homicide, would you say, "Execute my son or wife or mother or father"? No, you would not. People will say, "But my loved ones would not commit a murder." That's what the relatives of people on condemned row have told me, too.

Much of your opposition to capital punishment comes from your personal experience. When did you witness your first execution?

My first official one was about 1930 when I had to participate with the warden in a hanging.

But I was involved in hangings almost as a baby because we lived within a block of the main entrance of the prison. We knew when there was going to be an execution because the prisoners were not out in the yard. I learned early about the things that happen when people are hanged.

DEATH-ROW CENSUS (APRIL 20, 1981)

TOTAL number of persons under sentence of death: 792

By race:	Black	322	40.66%
	Hispanic	35	4.42%
	Native American	4	.50%
	Asian	2	.25%
	TOTAL minority	363	45.83%
	TOTAL white	429	54.17%
		<u>792</u>	<u>100.00%</u>

By sex:	Male	784	99%
	Female	8	1%

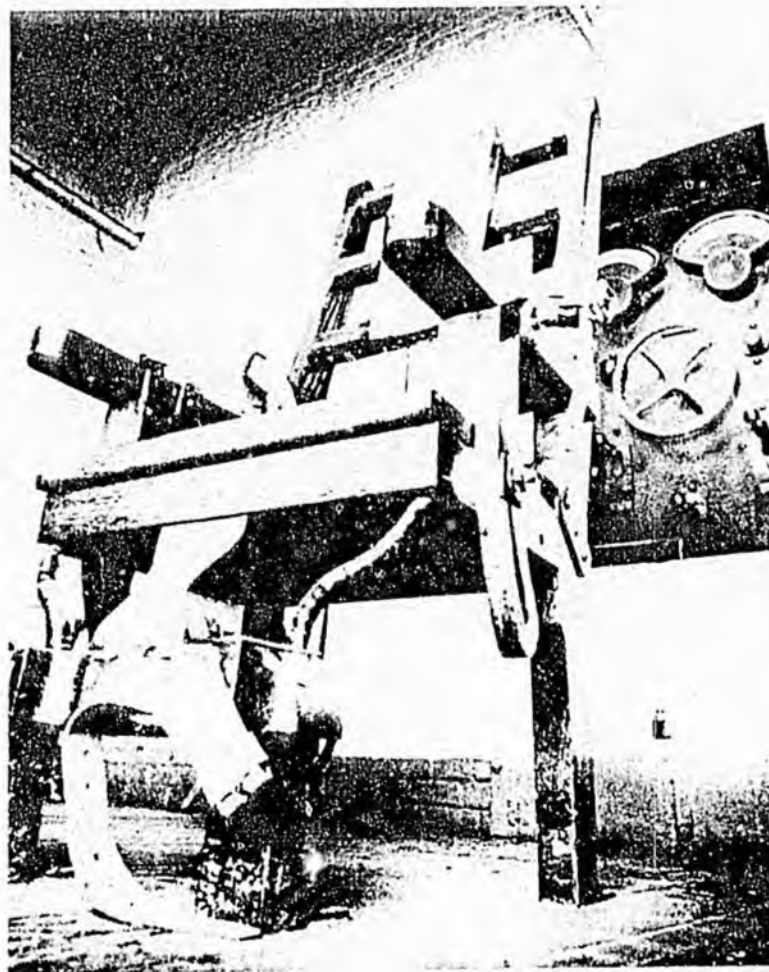
By crime:	Aggravated murder	791
	Forcible rape of a minor	1

Statistics compiled by the National Coalition Against the Death Penalty.

What happens when a man is executed?

The executioner for a hanging straps the prisoner's arms to his side with a belt around the middle. They walk up the 13 stairs and strap his feet together. A black cap is placed over his head. The noose is slipped on and hitched up around his left ear.

ELECTRIC CHAIR: TRENTON STATE PRISON, NEW JERSEY



Religious News Service Photo

The trap is sprung, and the man hits bottom. He perspires, he wheezes, he squeals, he wiggles, he kicks, he urinates, he defecates. Droppings fall to the floor. The stench is terrific, and witnesses pass out. Between 8 and 12 minutes later, according to the vitality of the prisoner, he is pronounced dead.

Electrocutions are similar. But his head is shaved, and his pants leg is split. When he's strapped down, electrodes are placed on his calf and head. The warden throws the switch, and the body cringes, pulls, fights. The eyes pop, and the tongue swells. The skin swells almost to the breaking point, and many times the body smells like cooked meat.

The gas chamber is not as gruesome only because the body doesn't smell like cooked meat. All else is the same.

They are all gruesome. There's no easy or humane way to kill people whether it is done by the murderer or the prison or during war...

ABOLISH CAPITAL PUNISHMENT

We believe that in the conditions of contemporary American society, the legitimate purposes of punishment do not justify the imposition of the death penalty. Furthermore, we believe that there are serious considerations which should prompt Christians and all Americans to support the abolition of capital punishment.

U.S. Catholic Conference statement on capital punishment.

If people did what you did, do you think they could still favor capital punishment?

If we held electrocutions in Times Square, New York would outlaw the death penalty. If we held firing squads in front of the Mormon Tabernacle in Salt Lake City, Utah would abolish the death penalty. If we gassed people in the bandstand of Golden Gate Park in San Francisco, California would abolish the death penalty.

One of these days we are going to look at the death penalty

and strike it from our statutes. When the gas chamber, hangman's noose, and the electric chair are done away with, as were the rack, screw, burling at the stake, drowning, throwing to the lions, and other barbaric methods, then we will all be the better for it.

What would you do with murderers?

Life imprisonment. Let them die in prison if necessary. People ask, "Why should we keep these kinds of people in prison all their lives at our expense when we could execute them and be ahead in money?" That's not true. From the time of arrest, conviction, and execution versus arrest, conviction, and death in prison naturally, it costs a lot more to execute. A survey was made, and it revealed it costs \$20,000 more to execute.

The feeling is, though, that murderers go free.

I made a survey of California prisons and found that 86 lifers had died in prisons over a ten-year period. All murderers are not released. Many die in prison and should because they are too dangerous.

But many are ordinary persons who can change enough to make it in the community. A man called me a while ago who had worked for me while I was warden. He had been out for 38 years. He is a good family man, a worker; he pays his taxes and bills and enters into community activity. He had been a lifer who served 18 years.

If capital punishment doesn't deter crime, what would?

Building a better child. We'd better develop a system to make bad kids into good ones who will become productive people who, in turn, will raise good children. We need a prevention program...

My plan would cost millions and would save billions, but more important, it would save human beings.

Another way out is to train better parents. I often ask people, "Why didn't your kids or mine commit murders?" The reason is that where there is love, understanding, religion, discipline, and direction, rarely will you have a delinquent child or an adult criminal.

"History and present conditions in the world show that murder and homicide are most prevalent where the punishment for them is moderate and limited."

The Death Penalty: A Necessary Evil

William R. Cannon

William R. Cannon is bishop of the Atlanta Area of the United Methodist Church. Essentially, he believes that capital punishment is an evil. But he writes that when the death penalty is "assessed in terms of the interests of society as a whole," it becomes a necessary evil which we must learn to endure.

Consider the following questions while reading:

1. How does Bishop Cannon compare divorce to killing to protect a loved one?
2. Which great Christian thinkers does the Bishop refer to? What was their attitude toward capital punishment?
3. What does the author suggest as a possible alternative to capital punishment?

William R. Cannon, "An Abhorrent But Necessary Evil". Reprinted from the January 1980 issue of *engage/social action* magazine, copyright 1979 by the United Methodist Board of Church and Society.

Capital punishment is an evil. The very thought of it is abhorrent to me.

However, in the world in which we live, we do not always have a choice between absolute good and absolute evil. It is not simply a matter of deciding between unequivocal right and wrong. More often than not, our only choice is between the greater and the lesser of two evils.

Marriage is a divinely ordained institution, and to dissolve a marriage by divorce is evil. Even so, divorce may be the only means possible to save a husband and a wife from destroying themselves. It is much less wrong, therefore, to permit the divorce than to accept its alternative. Almost any morally responsible person would kill a criminal if this were the only means he had of preventing the criminal from killing his friend or loved one; moreover, Christian conscience would exonerate him for his act, though it would not term the deed "good." Christian conscience recognizes that it is far less evil to kill a criminal than it is to stand idly by and permit him to kill someone else.

The Well-being of All the People

Capital punishment cannot be evaluated only in terms of the person on whom it is inflicted, that is, on the condemned criminal alone; instead, it must be assessed in terms of the interests of society as a whole, in terms of the well-being of all the people, of whom the criminal is but one. It is a lopsided and distorted moral evaluation when our only concern is the action we take toward a murderer, with no consideration whatever of the action the murderer took against the person he murdered. If capital punishment is abolished, warned an eminent French jurist of an earlier generation, "the law will guarantee the lives of none but murderers."

We covet a society where capital punishment is unnecessary because the strength of the law is so great that crimes of violence such as murder would be impossible. A few decades ago we thought we were making such progress in handling crime that we could afford to abolish capital punishment. Indeed, it was the opinion of many, and I was one of them, that capital punishment had become an anachronism because crimes commensurate with such punishment seemed to be decreasing in number and that the form of punishment that would be inflicted for the commission of the crime really had no bearing on whether the crime would be committed. Many sociologists still contend that capital punishment is no deterrent whatever to homicide and murder.

But both history and present conditions in the world show



William Cannon

that murder and homicide are most prevalent where the punishment for them is moderate and limited. They are rare, indeed, where their punishment carries the finality of death. When I wrote this article, on November 1, 1979 the last count of homicides in Atlanta, Ga., during 1979 were 203. Atlanta has a population of approximately 1.75 million people. The number of homicides in Athens, Greece, for a comparable period of time was only three persons. The population of Athens is about twice that of Atlanta.

The difference between the two cities is that in Greece the system of criminal justice is swift and severe, while in Georgia it is slow, inexact, and lenient. Convicted murderers have been released on parole, according to reports in *The Atlanta Journal*, in as short a time as three years, and one man who buried a college girl alive for ransom, and almost cost her her life, was set free after only a few years imprisonment on condition that he never return to Georgia. The parole board was willing to take a risk on him—somewhere else.

EXECUTION PREVENTS FUTURE VICTIMS

"It is better by far that a murderer be executed than that still another person in the future be victimized by his crime."

The Welfare of the Community

I agree with the assessment of a panel of Scottish jurists: "It would not be for the interests of humanity that the well-conducted and useful members of the community should be more exposed to deprivation of life by murder in order that the lives of the murderers may be saved." It is better by far that a murderer be executed than that still another person in the future be victimized by his crime. Always and invariably the welfare of the community takes precedence over that of the individual, whose rights can be defined and protected only in relationship to the rights of all others with whom he dwells. Since a person exists only within a community, whatever rights he has, states St. Thomas Aquinas, are derived from those of the community.

St. Thomas therefore insists that the community has the right to "cut away" a diseased member from its collective body. Since it is a moral body, a member may be amputated from the body because of heinous moral defects.

Justice is the basic moral requirement of any viable society; therefore, penalties must be commensurate with crimes. If a penalty is more severe than the crime, it then becomes a crime itself. If it is less severe, it mocks justice by disregarding the rights and welfare of the person or persons against whom the crime was committed, and it endangers the moral order of society. The death penalty, which is ultimate, is exactly commensurate with an ultimate crime such as murder. Willfully to inflict death upon another is to invite death on one's self.

St. Augustine taught that civil authority is obligated to impose the death sentence on a murderer and that in executing him acts impartially and without malice to therefore free from guilt. Indeed, according to Augustine, in a Christian commonwealth, the state acts in such matters for God himself.

The great doctors of the Church, along with her other major theologians, have supported capital punishment since the beginning of organized Christianity. The proscription of capital punishment by Christian bodies through their ecclesial pronouncements, such as our own United Methodist "Social Principles," is therefore a recent and contemporary development. It is not supported by tradition and history.

RELATION TO HOMICIDE RATE

As long as capital punishment was viewed as a realistic prospect by violent criminals, the homicide rate in this country was relatively low, and falling. But as capital punishment was phased down and at last abolished in the 1960s, the homicide rate turned around and began moving rapidly upward.

M. Stanton Evans, *Human Events*, February 23, 1980.

Mercy Must Be Based on Justice

It is based, of course, on our laudable concern for compassion and mercy and forgiveness. But mercy is actually unmer-

ciful unless it is based on justice. And forgiveness is hollow and meaningless unless there is a genuine desire on the part of the wrongdoer to be forgiven. The Cross symbolizes to all of us God's own sense of justice as well as his mercy. Jesus took upon himself the guilt of our sins, and he died for them on Calvary. God can afford to be merciful only because, first, he is just. Even so, the mercy of God is dependent upon our willingness to receive it. Before he can forgive us our sins, we must ask to be forgiven. When we repent he expects us to bring forth "works meet for repentance."

Applied to criminal justice, this principle means that before a murderer can be properly released from the due punishment of his crime, he must show clear signs of genuine penitence and be willing in some way to compensate for the loss he has inflicted. If society should devise a means whereby the penitent murderer could do constructive work for the rest of his life, with the benefits of his labor accruing to the family of his victim, this would be far better than capital punishment.

But merely to abolish capital punishment, with no corresponding just compensation for crime as a substitute for such punishment, is not a virtue but a vice, not a moral achievement but a heinous sin, not a support to the well-being of society but a dire threat to its very existence.

When a murderer repents and desires to make reparations, then his life should be spared and he should be given another chance. Therefore, we should exert our efforts as a church in trying to convert criminals, rather than in defending them.

We mock justice when we strain every means at our disposal to keep alive some hardened and unrepentent murderer on death row, but do little to protect the innocent and the helpless against his crimes.

Like the voice of the blood of Abel, the voice of their blood cries to Almighty God from the ground.

"If we deal with persons who have 'brutally killed' someone by killing them, we encourage dealing with all human problems in this harsh and summary manner."

The Death Penalty: A Barbaric Relic of the Past

Jack M. Tuell

Jack M. Tuell is bishop of the Portland Area of the United Methodist Church. He views capital punishment as an unchristian holdover from a brutal past. With the death penalty, we move "away from humanness toward brutality," he writes.

Consider the following questions while reading:

1. What three reasons does Bishop Tuell offer for calling capital punishment a "peculiar form of killing?"
2. Why does the author believe that capital punishment brutalizes our society?
3. Compare Bishop Tuell's arguments to others in this chapter opposed to capital punishment.

Jack M. Tuell, "A Barbaric and Unchristian Relic of the Past". Reprinted from the January 1980 issue of *engage/social action* magazine, copyright 1979 by the United Methodist Board of Church and Society.

I BELIEVE THAT CAPITAL PUNISHMENT IS MORALLY WRONG AND BASICALLY UNCHRISTIAN

My belief here is not based on an absolutist interpretation of "Thou shalt not kill," although that commandment carries great weight. I am not prepared to say that killing is never justifiable. There may be situations of self-defense, or defense of others, where killing can be justified as the lesser of two evils. As one who does not profess to be a pacifist in an absolute sense, I believe that it is possible to have situations where war is justifiable, although they would be extremely limited.

But capital punishment is a peculiar form of killing. First, it could not be more pre-meditated — it is done coolly and deliberately, with certain form and ceremony, to a helpless incarcerated person.

Second, it purports to make every citizen of the state a participant in the killing, since an order of execution is made by a judge after a trial bringing charges by "the people" against an individual. When a hangman springs the trap, he does it for all of us.

Third, unlike war, where killing is done in the name of securing some ideological objective, capital punishment is based almost solely on retribution and revenge. Many honest proponents will grant this freely, recognizing that deterrence cannot be proved.

I resent, in other words, being made party to the premeditated killing of a person out of revenge. I resent that as a person and as a citizen of a country of which I am proud and which professes to be a nation "under God," a nation built upon Christian values. I believe such killing accomplishes nothing toward achieving the goals of our society, and is, in fact, destructive of them.

I BELIEVE THAT CAPITAL PUNISHMENT DOES NOT DETER CRIME

Without going into the various studies that have been made here, it would appear to be clear that no one has established that capital punishment actually deters other people from killing. But in line with my non-absolutist position mentioned earlier, I would have to say that if an objective study could conclusively demonstrate that the killing of a murderer would indeed prevent the murder of two or three innocent persons in the future, I would feel obliged to re-study the whole question.



Jack M. Tuell

I might still come down against capital punishment, but it would have to be in the light of the new findings of the study.

However, I would have to say that the possibility of such a study emerging is very remote. In the meantime, I must act on the assumption, which is actually fairly well documented, that capital punishment does not deter.

DEATH PENALTY INHUMANE

Thus we would regard it as barbarous and inhumane for a criminal who had tortured or maimed a victim to be tortured or maimed in return. Such a punishment might satisfy certain vindictive desires that we or the victim might feel, but the satisfaction of such desires is not and cannot be an objective of a humane and Christian approach to punishment.

U. S. Catholic Conference statement on capital punishment.

I BELIEVE THAT CAPITAL PUNISHMENT BRUTALIZES OUR SOCIETY

The church has sought to be a "civilizing" agent in society, helping government to deal more civilly and humanely with people. This grows out of the church's respect for all persons as beings made in the image of God, and as those for whom Christ died. Capital punishment is a resort unworthy of those who see divine value in human life. It copies the behavior of the worst tyrants and brutes of history in their methods of dealing with those who offended them.

If we deal with persons who have "brutally killed" someone by killing them, we encourage dealing with all human problems in this harsh and summary manner. Thus, our whole society moves away from humanness toward brutality.

CAPITAL PUNISHMENT IS IRREVOCABLE

Judges and juries, like all human beings, make mistakes. From time to time we read accounts of how someone has been

imprisoned ten years for a crime when another person confesses to it. What does society do then? It frees the person with apologies, and may even try to make some payment of money to the person to make up for the horrible mistake. We all recognize how inadequate such an effort is, but *at least the person is still alive.*

In capital punishment, however, we take an absolutely irrevocable step. The imperfect methods of human justice through which we seek to ascertain guilt or innocence are far too fragile to dare to support the imposition of death, the irrevocable penalty.

DEATH PENALTY IS EXTERMINATION

Capital punishment means taking living, breathing men and women, stuffing them into a chair, strapping them down, pulling a lever, and exterminating them.

Anthony G. Amsterdam, Professor of Law, Stanford University.

CAPITAL PUNISHMENT DOES NOTHING CONSTRUCTIVE FOR THE FAMILIES OF VICTIMS OF CRIME

The charge is often made by those who favor capital punishment that those who oppose it "care more about criminals than they do about victims and their families." That is absolutely not true. I care deeply about the suffering of the victims of crime, but killing the perpetrator of the crime does nothing to bring back the victim.

What should bring the greatest solace to the families of murder victims? Since the victim cannot be brought back, it has to be the assurance that the society is taking steps toward a future in which violent crime will be diminished, so that others will not have to suffer the agonies of loss that they have known. That is not going to happen if the state itself continues to be lethally violent.

I have not included here the argument that the death penalty discriminates against blacks and the poor. It does, but this goes more to the need for reform of our social and penal systems than it does to the validity of the death penalty. To put it another way, the fact that an undue preponderance of persons actually executed are black and/or poor does not so much invalidate the death penalty as it does the system which allows that to happen.

POOR CONDEMNED NOW AS IN PAST

Now, as during Roman times, capital punishment is nearly always reserved for the outsider, the feared and hated in our society. The poor and powerless are condemned because of who they are as much as for what they may do contrary to the law.

L. Michael Jendrzeczyk, *The Christian Century*, March 30, 1977.

The mood of this country has been changing. An illustration of this: In 1963 the people of Oregon voted in a referendum to abolish the death penalty. In 1978 they voted 2-1 to restore it. What had happened? A whole series of events occurred that have people running scared about crime and its possible effects upon them. Not only are people scared, but they are frustrated because they do not know what to do to improve the situation. In their fear and frustration "getting tough" seems the only alternative. Thus, the death penalty comes into favor.

The times call for a renewed and imaginative effort for creative and redemptive ways to deal with the admittedly serious problems of crime. It is a time for all Christians to reaffirm their opposition to the death penalty as a barbaric and un-Christian relic of the past.

"The return of capital punishment for murder would enhance the respect for innocent human life."

The Death Penalty Means Respect for Life

John D. Lofton, Jr.

John D. Lofton, Jr. is a columnist for United Feature Syndicate. His editorials appear regularly in newspapers throughout the U.S. In the following viewpoint, he offers a defense for capital punishment which is rarely encountered. He writes: "What really fosters respect for human life is the ultimate penalty for the taking of this life — the death penalty."

Consider the following questions while reading:

1. Describe the Campbell murder.
2. How does the Campbell murder relate to the author's belief that the return of capital punishment would increase "the respect for innocent human life?"
3. Do you agree with the author? Why or why not?

John D. Lofton, Jr., "Return of Death Penalty Means Respect for Life", appeared in the *Manchester Union Leader*, March 25, 1980. ©1980 United Feature Syndicate, Inc.

"We cannot foster respect for human life while giving the state the license to destroy it." This is what New York Gov. Hugh Carey said earlier this year when, for the fourth time in four years, he vetoed a bill to reinstate capital punishment. But I seriously question the correctness of Gov. Carey's rationale for opposing the death penalty.

MASS MURDERER

In Chicago, a jury of seven men and five women have convicted John Wayne Gacy, the worst mass murderer in the history of the United States. Gacy was judged to have been guilty of killing and sexually assaulting 33 boys and young men. Twenty-eight bodies were found in the crawl space under Gacy's house, another body was found beneath his garage, and four more of his victims were discovered in the Des Plaines River. Eleven of these individuals have never been identified.

Terry Sullivan, an assistant state's attorney who prosecuted him, described Gacy as an "evil, vile and diabolical man, a sadistic animal" who had "snuffed out 33 lives like they were candles." Gacy grinned as Sullivan called him "the worst of all murderers," a man who is "truly a predator."

PENALTY MAINTAINS HONORABLE LIFE

The death penalty does not cheapen life — it increases the value of life and elevates the importance which we attach to it. Imposition of the death penalty underscores society's interest in maintaining honorable life, rather than dishonorable life.

Marlene W. Lehtinen, *USA Today*, January, 1973.

Following Gacy's conviction, the brother of one of his 15-year-old victims, Kenneth Priest, declared:

"For the first time in 15 months, I am happy, but it's not over. None of us will be satisfied until he is put to death. He destroyed my life, my family's life, my girlfriend's life, my

brother's life. This involved literally thousands of people whose lives have been shattered, not just my brother's alone... To leave Mr. Gacy with a prison sentence is not enough."

Eugenia Godzik, whose son was another Gacy victim, said that she never thought for a moment that Gacy was sane. "He couldn't be, to have done that to so many boys. If he got the chair right away it would be fine," she said.

MURDERER SHOULD FORFEIT LIFE

When murder no longer forfeits the murderer's life (though it will interfere with his freedom), respect for life itself is diminished, as the price for taking it is.

SENSELESS KILLING

In Oroville, Calif., two young white men, Marvin Dean Noor and James T. McCarter, have been found guilty of stalking and killing a deaf black man, Jimmy Lee Campbell, when they couldn't find any animals to shoot. Noor and McCarter, who had been drinking heavily and smoking marijuana, murdered Campbell with a .30-.30 Winchester rifle. The two killers were sentenced to 25 years to life in prison, with no parole.

A witness to the Campbell murder, Dani Lee Shope, described the actions of Noor and McCarter after they had unsuccessfully looked for even a deer or a cow to shoot:

"Dean and Jim started talking about getting dark meat. They were talking about getting blacks, otherwise niggers, critters, animals, dark meat." After spotting "a colored man," Shope said Noor told McCarter to shoot him and he did. The three then returned to Oroville, where Noor shot at, but missed, a black woman. Shope testified:

"Jim said something about it being a girl, and Dean said, 'What's the difference? Critters is critters!'"

Now, to return to Gov. Carey. Can it logically be

argued that if John Wayne Gacy and Marvin Dean Noor and James McCarter were put to death, this would somehow not foster respect for the human lives these individuals snuffed out? Is Kenneth Priest wrong when he says Gacy should die? Is Mrs. Godzik wrong when she agrees with Priest? I think not.

No, it seems to me that what is true is the exact opposite of what Carey argues: What really fosters respect for human life is the ultimate penalty for the taking of this life — the death penalty. As Ernest van den Haag observes in his excellent book, "Punishing Criminals: Concerning a Very Old and Painful Question" (Basic Books, 1975):

A LOSS OF NERVE

"No matter what can be said for the abolition of the death penalty, it will be perceived symbolically as a loss of nerve: social authority no longer is willing to pass an irrevocable judgment on anyone. Murder is no longer thought grave enough to take the murderer's life, no longer horrendous enough to deserve so fearfully irrevocable a punishment. When murder no longer forfeits the murderer's life (though it will interfere with his freedom), respect for life itself is diminished, as the price for taking it is. Life becomes cheaper as we become kinder to those who wantonly take it. The responsibility we avoid is indeed hard to bear. Can we sit in judgment and find that anyone is so irredeemably wicked that he does not deserve to live? Many of us no longer believe in evil, only in error or accident. How can one execute a murderer if one believes that he became one only by error or accident and is not to blame? Yet if life is to be valued and secured, it must be known that anyone who takes the life forfeits his own."

The return of capital punishment for murder would enhance the respect for innocent human life. What would foster disrespect for this life would be the abolition of the death penalty, which would tell all future potential murderers: "Don't worry — regardless of how many people you murder, you'll never have to fear losing your own life." This is the real anti-life position.

"If execution is such a deterrent, we ought to televise executions on all the networks so everyone could be taught a lesson."

The Death Penalty is Judicial Murder

Lee A. Belford

Lee A. Belford, an Episcopal clergyman, is head of the Religion Department, New York University. President of the Churchman Associates, Dr. Belford has been a staunch opponent of capital punishment. In the following viewpoint, he offers several arguments in opposition to the death penalty, concluding with his strongest indictment: "Capital punishment is nothing less than judicial murder."

Consider the following questions while reading:

1. List the countries which do not have capital punishment.
2. List and explain three of the author's arguments in opposition to capital punishment.

Lee A. Belford, "Judicial Murder", *The Churchman*, October, 1976. Reprinted with permission of the publisher.

The Supreme Court has declared that capital punishment is permissible provided there are certain judicial safeguards. After due consideration we can decide quite deliberately that some people have no right to live. The thought is shocking. Austria, Belgium, Greenland, the Netherlands, Switzerland, Sweden, Portugal, Great Britain, Italy, Norway, Finland, Denmark and even some of the Latin American countries that we patronize have declared that capital punishment is null and void — they have dropped it. But this country, my country that I love, has ruled that we may legitimately take the life of fully conscious human beings...

IRREVERSIBLE PUNISHMENT

My first argument in opposition to capital punishment is that occasionally an innocent person is killed for a crime he did not commit. Some criminologists have suggested that 5% of those convicted of murder are innocent. Perhaps not more than 3 in every 100 are innocent, or perhaps not more than 1 in 100 or even 1 in 300, or 1 in 1,000 are innocent. Of course, there are those who say that for the sake of justice and the welfare of all, it is inevitable that occasionally an innocent person should become a victim. Innocent people are the victims of accidents, innocent people die in wars, innocent people are the victims of murder. However, I believe that to kill someone through judicial process when he is actually innocent is a case quite apart.

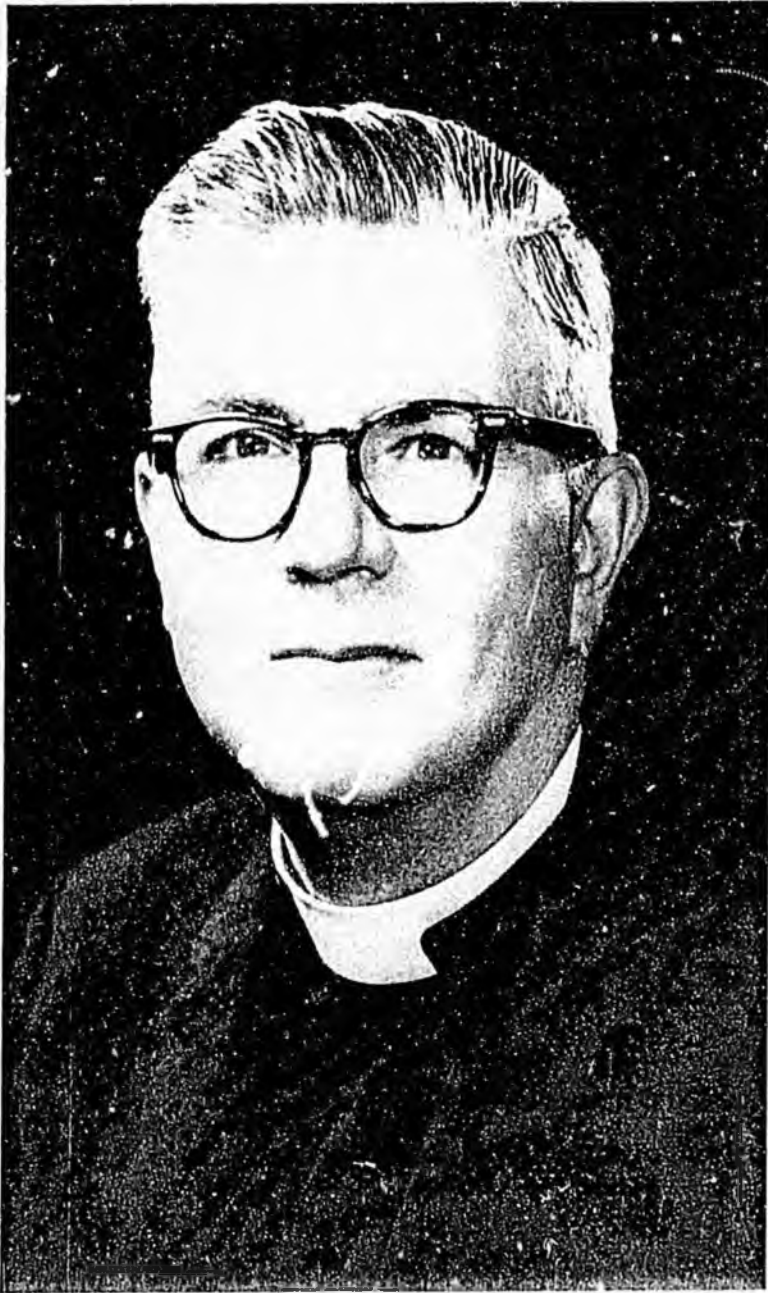
CAPITAL PUNISHMENT IS REVENGE

"All we really want from capital punishment is revenge. But still, we want to dispose of the evidence of our outrage as soon as the furor has been unleashed."

Kate Stanley, *Minneapolis Star*, January 29, 1981.

THE POOR SUFFER MOST

My second argument in opposition to capital punishment is that it is administered unfairly. We electrocuted the Rosenbergs. I think that they thought what they were doing was for



Lee A. Belford

the social good. Lt. Calley intentionally and deliberately killed innocent men, women, and children at My Lai. But he was exonerated with a slap on the wrist. Harry K. Thaw carefully planned the murder of Stanford White because of a woman's affections and Thaw was sentenced to jail. Loeb and Leopold plotted to kill the little Frank boy because they thought it would be fun. Were they executed for this crime? Of course not! Loeb and Leopold had money, just as Harry Thaw had money. Any one with enough money to hire good lawyers can always beat the rap — a few years' imprisonment is enough. Justice is supposed to be blind. Justice has also learned to blink an eye.

Until executions were temporarily terminated in 1967, 4,000 people had died by capital punishment in the preceding 30 years. How many had graduated from high school? How many were from middle class families? How many had enough money to hire a good lawyer? These are rhetorical questions. Lewis E. Lawes, one-time warden of Sing-Sing prison, said that those who are executed are invariably the poor, those most in need, those to whom society has been least generous. It seems to me that it is grossly unfair that those whom society has most victimized are quite consistently made the final victims.

THE DETERRENCE MYTH

The most commonly given justification for capital punishment is that it deters others from committing brutal murders. There are those who claim that although the selection of victims is never completely fair, we still need victims to deter others from committing murder. But are murders committed by people who sit down and consider rationally the consequences of their contemplated action? Thieves were hanged at one time as both punishment and as a deterrent. A little nine-year-old boy not much more than a century ago was executed as an example to other little boys. Pickpockets in England until the 19th century were hanged. A public hanging was a great day for pickpockets. People pushed and shoved to get a better view of that man on the gallows. What a superb opportunity for the pickpocket plying his trade.

If execution is such a deterrent, we ought to televise executions on all the networks so everyone could be taught a lesson. And the televising should come in prime time so that all the little children of our land could learn that murder does not pay. But, deep in our hearts we know that executions degrade the meaning of life. No good lesson is ever learned that way. The Supreme Court in its recent decision declared that the evi-

**CHURCH LEADERS PROTEST
DEATH PENALTY
POINT OF THE MOUNTAIN, UTAH**



Religious News Service Photo

dence — statistically and otherwise — is insufficient to establish deterrence...

EXECUTIONS ARE STUPID

Our children will cease to execute murderers because executions are a self-deluding, self-defeating, self-degrading, futile and entirely stupid means of dealing with the crime of murder, and because our children will prefer to be something better than murderers themselves. Should we not—can we not—make the same choice now?

Author, G. Amsterdam, Professor of Law, Stanford University.

JUDICIAL MURDER

To kill a man is murder. We justify it as the lesser of two evils when we have got ourselves into a situation where there seems to be no alternative to war. But that is a far cry from intentionally and deliberately deciding to take the life of a man who is already behind bars and no longer a threat to anyone. Capital punishment is nothing less than judicial murder.

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APPENDIX OF ORGANIZATIONS

The editors have compiled the following list of organizations concerned with the criminal justice system in an effort to provide students access to a broad range of resource materials. We have listed legal police, prisoner, and citizen organizations spanning a broad spectrum of views on criminal justice. The majority of organizations listed have available publications or pamphlets expressing their views on a variety of subjects in the area of criminal justice.

Alliance to End Repression
1000 Old Colony Building
407 S. Dearborn Street
Chicago, Illinois 60605
(312) 427-4064

The organization was founded in 1970 to safeguard the Bill of Rights and constitutional freedom and to ensure just application of state and local laws.

American Academy for Professional Law Enforcement
c/o T. Kenneth Moran, Executive Director
444 W. 56th Street Suite 2312
New York, N.Y. 10019
(212) 765-1364

An organization of professionals and academics founded in 1974 to promote professional standards and ethical practices in police service.

American Civil Liberties Union
22 East 40th Street
New York, N.Y. 10016
(212) 725-1222

One of America's oldest civil liberties organizations (founded in 1920), the ACLU champions the rights set forth in the Declaration of Independence and the Constitution. The Foundation of the ACLU provides legal defense, research, and education.

American Federation of Police
1100 N.E. 125th Street
North Miami, Florida 33161
(305) 891-1700

Founded in 1966, the purpose of this federation of government and private law enforcement officers is prevention of crime and apprehension of criminals.

American Law Enforcement Officers Association
2000 P Street N.W.
Washington, D.C. 20036
(202) 293-9088

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CRIMINAL JUSTICE

opposing viewpoints

David L. Bender & Bruno Leone

OPPOSING VIEWPOINTS SERIES



Greenhaven Press



FAC-SHEET

#4 CAPITAL PUNISHMENT

BACKGROUND BRIEFING

The May 25th execution of John Spenkeliuk for the 1973 murder of a traveling companion has served to renew the controversy surrounding capital punishment. Spenkeliuk was the second person to suffer the death penalty since 1967, the first since 1977.

(In 1967, the US Supreme Court announced it would take the matter of capital punishment under advisement. Lower courts then put the death penalty "in limbo", awaiting the highest court's decision. In 1972, the Supreme Court held that the death penalty laws of 41 states were unconstitutional on the grounds that they were applied arbitrarily and in a discriminatory manner. Subsequently, three states enacted revised death penalty statutes and these were upheld by the Supreme Court; 32 states then followed suit and enacted similar laws. There are now 520 persons being held under the sentence of death for capital crimes. Opponents of capital punishment vow an all-out campaign to prevent further executions.)

Proponents of capital punishment assert that the death penalty is necessary to protect the public in that it serves as a deterrent to murder. Opponents disagree. Statistics would seem to support the deterrent argument: during the 10 years the death penalty was in limbo or outlawed, the number of murders in the US almost doubled -- from 10,000 in 1967 to 19,000+ by 1978. Further, as executions declined, murders increased: in 1955, 76 executions, 7,000 murders; in 1960, 56 executions, 8,000 murders. In 1972, no executions, 18,000 murders and, in 1978, no executions and 19,555 murders.

After studying crime and punishment, Gordon Tullock of Virginia Polytechnic Institute concluded: "Eighty percent of the people who seriously think about crime think of punishment as a deterrent -- except for the sociologists, and they wrote all the books." Prof. Isaac Ehrlich, Univ. of Chicago, himself an opponent of capital punishment, nevertheless stated that his studies indicated that if the death penalty were really enforced eight murders would be prevented for every one execution. Other researchers contended Ehrlich's data were off by a factor of at least five -- that for each execution at least 50 murderers were deterred.

Opponents of capital punishment claim it is "cruel and unusual" and thus prohibited by the Constitution. The courts have held otherwise. No court has ever deviated from the position taken by the US Supreme Court in 1890: "Punishments are cruel when they involve torture or lingering death; but the punishment of death is not cruel within the meaning of that word as used in the Constitution. It implies something inhuman and barbarous...."

Another argument raised by the opponents is that capital punishment is "racist" in that it is applied most often against members of the minorities. A study of capital punishment made in 1974 indicated that between 50% and 60% of those sentenced to death were black. At the same time, the Uniform Crime Report (FBI) disclosed that 57% of those arrested for willful homicide were black. Further, statistics demonstrate that 50% of all murder victims are black. Thus, it can be argued, failure to apply the death penalty in cases of homicide is in fact "racist" since it deprives the black community of a demonstrable deterrent to murder.

In 1966 (10,920 murders), polls indicated that 42% of the American public favored capital punishment while 47% opposed it. In 1977, as the number of murders in the US approached the 20,000 mark, the polls found that 67% of the American people favored the death penalty and only 25% were opposed.

CONSIDER THE
BIBLICAL
PRINCIPLE

For those who would obey The Lord God, capital punishment is not a matter of choice or opinion poll, or even court decree: it is a requirement, a Biblical principle. God established the death penalty for willful murder in the days of Noah (Gen 9:4-6) -- and not just for the time of Noah and Noah's seed but "for perpetual generations" (Gen 9:12).

Capital punishment and the manner in which it is to be applied is detailed and reaffirmed many times in the Scriptures (Ex 21:12-15; Lev 24:17-21; Num 35:9-34; Deut 21:1-9, etc.). Paul recognizes the propriety of capital punishment for capital crimes in Acts 25:10-12.

Importantly, The Bible carefully and clearly delineates between the crime of willful homicide (murder) and accidental death (manslaughter); The Bible also declares that causing the death of an unborn child is murder (Ex 21:23).

Capital punishment is not to be used for personal revenge; it is strictly a matter of divine retribution. God instructs us that (1) the person who willfully takes another person's life must pay for that act by forfeiting his own life, (2) the death penalty is not to be exercised by individuals but by civil govt., and (3) this must be done to uphold the sacredness (the sanctity) of human life (in the image of God created He them).

When God established capital punishment, He also ordained the institution that is to enforce it -- civil govt. (Gen 9:6). The Apostle Paul refers to this power to protect the innocent and to punish the wrong-doer when he wrote in Rom 13:4: "(the ruler) beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him who doeth evil."

The foundation of civil govt. is power (implied or applied); when that power is abused or not used, govt. is weakened and eventually destroyed. When that occurs, the individual, the family, the home, and most if not all aspects of society are imperiled. Capital punishment is essential to the protection of the innocent and the maintenance of a safe and peaceful society. It is one of God's measures for protecting His creation, man.

The Bible tells us that murder pollutes the land and that the only way to cleanse the land is capital punishment (Num 35:33-34). The Bible also instructs us that those nations that fail to enforce capital punishment will be judged harshly (Jer 2:34-37; Hos 1:4; 4:1-5). By obeying God and enforcing the death penalty, the nation cleanses itself of the guilt of innocent blood; conversely, the nation that refuses to obey God and avenge the taking of innocent human life must share the guilt of the murderer (Deut 21:7-8).

The Bible sets forth definite rules so that this ultimate civil power, capital punishment, will not be abused. The death penalty is to be enforced judiciously, impartially, and only after full and proper (and swift) legal proceedings. Testimony in such cases must be corroborated by at least two witnesses and should a witness give false testimony, thus to jeopardize the accused improperly, that witness shall be subject to the penalty attached to the crime under consideration. Finally, capital punishment is not to be enforced in a spirit of maliciousness (which is forbidden - Matt 5:38-44) but used only as God has directed and so that we may keep His commands and statutes so that "It may go well with thee." (Deut 19:13 and also Num 35:31-34).

(Recommended reference books: "NEITHER CRUEL NOR UNUSUAL," Frank G. Carrington, Arlington House; "TOWARD A BIBLICAL VIEW OF CIVIL GOVERNMENT," Robert Duncan Culver, Moody Press.)



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
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March 10, 1987

MEMORANDUM

TO:

ATTN:

FROM: Penelope Weyhrauch
Legislative Analyst

RE: Capital Punishment: Contracting for Execution
Research Request 87.169

You asked for information on contracting with other states for the execution of Alaska's death row prisoners.

Capital Punishment in Alaska

Alaska has not had a capital punishment statute since prior to statehood. According to Susan Knighton, Research Analyst with the Department of Corrections, execution was by hanging. There are presently no execution facilities in Alaska.

Contracting for Execution Services

I contacted Georgia, Florida and Virginia, which together executed one-third of all executed death row prisoners in the nation, and Oregon and Washington, because they are of relatively close proximity to Alaska. None of the correction administrators with whom I spoke in these states were interested in contracting to execute Alaska prisoners, nor were they aware of other states who contracted for this service or who would be willing to do so. Two states stated that contracting with Alaska would require legislative action. The various reasons listed by correction administrators for refusing to contract for the execution of Alaska prisoners include:

Political Repercussions. Correction administrators in Georgia and Florida stated that because capital punishment is such a controversial issue, neither the state executive branch nor the public would approve the execution of another state's prisoners in their state. William Kelley Jr., Director of the Governor's Criminal

Justice Council in Georgia, believes that the Georgia public would view the contracting out of execution services as "morally unseemly."

- **Legal Issues.** Duncan Brogan, Executive Assistant to the Director of Corrections in Virginia, said that because of all the various legal issues involved, the Virginia legislature would probably never approve the contracting out of execution services. Death sentences are usually appealed and involve a long legal process before culminating in execution.

- **Lack of Equipment.** Although Oregon has a death penalty mechanism in place, it does not have the equipment required to carry out executions. Tom Toombs, Administrator of the Oregon Division of Corrections, said that Oregon wanted to borrow or rent Idaho's execution facility--a mobile trailer, but that Idaho was not willing to accommodate them.

- **Overcrowding of Death Row Prisoners.** Richard Dugger, Administrator with the Florida Department of Corrections, said that Florida presently has about 230 prisoners on death row awaiting reprieve or execution. He does not believe that the state would be willing to take on additional prisoners from another state with so many death row prisoners already requiring attention.

March 10, 1987
Page 4

state and what savings would be enjoyed by the State of Alaska by contracting is not available. However, analysis of the cost of constructing and operating facilities for housing death row prisoners has been done by the Alaska Department of Corrections (Attachment B). They anticipate that the cost of constructing a facility would be \$2.7 million, and the cost of operating the facility would range from \$501,000 in FY 89 to \$1.2 million in FY 92. These costs do not include the construction of an execution facility, its operation or maintenance.

* * *

I hope this information is useful to you. I have attached a recent U.S. Department of Justice, Bureau of Justice Statistics Bulletin on Capital Punishment, which may be of interest to you. If you have any questions or would like additional information, please contact our agency.

Attachment

Length of Time in Incarceration and the Cost of Executions

Table 1 shows the time of incarceration between the imposition of the death sentence and execution. For those executed since 1977, the average time between sentence imposition and execution was six years.

TABLE 1

Year of execution	Number executed			Average elapsed time from sentence to execution for:		
	All races	Whites	Blacks	All races	Whites	Blacks
Total	50	33	17	72 months	68 months	75 months
1977-83	11	9	2	58	59	58
1984	21	13	8	79	76	84
1985	18	11	7	71	65	80

Note: Three cases were resentenced to death after appeal. For these executions, average time was calculated from the original sentencing dates. The range for elapsed time for the 50 executions was 3 months to 133 months.

Source: "Capital Punishment," Bureau of Justice Statistics, U.S. Department of Justice, 1985.

In regard to the cost of executions, Mr. Dugger (of Florida) said that the costs for death row prisoners can be primarily attributed to the cost of legal proceedings.¹ According to Mr. Brogan, each electrocution costs the state of Virginia about \$85,000, which does not include the extensive legal proceedings that are required.

Jim Spaulding, Deputy Director for the Washington Department of Corrections, believes that it would be cheaper for Alaska to utilize its own execution facility rather than contracting with another state. He said that transporting a death row prisoner and the security surrounding the prisoner contribute substantially to the total costs of execution. He also mentioned that hanging and lethal injection were probably cheaper methods of execution than electrocution.

Because it is doubtful that any state would be willing to contract with Alaska for the execution of Alaska's death row prisoners, the information you requested on the average cost per year for contracting with another

¹ Attachment A is a fiscal note prepared by the Department of Law for CSSB 7 (HESS), which would authorize capital punishment. The fiscal note analysis states "Because a human life is at stake, the defense of these [capital punishment] cases is extremely vigorous and no expense is spared." The fiscal note analysis continues by stating that at least two full-time attorneys and support staff, will be required to handle the additional work made necessary by capital cases.

ATTACHMENT A

State of Alaska 1987 Legislative Session
Fiscal Note for CSSB 7 (HESS)

ATTACHMENT B

State of Alaska 1987 Legislative Session
Fiscal Note (CSSB 7 and Senate Bill 31)

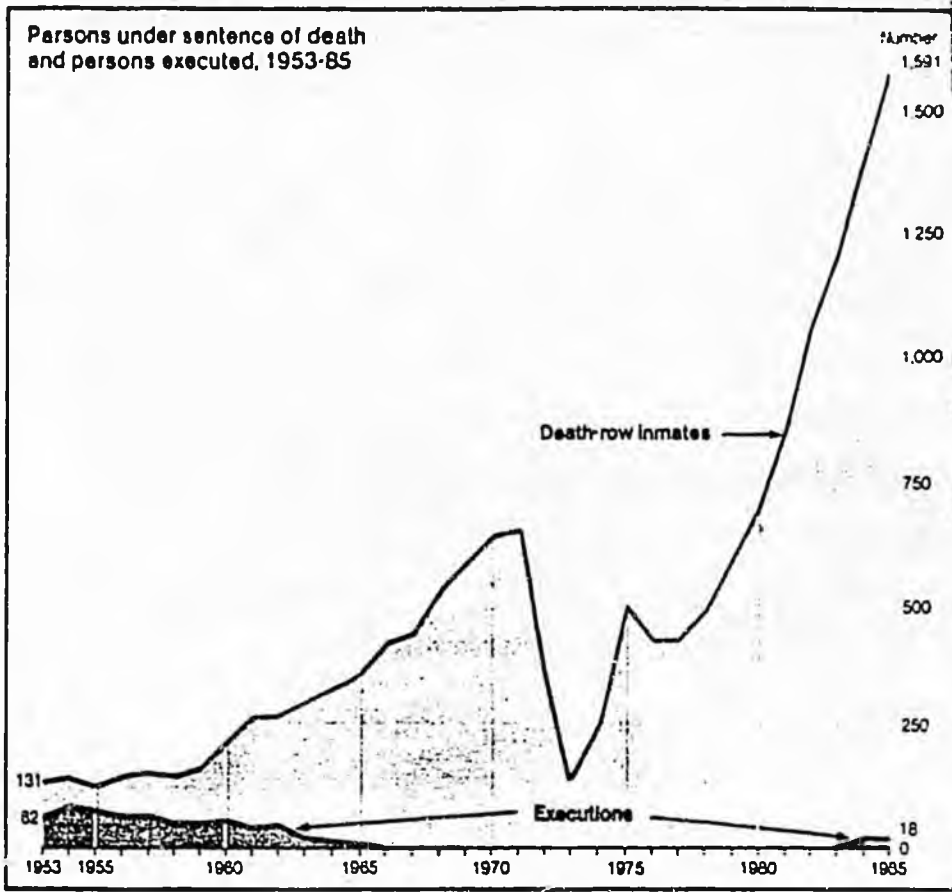
sons were removed from the condemned population as a result of dispositions other than execution (such as resentencing, retrial, or commutation) or died while awaiting execution).

Capital punishment in the courts

On January 21, 1985, the Supreme Court in *Wainwright v. Witt* handed down an important decision bearing on the longstanding issue of the constitutionality of excluding persons opposed to the death penalty from juries in capital cases. The U.S. Court of Appeals had overturned a death sentence imposed by a Florida court on grounds that the trial judge had improperly excused a juror who had expressed qualms about imposing a death sentence. The High Court held that, as a matter of principle, any juror can be excused if his views on capital punishment are deemed by the trial judge to "prevent or substantially impair the performance of his duties."

In *Ake v. Oklahoma* (decided February 26, 1985) the Court rendered a decision related to one aspect of the sanity defense. The court reversed and remanded a State case in which an indigent defendant was not provided the assistance of a psychiatrist to determine his mental state at the time of the crime or to rebut the testimony of prosecution psychiatrists as to his future dangerousness (an aggravating factor for capital sentencing in Oklahoma). The Court of Criminal Appeals in Oklahoma had concluded previously that the defendant had waived his right to a court-provided psychiatrist by not raising this claim in his motion for a new trial—a conclusion rejected by the High Court. The Court found that the defendant's request for an appointed psychiatrist at a pretrial conference constituted a preliminary showing that his sanity would be an issue in the trial. The Court held that psychiatric assistance should have been provided.

In *Caldwell v. Mississippi* (decided June 11, 1985) the High Court reversed a death sentence imposed by the trial court jury. The court concluded that the prosecution had influenced the jury in an unconstitutional manner by emphasizing, in the closing argument at the sentencing stage, that a death sentence would ultimately be reviewed for correctness by the State Supreme Court. Such a prosecution argument was viewed as improperly diminishing the "awesome responsibility" placed upon jurors to choose between life or death and was inconsistent with the need for a reliable determination "that death is an appropriate punishment in a



specific case," guaranteed by the Eighth Amendment.

Fifth Amendment protection against "double jeopardy" in a capital sentence was the subject of *Heath v. Alabama* (decided December 3, 1985). In this case the Supreme Court upheld a death sentence imposed by an Alabama trial court on a resident of that State for a murder that occurred in Georgia, after he had already been sentenced to life imprisonment for the same murder by a Georgia trial court. At issue was a contract kidnap/murder that began with the kidnaping in Alabama and concluded when the victim's body was found in Georgia. The Georgia conviction was for "malice murder" based upon a plea entered in exchange for a life sentence. The Alabama trial court rejected the claim of double jeopardy and subsequently imposed a sentence of death for murder during a kidnaping. The Supreme Court also rejected the appellant's claim of double jeopardy concluding that the "dual sovereignty" doctrine did not bar successive prosecutions by two States for the same conduct.

Other cases of interest during the year were:

- *Francis v. Franklin* (decided April 29, 1985). The Court concluded

that improper instructions had been given to the jury on criminal intent and that the prosecution had failed to fulfill the requirement to prove the existence of such intent beyond "reasonable doubt."

- *Heckler v. Chaney* (decided March 20, 1985). This case was brought by inmates sentenced to death by lethal injection of drugs after the Food and Drug Administration had denied their petition to prohibit the use of these drugs for this purpose. The Court held that under the Administrative Procedures Act the Food and Drug Administration's failure to take enforcement action against drugs used for execution by lethal injection was not subject to judicial review.

- *Baldwin v. Alabama* (decided June 17, 1985). The Court held that Alabama's mandatory death sentence in cases where the jury finds the defendant guilty of aggravated murder is constitutional because the statute provided that the trial judge can set aside the jury sentence after an independent weighing of aggravating and mitigating circumstances.

Capital punishment laws

At yearend 1985, the death penalty was authorized by the statutes of 37

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Bureau of Justice Statistics Bulletin

Capital Punishment, 1985

Eight States executed a total of 18 prisoners during 1985, bringing the total number of executions to 50 since 1976, the year that the United States Supreme Court upheld the death penalty in three separate cases. Those executed during 1985 had spent an average of 5 years and 11 months awaiting execution, about the same as the average for the 12 previous executions.

During 1985, 273 prisoners were received under sentence of death, 80 had their death sentences vacated or commuted, and 4 died while under sentence of death. At yearend 32 States reported a total of 1,591 prisoners under sentence of death, all for murder. The median time since sentence was imposed was 36 months.

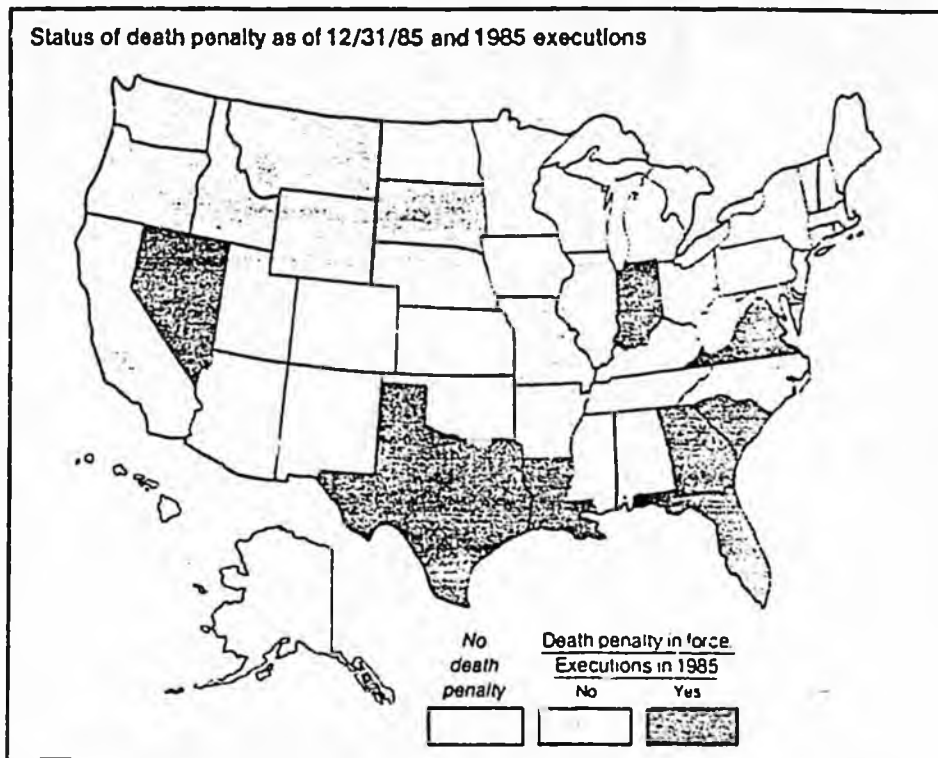
About 2 in 3 offenders under sentence of death for whom such information was available had a prior felony conviction; about 1 in 11 had a prior homicide conviction. About 2 in 5 condemned prisoners for whom such information was available were in some criminal justice status at the time of the capital offense; half of these were on parole. The rest were either in prison, on escape from prison, or on probation or had charges pending against them.

The majority of those under sentence of death (903) were white; 672 were black; 11, American Indian; and 5, Asian. The median age was nearly 32 years old.

About 63% of those under sentence of death were held by States in the South. Western States held an additional 19%; Midwestern States, 14%; and the Northeast, nearly 5%. Florida had the largest number of condemned inmates (226), followed by Texas (206), California (170), and Georgia (107).

Inmates received under sentence of

Status of death penalty as of 12/31/85 and 1985 executions



death during 1985 were also concentrated in the South (61%). Twenty percent were in the Midwest; 12%, in the West; and 7%, in the Northeast. A total of 26 State prison systems received prisoners under sentence of death in 1985.

The 18 executions in 1985 were carried out by eight States: 6 in Texas, 3 in Georgia, 3 in Florida, 2 in Virginia, and 1 each in Indiana, Louisiana, Nevada, and South Carolina. Eleven of those executed were white males and seven were black males.

From the beginning of 1977 to the end of 1985, a total of 12 States carried out executions. Over the same period, 2,110 persons were admitted to prisons under sentence of death and 889 per-

October 1986

This bulletin marks the 55th consecutive year that capital punishment statistics have been published by the Federal government. The cooperation of officials in each of the States has been essential to the continuity of this series. The Bureau of Justice Statistics gratefully acknowledges the contributions of both the State departments of correction and offices of the attorney general to the information presented in this report.

Steven R. Schlesinger
Director

Methods of execution

At yearend 1985, lethal injection (16 States) and electrocution (15 States) were the most common methods of execution. Eight States authorized lethal gas; four States, hanging; and two States, a firing squad (table 2). Eight States provided for more than one method of execution—lethal injection and an alternative method—generally at the election of the condemned prisoner. (In Mississippi lethal injection was introduced in 1985 for persons convicted after July 1, 1984.) Some States have stipulated an alternative to lethal injection in anticipation that it may be found unconstitutional. Each of the other four methods, previously challenged on Eighth Amendment grounds as cruel and unusual punishment, has been found to be constitutional. The method of execution for Federal offenders is that of the State in which the execution takes place.

Automatic review

Of the 37 States with capital punishment statutes at yearend 1985, 32 provided for an automatic review of all death sentences. Arkansas, Florida, New Jersey, Ohio, and Vermont had no specific provisions for automatic review (although New Jersey has had such review since January 17, 1986). In most States automatic review is conducted regardless of the defendant's wishes. While most of the 32 States authorize automatic review of both conviction and sentence, Idaho, Maryland and New Mexico require review of the sentence only. Typically, the review is undertaken directly by the State Supreme Court. If either the conviction or sentence is vacated, the case may be remanded to the trial court for additional proceedings or for retrial. It is possible that as a result of retrial or resentencing the death sentence may be reimposed. Some statutes also permit the State Supreme Court to commute a death sentence to life imprisonment.

Minimum age

A total of 23 States specify a minimum age at which the death penalty may be imposed (table 3). In some States the minimum age is specified in the capital punishment statute; in others it is, in effect, set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. The most frequently specified age is 18 years old (nine States). Fourteen States and the Federal system report no minimum age.

Table 2. Method of execution, by State, 1985

Lethal injection	Electrocution	Lethal gas	Hanging	Firing squad
Arkansas ^a	Alabama	Arizona	Delaware	Idaho ^b
Idaho ^b	Arkansas ^a	California	Montana ^a	Utah ^a
Illinois	Connecticut	Colorado	New Hampshire	
Mississippi ^{a,b}	Florida	Maryland	Washington ^a	
Montana ^a	Georgia	Mississippi ^{a,b}		
Nevada	Indiana	Missouri		
New Jersey	Kentucky	North Carolina ^a		
New Mexico	Louisiana	Wyoming ^a		
North Carolina ^a	Nebraska			
Oklahoma ^c	Ohio			
Oregon	Pennsylvania			
South Dakota	South Carolina			
Texas	Tennessee			
Utah ^a	Vermont			
Washington ^a	Virginia			
Wyoming ^a				

^aAuthorizes two methods of execution.
^bMississippi authorizes lethal injection for those convicted after 7/1/84; executions of those convicted prior to that date are to be carried out with lethal gas.
^cShould lethal injection be found to be unconstitutional, Oklahoma authorizes use of electrocution or firing squad.

Table 3. Minimum age authorized for capital punishment, yearend 1985

10 years	Indiana Vermont
13 years	Georgia Mississippi
14 years	Missouri North Carolina
15 years	Arkansas Louisiana Virginia
16 years	Connecticut Montana Nevada
17 years	New Hampshire Texas
18 years	California Colorado Illinois Nebraska New Jersey ^a New Mexico Ohio Oregon ^d Washington
No minimum age specified	Federal Alabama Arizona Delaware Florida Idaho Kentucky Maryland Oklahoma Pennsylvania South Carolina South Dakota ^b Tennessee Utah Wyoming

^aDuring 1985 New Jersey enacted legislation changing the minimum age for receiving the death penalty from 14 to 18 years old, effective January 17, 1986.
^bAdult status at trial required.

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ates and by Federal statute (table 1). In contrast to 1984--when the death penalty was struck down in New York and Massachusetts, and Oregon enacted a new capital punishment law--there were no successful challenges to the constitutionality of State death penalty laws or enactment of any new legislation authorizing capital punishment during 1985. In a series of 1985 rulings, however, the California Supreme Court reversed death sentences for defendants convicted of "murder with special circumstances" (e.g., felony murders, multiple murders) concluding that juries must be properly instructed to determine that the defendant had an actual "intent to kill" before they can impose the death sentence.

Statutory changes

Eleven States altered their existing death penalty statutes during 1985. Arizona, Arkansas, Montana, Texas, and Virginia added new aggravating factors for capital offense categories to their capital punishment laws. Arizona included adult status of the offender when the victim was less than 15 years old as a circumstance that could aggravate homicide to first degree murder. Arkansas incorporated murder for pecuniary gain and murder committed in a heinous or cruel manner into its statutes as aggravating factors. Texas included multiple murders as an aggravating factor. Virginia added murder during an abduction of a child under the age of 12 as a capital crime.

Montana added a series of aggravating circumstances for murder committed by prison inmates who had a prior record of deliberate homicide or if repeated felonies at least one of which was a violent offense. The aggravating circumstances are attempted deliberate homicide, aggravated assault, or aggravated kidnaping.

Three States--Colorado, Connecticut, and South Carolina--amended their death penalty statutes to ensure severe restrictions on parole for persons who had their death sentences commuted to life imprisonment. Colorado stipulated that for offenses committed after mid-year 1985 prisoners whose death sentences were commuted to life terms could not be paroled for 40 years. Connecticut provided that defendants sentenced to life imprisonment, instead of death, because of mitigating circumstances in capital murder cases must

Table 1. Profile of capital punishment statutes and legal changes during 1985

Jurisdictions authorizing capital punishment at some time during 1985	Revised or replaced by legislature	Automatic appeals required	Capital offenses
Federal			Aircraft piracy
Alabama		Yes	Murder
Arizona	Yes	Yes	First degree murder
Arkansas	Yes		Aggravated murder; treason
California		Yes	First degree murder with special circumstances
Colorado	Yes	Yes	First degree murder (includes felony murder); first degree kidnaping
Connecticut	Yes	Yes	Murder
Delaware		Yes	First degree murder with statutory aggravating circumstances
Florida			First degree murder
Georgia		Yes	Murder; treason; aircraft hijacking; kidnaping with bodily injury; armed robbery or rape in which victim dies
Idaho		Yes ^a	First degree murder, aggravated kidnaping (except where victim released unharmed)
Illinois		Yes	Murder
Indiana		Yes	Murder
Kentucky		Yes	Aggravated murder; kidnaping when victim is killed
Louisiana		Yes	First degree murder
Maryland		Yes ^a	First degree murder
Mississippi	Yes	Yes	Capital murder, capital rape
Missouri		Yes	First degree murder
Montana	Yes	Yes	Deliberate homicide, aggravated kidnaping (resulting in death)
Nebraska		Yes	First degree murder
Nevada	Yes	Yes	First degree murder
New Hampshire		Yes	Contract murder or murder of a law enforcement officer or kidnaping victim
New Jersey	Yes	Yes ^b	Kidnaping or purposeful murder or contract murder with aggravating circumstances
New Mexico		Yes ^a	First degree murder
North Carolina		Yes	First degree murder
Ohio			Aggravated murder
Oklahoma		Yes	Murder
Oregon		Yes	Aggravated murder
Pennsylvania		Yes	First degree murder
South Carolina	Yes	Yes	Murder with statutory aggravating circumstances
South Dakota		Yes	Murder, kidnaping (with gross permanent physical injury inflicted on victim)
Tennessee		Yes	First degree murder
Texas	Yes	Yes	Murder of public safety officer, fireman, or correctional employee; murder during specified felonies or escapes; contract murder; multiple murders
Utah		Yes	First degree murder; aggravated assault by prisoner sentenced for first degree felony where serious injury is caused
Vermont			Murder of police or corrections officer, kidnaping for ransom
Virginia	Yes	Yes	Capital murder
Washington		Yes	Aggravated, premeditated first degree murder
Wyoming		Yes	First degree murder

Note: See Appendix for State-by-State detail on statutory revisions. Jurisdictions without capital punishment statutes are: Alaska, District of Columbia, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota,

New York, North Dakota, Rhode Island, West Virginia, and Wisconsin.
^aSentence review only.
^bAutomatic review after January 17, 1986.

serve a life term without possibility of parole. South Carolina specifically excluded from parole eligibility those persons commuted to life sentences for murder.

Only one State--New Jersey--modified its death penalty law to restrict the scope, by providing that no death sentence be imposed unless the aggravating factors outweighed the mitigating circumstances "beyond any reasonable doubt."

Lastly, Nevada limited the time for automatic State Supreme Court review of death sentences to 150 days and also struck the requirement for a proportionality review as a part of the evaluation by the State Supreme Court.

The only Federal crime for which capital punishment is now authorized is aircraft piracy (including crimes prosecuted under military authority).

Entries and removals of persons under sentence of death

During 1985, 26 State prison systems reported receiving prisoners under sentence of death. Texas reported the largest number (36), followed by Florida (27), Ohio (21), and North Carolina (20).

Of the 273 received under sentence of death:

- all were convicted of murder;
- 157 were white males, 111 were black males, 2 were male American Indians;
- 3 were white females;
- 17 were Hispanic.

Twenty-six States reported a total of 80 persons whose sentence of death was vacated or commuted during 1985. Florida and California reported the largest number, 13 each, followed by Georgia with 10.

Of the 80 persons whose death sentence was vacated or commuted during 1985:

- 46 had their sentences vacated but convictions upheld;
 - 30 had both their sentences and convictions vacated;
 - 4 had their sentences commuted.
- At yearend, 45 of the 80 were serving life sentences, 17 were awaiting new trials, 11 were awaiting resentencing, no further prosecution was sought for 6, and 1 was in an undetermined status.

In addition, four persons died while under sentence of death in 1985. Two of these were murdered by other inmates; 1 died as a result of natural causes; and 1 committed suicide.

From 1977, the year after the Supreme Court reinstated the death penalty, through 1985, a total of 2,110 persons entered prison under a sentence of death; 889 had their capital sentence vacated or commuted or died while under sentence; and 50 were executed. Of those admitted, 58% were white, 41% were black, and 1% were classified as other races. Of those who had their sentences vacated or commuted or who died while under sentence, 57% were white, 42% were black, and less than 1% were of other races. Of the 50 executed, 66% were white and 34% were black.

Table 5. Demographic profile of prisoners under sentence of death, 1985

	Yearend 1985	1985 admissions	1985 removals
Total number under sentence of death	1,591	273	102
Sex			
Male	98.9%	98.9%	97.1%
Female	1.1	1.1	2.9
Race			
White	56.8%	58.6%	61.8%
Black	42.3	40.7	36.3
Other ^a	1.0	.7	2.0
Ethnicity			
Hispanic	6.2%	6.2%	5.9%
Not Hispanic	93.8	93.8	94.1
Age^b			
Less than 20 years	.8%	4.4%	0%
20-24	13.3	26.4	9.8
25-29	26.9	25.3	30.4
30-34	23.8	19.8	23.5
35-39	16.3	9.9	13.7
40-54	17.0	12.1	20.6
55+	2.0	2.2	2.0
Median	31.9 years	28.0 years	32.1 years
Education			
7th grade or less	10.8%	10.8%	9.9%
8th	11.7	11.1	13.6
9th-11th	35.6	39.4	34.6
12th	21.2	30.3	33.3
Any college	9.4	8.4	8.6
Median	10.5 years	10.4 years	10.5 years
Marital status			
Married	32.6%	28.0%	37.1%
Divorced/separated	21.2	22.2	14.4
Widowed	2.3	3.5	4.1
Never married	43.9	46.3	44.3

Note: Percentage and median calculations are based on those cases for which data were reported. Education data were not reported for 235 prisoners at yearend 1985, 22 prisoners admitted in 1985, and 21 prisoners removed in 1985. Data on marital status were not reported for 98 prisoners at yearend 1985, 16 prisoners admitted in 1985, and 5 prisoners removed in 1985.
^aConsists of 11 American Indians and 5 Asians.
^bThe youngest person under sentence of death was a black inmate in Arkansas born in October 1969. The oldest was a white inmate in Kentucky born in October 1911.

Table 6. Number of women on death row by State, yearend 1972-85

State	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
United States	4	3	3	8	7	6	5	7	9	11	14	13	17	17
California	3			1	2									
Georgia	1	2	1	1	1	1	1	2	3	4	5	3	2	2
North Carolina		1	2	3			2	1	1	1	1	1		
Ohio				2	3	4						2	2	2
Oklahoma				1				1	1	1	2	2	1	1
Florida					1	1	1	1	1	1			1	2
Alabama							1	1	1	1	1	2	2	2
Texas								1	2	2	2		1	3
Kentucky									1	1				
Maryland										1				
Mississippi											1	1	1	1
Nevada											1	1	2	2
New Jersey													1	1
Arkansas														1
Idaho														1
Indiana														1

Table 7.

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Prisoners under sentence of death at yearend 1985

A total of 32 States reported 1,591 persons under sentence of death on December 31, 1985, an increase of 171 or 12.2% over the count at the end of 1984 (table 4). States with the largest number of prisoners under sentence of death were Florida (226), Texas (206), California (170), and Georgia (107).

Although 37 States had statutes authorizing the death penalty (covering 7% of the nation's adult population), 5 of these reported no prisoners under sentence of death at yearend (Connecticut, New Hampshire, Oregon, South Dakota, and Vermont).

Of the 1,591 persons under sentence of death, more than three-fifths (63%) were in the South, 19% were in Western States, 14% in the Midwest, and nearly 5% in the Northeast. Nearly all were male (98.9%) and most were white (56.8%) (table 5). Blacks constituted 32.2% of those under sentence of death and another 1% were American Indians or Asian Americans. The States reported a total of 99 Hispanics under sentence of death, 6.2% of the total. The largest number of Hispanics were held in States with relatively large Hispanic populations: Texas (33), California (22), Florida (10), Illinois (9), and Arizona (7).

The median age of those under sentence of death was nearly 32 years. Less than 1% were under the age of 20 and 2% were 55 or older. The youngest offender under sentence of death was 16 years old and the oldest was 74 years old. About 1 in 9 of the inmates for whom information on education was available had not gone beyond seventh grade, but about 1 in 11 had some college education. The median level of education was 10.5 years. Approximately a third of the condemned inmates for whom marital status was available were married, one-fifth were divorced or separated, and two-fifths had never been married.

The 17 women under sentence of death at yearend 1985 were held in 11 States, with no State holding more than 3 (table 6). Since 1972, a total of 17 States have held women under sentence of death. Since 1977, one woman has been executed.

Table 4. Prisoners under sentence of death, by region and State at yearend 1984 and 1985

Region and State	Prisoners under sentence 1984	Changes during 1985		Prisoners under sentence 1985
		Received under sentence	Removed from death row (excluding executions) Executed	
United States	1,420	273	84 ^a	1,591
Federal^b	0	0	0	0
State	1,420	273	84	1,591
Northeast	59	20	6	73
Connecticut	0	0	0	0
New Hampshire	0	0	0	0
New Jersey	10	7	0	17
Pennsylvania	49	13	6	58
Vermont	0	0	0	0
Midwest	174	54	6	221
Illinois	70	15	2	83
Indiana	26	10	1	34
Missouri	29	8	1	36
Nebraska	13	0	1	12
Ohio	36	21	1	56
South Dakota	0	0	0	0
South	900	167	50	1,001
Alabama	68	13	2	79
Arkansas	23	6	1	28
Delaware	6	0	2	4
Florida	215	27	13	226
Georgia	112	8	10	107
Kentucky	20	6	1	25
Louisiana	31	10	1	39
Maryland	19	0	2	17
Mississippi	39	5	3	41
North Carolina	37	20	1	56
Oklahoma	50	14	6	58
South Carolina	35	9	1	42
Tennessee	37	11	2	46
Texas	180	36	4	206
Virginia	28	2	1	27
West	287	32	22	296
Arizona	56	4	4	56
California	167	16	13	170
Colorado	1	0	0	1
Idaho	14	1	1	14
Montana	4	1	0	5
Nevada	28	7	3	31
New Mexico	5	0	0	5
Oregon	0	0	0	0
Utah	5	2	1	6
Washington	4	1	0	5
Wyoming	3	0	0	3

Note: States not listed and the District of Columbia did not have the death penalty as of 12/31/85. Some of the figures shown for yearend 1984 are revised from those shown in *Capital Punishment, 1984*, NCJ-96353. The revised figures include 24 inmates who were either reported late to the NPS program or who were not in the custody of State correctional authorities by 12/31/84 (2 in Pennsylvania, 1 in Ohio, 1 in Georgia, 1 in Florida, 10 in Alabama, 5 in Louisiana, 2

in Oklahoma, and 2 in Texas) and exclude 9 inmates relieved of the death sentence before 12/31/84 (1 in Illinois, 1 in Florida, 1 in Louisiana, 1 in Oklahoma, and 5 in California). ^aIncludes 1 inmate in Ohio who committed suicide, 1 each in Missouri and Tennessee who were murdered by another inmate, and 1 in Louisiana who died of natural causes. ^bExcludes one male held under Armed Forces jurisdiction with a military death sentence for murder.

There were 50 executions and 889 removals for other reasons, including death while awaiting execution. Most of the removals occurred because the individual's particular sentence or conviction was overturned. A slightly higher percentage of whites than blacks were executed during this period; removal rates for the two races were virtually identical.

For those executed since 1977, the average time between sentence imposition and execution was 6 years (table 10). For the 11 prisoners executed during 1977 an average of nearly 5 years elapsed between the time their sentence was imposed and their execution. Those executed in 1984 had spent more than 6½ years under sentence of death. Prisoners executed in 1985 had averaged just under 6 years awaiting execution, a year more than the average for 1977-83, but a half-year less than the average for 1984.

Black prisoners executed in 1985 had spent an average of 6 years and 8 months awaiting execution; whites, 5 years and 5 months.

Methodological note

The statistics reported in this bulletin may differ from data collected by other organizations for any of the following reasons: (1) Inmates are originally added to the National Prisoner Statistics death-row counts not at the time the court hands down the sentence, but at the time they are admitted to a State or Federal correctional facility. (2) Subsequently, admissions to death row or releases as a result of a court order are attributed to the year in which the sentence or court order occurred. Prior year counts are, therefore, adjusted to reflect the actual dates of court decisions (see Note, table 4). (3) NPS death-row counts are always for the last day of the calendar year and thus will differ from counts for more recent periods.

U.S. Supreme Court decisions cited

- Wainwright v. Witt, 469 U. S. 412 (1985); 105 S. Ct. 844 (1985)
 Ake v. Oklahoma, 470 U. S. 68 (1985); 105 S. Ct. 1087 (1985)
 Caldwell v. Mississippi, 105 S. Ct. 2633 (1985)
 Heath v. Alabama, 106 S. Ct. 433 (1985)
 Francis v. Franklin, 105 S. Ct. 1965 (1985)
 Heckler v. Chaney 105 S. Ct. 1649 (1985)
 Baldwin v. Alabama 105 S. Ct. 2048 (1985)

Table 10. Elapsed time between imposition of death sentence and execution, by race, 1977-85

Year of execution	Number executed			Average elapsed time from sentence to execution for:		
	All races	Whites	Blacks	All races	Whites	Blacks
Total	50	33	17	72 months	68 months	79 months
1977-83	11	9	2	58	59	58
1984	21	13	8	79	76	84
1985	18	11	7	71	65	80

Note: Three cases were resentenced to death after appeal. For these executions, average time was calculated from the original sentencing dates. The range for elapsed time for the 50 executions was 3 months to 133 months.

State notes

Arizona—Amendments to Ariz. Rev. Statutes, Section 13-703-(F9), include as aggravating factors cases when the defendant was an adult at the time the offense was committed or was tried as an adult and the victim was under 15 years of age. Effective 5/16/85.

Arkansas—Revisions to Ark. Rev. Statutes, Article V, Chapter 15, Section 41-1501,8, include murder for pecuniary gain and murder committed in a heinous and cruel manner as aggravating factors. Effective 4/4/85.

Colorado—Revisions to Sections 16-11-103, 18-1-105, Colo. Rev. Statutes, 1985 Suppl. Vol. provide for juries to be instructed that for offenses committed before midyear 1985, life imprisonment means no parole for 20 years, and for offenses on or after that date, no parole for 40 years. Effective 7/1/85.

Connecticut—Amendments to Conn. General Statutes 53a-54b by Public Acts 85-366 stipulate trial court criteria for determining any mitigating circumstances before sentencing in capital murder cases and also provide that if mitigating factors exist, the defendant must be sentenced to life imprisonment without parole. Effective 10/1/85.

Mississippi—Capital murder includes murder of a peace officer, murder by a life-sentence inmate, murder perpetrated by bomb or explosive, contract murder, murder committed during another felony, and murder of an elected official. Capital rape is forcible rape of a child under 14 years by a person 18 years or older. Revision to Miss. Penal Code 99-19-51 Suppl. 1985 substitutes lethal injection for lethal gas as the method of execution for those convicted after July 1, 1984, retaining lethal gas as the method for those convicted before that date.

Montana—Amendments to Section 46-18-303, Mont. Code Ann., 1985, include as aggravating circumstances attempted deliberate homicide, aggravated assault, or aggravated kidnaping committed by State prison inmates with prior records of deliberate homicide or

of persistent felonies including violent offenses. Effective 10/1/85.

Nevada—Amendments to Chapter 177, Nev. Rev. Statutes, limit the time for appellate review of death sentences to 150 days. Section 177.055 eliminates the requirement that the State Supreme Court's automatic review of a death sentence include an evaluation of its proportionality to other similar cases, though a review for excessiveness of the penalty is retained. Effective 7/1/85.

New Jersey—Amendments to New Jersey Statutes 2C:11-3 include provisions that a mandatory death penalty may not be imposed unless the aggravating factors outweigh the mitigating factors beyond any reasonable doubt. Effective 7/10/85.

South Carolina—Amendment to S.C. Statutes at Large, Sec. 16-3-20, specifically provides that persons whose sentences for murder were commuted to life sentences may not be eligible for parole. Effective 5/21/85.

Texas—Amendment to Texas Penal Code Section 19.03(a) adds multiple murders to the overall category of capital murder. Effective 9/1/85.

Virginia—Amendments to Virginia Code, Section 18.2-31(h) add murder of a child under the age of 12 years old in the commission of an abduction to the categories of capital murder. Effective 7/1/85.

Bureau of Justice Statistics Bulletins are prepared principally by the staff of BJS. This bulletin was written by Lawrence A. Greenfeld, corrections unit chief. Carol B. Kalish, chief of data analysis, edits the bulletins. Marilyn Marbrook, publications unit chief, administered production, assisted by Millie Baldea and Betty Sherman. Data were tabulated by Arlene Rasmussen and other staff of the U.S. Bureau of the Census.

November 1986, NCJ-102742

Table 7. Criminal history profile of prisoners under sentence of death, by race, 1985

	Number under sentence of death			Percent of those under sentence of death ^a		
	All races ^b	White	Black	All races ^b	White	Black
Prior felony conviction history						
Yes	970	528	432	66.2%	62.2%	71.9%
No	498	321	169	33.8	37.8	28.1
Not reported	125	54	71			
Prior homicide conviction history						
Yes	116	48	67	9.0%	6.5%	12.6%
No	1,170	693	464	91.0	93.5	87.4
Not reported	305	162	131			
Legal status at time of capital offense						
Charges pending	85	55	28	6.6%	7.4%	5.2%
Probation	70	48	21	5.4	6.5	3.8
Parole	260	123	137	20.1	16.5	25.6
Prison escapee	36	22	14	2.8	3.0	2.6
Prison inmate	44	24	20	3.4	3.2	3.7
Other status ^c	21	11	9	1.6	1.5	1.7
None	776	461	307	60.1	62.0	57.3
Not reported	299	159	136			
Median time elapsed since imposition of death sentence	36 mos.	35 mos.	38 mos.			

^aPercents are based on those offenders for whom data were reported.
^bIncludes whites, blacks, and persons classified as members of other races.

^cIncludes six persons on mandatory release, two on bail, three on furlough from prison, one for whom charges were pending from the U.S. Army, one in a local jail, and eight on work release/work furlough from prison.

Table 8. Number of persons executed, by jurisdiction in rank order, 1930-85

State	Number executed	
	Since 1930	Since 1977
U.S. total	3,909	50
Georgia	372	8
New York	329	
Texas	307	10
California	292	
North Carolina	265	2
Florida	183	13
Ohio	172	
South Carolina	163	1
Mississippi	155	1
Pennsylvania	152	
Louisiana	140	7
Alabama	136	1
Arkansas	118	
Kentucky	103	
Virginia	96	4
Tennessee	93	
Illinois	90	
New Jersey	74	
Maryland	68	
Missouri	62	
Oklahoma	60	
Washington	47	
Colorado	47	
Indiana	43	2
West Virginia	40	
District of Columbia	40	
Arizona	38	
Federal system	33	
Nevada	31	2
Massachusetts	27	
Connecticut	21	
Oregon	19	
Iowa	18	
Kansas	15	
Utah	14	1
Delaware	12	
New Mexico	8	
Wyoming	7	
Montana	6	
Vermont	4	
Nebraska	4	
Idaho	3	
South Dakota	1	
New Hampshire	1	
Wisconsin	0	
Rhode Island	0	
North Dakota	0	
Minnesota	0	
Michigan	0	
Maine	0	
Hawaii	0	
Alaska	0	

Since 1977, a total of 1,530 offenders have been under a death sentence for varying periods of time (table 9).

Criminal history of inmates under sentence of death in 1985

Among those under sentence of death at yearend 1985 for whom criminal history information was available, 66% had a history of felony convictions (table 7). Among those for whom information on homicide was available, 9% had a previous conviction for that crime.

Among those for whom legal status at the time of the capital offense was reported, about 40% had been in an active status. Half of these were on parole, while the rest had charges pending (7%), were on probation (5%), were prison inmates (3%) or escapees (1%). Excluding those with pending charges, a total of one in three were under sentence for another crime when the murder for which they were condemned occurred; in a number of cases, such status is considered an aggravating factor in sentencing for the crime.

The criminal history patterns were similar for whites and blacks, although somewhat higher percentages of blacks than whites had prior felony convictions or prior homicide convictions or were on parole at the time of the capital offense.

government, 3,909 executions have been conducted under civil authority (table 8).² Since the death penalty was reinstated by the Supreme Court in 1976, the States have executed 50 persons:

1977:	1	1983:	5
1979:	2	1984:	21
1981:	1	1985:	18
1982:	2		

A total of 12 States have carried out executions since 1977. During the period, 32 white males, 17 black males, and 1 white female have been executed with the largest number of executions occurring in Florida (13), Texas (10), and Louisiana (7). During 1985, 11 white males and 7 black males were executed by eight States.

²An additional 160 executions have been carried out under military authority since 1930.

Table 9. Percentage of those under sentence of death who were executed or received other dispositions, by race, 1977-85

Race	Total under sentence of death 1977-85 ^a	Prisoners executed		Prisoners who received other dispositions ^b	
		Number	Percent of total	Number	Percent of total
All races ^c	2,530	50	2.0%	989	35.1%
White	1,441	33	2.3	505	35.0
Black	1,066	17	1.6	377	35.4

^aThose under sentence of death at the beginning of 1977 (420) plus all new admissions under sentence of death between 1977 and 1985 (2,110).

^bOther dispositions include persons removed from a sentence of death due to statutes struck down on appeal, sentences convictions

vacated, commutations, or death other than by execution (of the 889 removals, 32 resulted from death during confinement—11 from natural causes, 14 by suicide, 2 during escape attempts, and 5 murdered by other inmates).
^cIncludes whites, blacks, and persons classified as members of other races.

Original sponsors: Abood, Kelly
and Faiks

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IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

CS FOR SENATE BILL NO. 7 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies; providing for an advisory vote; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 11.31.100(d) is amended to read:

(d) An attempt is a

(1) class A felony if the crime attempted is an unclassified or capital felony;

(2) class B felony if the crime attempted is a class A felony;

(3) class C felony if the crime attempted is a class B felony;

(4) class A misdemeanor if the crime attempted is a class C felony;

(5) class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

* Sec. 2. AS 11.31.110(c) is amended to read:

(c) Solicitation is a

(1) class A felony if the crime solicited is an unclassified or capital felony;

(2) class B felony if the crime solicited is a class A felony;

1 (3) class C felony if the crime solicited is a class B
2 felony;

3 (4) class A misdemeanor if the crime solicited is a class C
4 felony;

5 (5) class B misdemeanor if the crime solicited is a class A
6 or class B misdemeanor.

7 * Sec. 3. AS 11.41.100(b) is amended to read:

8 (b) Murder in the first degree is a capital [AN UNCLASSIFIED]
9 felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

10 * Sec. 4. AS 12.30.040(b) is amended to read:

11 (b) Notwithstanding the provisions of (a) of this section, if a
12 person has been convicted of an offense that [WHICH] is a capital
13 felony, an unclassified felony or a class A felony, the person may not
14 be released on bail either before sentencing or pending appeal.

15 * Sec. 5. AS 12.55 is amended by adding a new section to read:

16 Sec. 12.55.117. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)
17 A judgment of conviction of a capital felony for which a sentence of
18 death is imposed is subject to automatic review by the supreme court
19 within 60 days after imposition of the sentence. This time limit may
20 be extended by the supreme court. A review under this section has
21 priority over all other cases and the case shall be heard in accor-
22 dance with rules adopted by the supreme court. On review, the court
23 shall determine whether

24 (1) the sentence was imposed under the influence of pas-
25 sion, prejudice, or other arbitrary factor;

26 (2) the evidence supports the finding of an aggravating
27 factor under AS 12.55.180; and

28 (3) the sentence is excessive or disproportionate to the
29 penalty imposed in similar cases, considering both the crime and the

1 defendant.

2 (b) If the supreme court upholds a judgment of conviction and
3 sentence of death, the court shall issue a death warrant that
4 specifies a date of execution. The date of execution shall be not
5 less than 30 days nor more than 60 days after the date of the warrant.
6 The death warrant shall be delivered to the commissioner of
7 corrections. The commissioner shall specify the time, place, and
8 manner of execution after providing a person sentenced to death an
9 opportunity to choose to be executed by lethal injection or by firing
10 squad.

11 (c) An execution by firing squad shall be carried out at a state
12 prison designated by the commissioner of corrections. The commis-
13 sioner shall select a firing squad of six peace officers. They shall
14 be compensated in an amount determined by the commissioner.

15 (d) After consulting a licensed physician, the commissioner of
16 corrections shall select a method of injection and a drug or com-
17 bination of drugs to be used for an execution by lethal injection.

18 (e) The commissioner of corrections and a licensed physician
19 chosen by the commissioner shall be present at an execution under this
20 chapter. The commissioner may invite not more than nine citizens 19
21 years of age or older to be present at an execution, including the
22 prosecuting attorney, the defense attorney, relatives, friends or
23 religious representatives designated by the defendant. None of those
24 invited may attend an execution as a matter of right.

25 (f) After the execution the commissioner of corrections shall
26 make a return upon the death warrant, showing the time, place and
27 manner in which the defendant was executed.

28 (g) The commissioner of corrections shall permit at an execution
29 the attendance of not more than six members of the print and broadcast

1 news media selected by the commissioner in accordance with regulations
2 adopted by the Department of Corrections. The selected news media
3 members shall serve as a pool for other members of the news media as a
4 condition of attendance.

5 (h) The use of photographic or recording equipment may not be
6 permitted at the execution site until the execution is completed, the
7 body is removed and the site has been restored to an orderly condi-
8 tion. The physical arrangements for the execution may not be dis-
9 turbed. A person who violates this subsection is guilty of a class B
10 misdemeanor.

11 (i) Persons attending an execution shall be subject to a reason-
12 able search as a condition of attendance.

13 (j) Persons other than the necessary staff designated by the
14 commissioner of corrections and others permitted under (e) and (g) of
15 this section, may not be permitted to attend an execution, nor may any
16 person under the age of 19 attend.

17 (k) The Department of Corrections shall adopt regulations gov-
18 erning the attendance of persons at an execution.

19 * Sec. 6. AS 12.55.125(a) is amended to read:

20 (a) A defendant convicted of a capital felony [MURDER IN THE
21 'FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
22 at least 20 years but not more than 99 years, or shall be sentenced to
23 death.

24 * Sec. 7. AS 12.55 is amended by adding new sections to read: .

25 Sec. 12.55.177. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a)
26 If, after trial by jury, the defendant is convicted of a capital
27 felony, the court shall conduct a separate sentencing proceeding
28 before the trial jury as soon as practicable. If a jury trial has
29 been waived or if the defendant pleads guilty, the sentencing

1 proceeding shall be held before a jury impaneled for the purpose.

2 (b) In the sentencing proceeding evidence may be presented as to
3 any matter relevant to the nature of the crime, the character of the
4 defendant, or any aggravating or mitigating factor that the court
5 considers to have probative value, regardless of the admissibility of
6 the evidence under the exclusionary rules of evidence, provided the
7 defendant has an opportunity to rebut hearsay statements. The state
8 and the defendant or the defendant's counsel shall be permitted to
9 present oral argument. This subsection does not authorize the intro-
10 duction of evidence secured in violation of the Constitution of the
11 State of Alaska or the Constitution of the United States.

12 (c) After hearing the evidence, the jury shall deliberate and
13 recommend a sentence to the court. The recommended sentence must
14 include written findings of whether

15 (1) aggravating factors exist to justify the death sen-
16 tence;

17 (2) mitigating factors exist that outweigh the aggravating
18 factors; and

19 (3) the defendant should be sentenced to a term of impris-
20 onment or to death.

21 Sec. 12.55.179. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
22 The court, after considering the evidence and the recommended sen-
23 tence, shall enter a sentence of death or a term of imprisonment in
24 accordance with AS 12.55.125(a). The death sentence may not be im-
25 posed unless the jury finds at least one aggravating factor that is
26 not outweighed by the mitigating factors, and the jury recommends that
27 the defendant be sentenced to death. If the jury findings include an
28 aggravating factor that is not outweighed by the mitigating factors,
29 and the jury recommends that the defendant be sentenced to death, the

1 court shall sentence the defendant to death. . If a sentence of death
2 is not recommended by the jury, the court shall sentence the defendant
3 to a term of imprisonment.

4 (b) If the court enters a sentence of death, it shall make
5 written findings of

6 (1) aggravating factors that exist to justify the sentence;
7 and,

8 (2) mitigating factors considered by the court.

9 (c) A judgment of conviction for which a sentence of death is
10 imposed is subject to automatic review under AS 12.55.117.

11 Sec. 12.55.180. AGGRAVATING FACTORS. In determining whether to
12 impose a sentence of death, the following aggravating factors may be
13 considered:

14 (1) the defendant's conduct during the commission of the
15 offense manifested deliberate cruelty to another person in that it
16 involved sexual assault in the first degree, kidnapping, assault in
17 the first degree, torture, or an aggravated battery;

18 (2) the defendant's conduct caused the death of two or more
19 persons, other than accomplices;

20 (3) the defendant's conduct created a risk of imminent
21 physical injury to three or more persons, other than accomplices;

22 (4) the defendant has a prior conviction for a felony that
23 involved the use of violence to a person or for murder under AS 11.-
24 41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or a law from
25 another jurisdiction with substantially similar elements;

26 (5) the defendant knowingly directed the conduct constitut-
27 ing the offense at the President of the United States or the governor
28 of this state;

29 (6) the defendant knowingly directed the conduct

1 constituting the offense at an active or former law enforcement
2 officer, prosecuting attorney, fireman, judicial officer, or
3 correctional officer during or because of the exercise of official
4 duties;

5 (7) the defendant committed the offense under an agreement
6 that the defendant either pay or be paid for the commission of the
7 offense, or for other pecuniary gain;

8 (8) the defendant was on release for another felony charge
9 or conviction having assault as a necessary element.

10 Sec. 12.55.181. MITIGATING FACTORS. In determining whether to
11 impose the death sentence, all mitigating factors shall be considered,
12 including, but not limited to, the following:

13 (1) the defendant committed the offense under a degree of
14 duress, coercion, threat, or compulsion insufficient to constitute a
15 defense, but that significantly affected the defendant's conduct;

16 (2) the conduct of a youthful defendant was substantially
17 influenced by a person more mature than the defendant;

18 (3) the defendant acted with serious provocation from the
19 victim;

20 (4) the defendant assisted authorities to detect or appre-
21 hend other persons who committed the offense with the defendant.

22 Sec. 12.55.182. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
23 DEATH. (a) If, after imposing a sentence of death, there is reason
24 to believe the defendant has become incompetent to proceed with the
25 execution, or is pregnant, the commissioner of corrections shall
26 immediately give written notice to the court in which the sentence of
27 death was imposed, the prosecuting attorney, and counsel for the
28 defendant. The execution of sentence shall be stayed pending further
29 order of the court.

1 (b) On receipt of the notice that the defendant is believed to
2 be incompetent, the mental condition of the defendant shall be ex-
3 amined in the same manner as provided for examining persons for compe-
4 tency to stand trial under AS 12.47.070. If it is found that the
5 defendant is incompetent, the sentencing court shall immediately
6 certify that finding to the supreme court and the commissioner of
7 corrections, and shall enter an order for commitment in the same
8 manner as provided for commitment under AS 12.47.110. If it is found
9 that the defendant is competent, the sentencing court shall immedi-
10 ately certify the finding to the supreme court and the commissioner of
11 corrections. The supreme court shall issue and deliver another war-
12 rant to the commissioner of corrections under AS 12.55.117, together
13 with a copy of the certified finding. The warrant shall specify a
14 date of execution not less than 30 days nor more than 60 days after
15 the date of the warrant.

16 (c) If the defendant is pregnant, the sentencing court shall
17 immediately certify that finding to the supreme court and the commis-
18 sioner of corrections. The supreme court shall issue an order staying
19 the execution of the sentence of death during the pregnancy. When the
20 defendant is no longer pregnant, the sentencing court shall immedi-
21 ately certify the finding to the supreme court and the commissioner of
22 corrections. The supreme court shall issue and deliver another war-
23 rant under AS 12.55.117, together with a copy of the certified find-
24 ing. The warrant shall specify a date of execution not less than 30
25 days nor more than 60 days after the date of the warrant.

26 * Sec. 8. AS 22.07.020(a) is amended to read:

27 (a) The court of appeals has appellate jurisdiction in actions
28 and proceedings commenced in the superior court involving:

29 (1) criminal prosecution, except prosecution for a capital

1 felony for which a death sentence is imposed;

2 (2) post-conviction relief;

3 (3) children's court matters under AS 47.10.010(a)(1)
4 including waiver of children's court jurisdiction over a minor under
5 AS 47.10;

6 (4) extradition;

7 (5) habeas corpus;

8 (6) probation and parole; and

9 (7) bail.

10 * Sec. 9. AS 22.07.020(b) is amended to read:

11 (b) Except for appeals of a death sentence, the [THE] court of
12 appeals has jurisdiction to hear appeals of sentences of imprisonment
13 imposed by the superior court on the grounds that the sentence is
14 excessive or too lenient and, in the exercise of this jurisdiction,
15 may modify the sentence as provided by law and the state constitut

16 * Sec. 10. The lieutenant governor shall place before the qual
17 voters of the state at the next statewide election the question advisory to
18 the legislature of whether capital punishment for murder in the first
19 degree as now authorized by law should go into effect on August 15, 1989.
20 The question shall appear on the ballot in substantially the following
21 form:

22 Q U E S T I O N

23 Shall capital punishment for murder in the first degree
24 as now authorized by law go into effect on August 15, 1989?

25 Yes []

No []

26 * Sec. 11. Sections 1 - 9 of this Act take effect August 15, 1989.

27 * Sec. 12. Section 10 of this Act takes effect immediately under
28 AS 01.10.070(c).