

S B

17

FISCAL NOTE

REQUEST:

Revision Date: 3/12/90
Title: "An Act authorizing capital punishment,..."
Sponsor: Senator Fisher
Requestor: Senate Finance

Agency Affected: Administration
BRU: Office of Public Advocacy

Comments: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 98
PERSONAL SERVICES	-0-	239.2	248.8	258.8	269.2	280.0
TRAVEL		35.0	36.4	37.9	39.4	41.0
CONTRACTUAL		486.2	505.6	525.8	546.8	568.7
SUPPLIES		4.0	4.2	4.4	4.6	4.8
EQUIPMENT		18.3	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	782.7	795.0	826.9	860.0	894.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	782.7	795.0	826.9	860.0	894.5
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	782.7	795.0	826.9	860.0	894.5

POSITIONS:

FULL-TIME	-0-	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

FY90 impact is zero. See attached for analysis.

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

Phone: 274-1684
Date: 3/12/90

Approved by Commissioner: Frank Baxter
Agency: Department of Administration

Date: 3/12/90

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

The passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy. The OPA is purely a 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.

Section 9 of the Senate Judiciary Committee substitute for this bill adds a new chapter to AS 12, which grants prosecutors the discretion whether to seek the death penalty against a defendant. The Department of Law has estimated that it would seek the death penalty in approximately six cases annually. Therefore, Office of Public Advocacy anticipates that it would be responsible for two capital cases in FY92. This estimate is dependent upon the following two assumptions: (1) a slight numerical increase in the number of capital felony cases which fall within the OPA statutory mandate, and (2) the Department of Law will not seek the death penalty in more than six cases annually.

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 extraordinarily 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. CSSB 17 (Jud)

Personal Services

Anchorage

Attorney V Salary & Benefits	=	\$ 79.6
Attorney IV Salary & Benefits	=	74.8
Investigator III Salary & Benefits	=	52.0
Legal Secretary I	=	<u>32.8</u>
Subtotal Personal Services		\$239.2

Travel

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

Contractual

Additional office for four positions in Anchorage = \$16,200	16.2
Expert witness fees based on two cases per year at \$60,000 per case	120.0
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	\$486.2

Supplies

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

Equipment

Office furniture and equipment for
three professional positions at \$3,635
each and one legal secretary at \$7,369 18.3

TOTAL: \$782.7

Position Title Attorney V		No. of Positions 1	Range/Step 25/A	Org. Unit X
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary	60,252			
Benefits	19,342			
Premium Pay				
Other				
Total Personal Services		79,594		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		79,594		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		79,594		
GF Program Receipts 1005				
Other				
<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
 DRU Office of Public Advocacy
 Component _____

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 Revised Date _____

FY 90

Position Title Attorney IV		No. of Positions 1	Range/Step 24/A	Org. Unit X
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Justification				
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.				
Type of Expenditure		Amount		
1	2	3		
Salary	56,244			
Benefits	18,612			
Premium Pay				
Other				
Total Personal Services		74,856		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		74,856		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		74,856		
GF Program Receipts 1005				
Other				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

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FY 90

Position Title Investigator III		No. of Positions	Range/Step 18/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Justification				
Type of Expenditure			Amount	
	2	3		
Salary	37,356			
Benefits	14,601			
Premium Pay				
Other				
Total Personal Services		51,957		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		51,957		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	51,957		
GF Program Receipts	1005			
Other				
<p>This position will perform all investigative duties in death penalty cases. Extensive experience in all areas of criminal investigation 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, followup and review the prosecution investigation and coordinate witness testimony.</p> <p>The OPA currently 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 6 of 7
 Revised Date _____

FY 90

Position Title Legal Secretary 1		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	10,813			
Premium Pay				
Other				
Total Personal Services		32,833		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		32,833		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	32,833		
CF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 7 of 7
 Revised Date _____

FY 90

FISCAL NOTE

REQUEST:

Revision Date: 3/12/90
 Title: "An Act authorizing capital punishment..."
 Sponsor: Senators Fischer, Kally, Pearce
 Requestor: Senate Finance

Agency Affected: Dept. of Administration
 BRU: Public Defender Agency

Components: Third and Fourth Judicial Districts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES		239.1	740.8	770.4	801.2	833.2
TRAVEL		50.0	150.0	156.0	162.2	168.7
CONTRACTUAL		95.0	301.0	313.0	325.5	338.5
SUPPLIES		6.0	18.0	18.7	19.4	20.2
EQUIPMENT		20.0	40.0	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	410.1	1249.8	1258.1	1308.3	1360.6

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	410.1	1249.8	1258.1	1308.3	1360.6
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	410.1	1249.8	1258.1	1308.3	1360.6

POSITIONS:

FULL-TIME	-0-	4.0	12.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached analysis)

Prepared by: John B. Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: 3/12/90

Approved by Commissioner: Frank Baxter
 Agency: Department of Administration

Date: 3/12/90

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 17

If this capital punishment bill is enacted, legal representation of the poor in death penalty 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. The potential for a mistaken conviction is of course a 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. In essence, a death penalty case involves two separate trials involving enormous time and expense.

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

1. Motion to modify death penalty sentence before trial judge.
2. Automatic 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. CS, SB 17

The figures in this fiscal note are based on an estimation of the number of cases which would qualify under the bill as capital cases, and based further on the Department of Law's estimate that they would be seeking the death penalty in six capital cases per year. The specific figures included in this fiscal note are based on the following:

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 6 cases per year, this agency would need one death penalty team of two attorneys to handle the trial and penalty phases of these cases. A second death penalty team of two attorneys would be necessary to handle the additional cases which would accumulate during the second year of enactment of this bill. In addition, during that second year an appellate attorney team of two attorneys would be necessary to handle the appeals of these cases. No appellate attorney team would be added the first fiscal year as it is unlikely that any of these cases would reach the appellate stage during the first year of enactment of the bill. 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 6 cases per year.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 17

3. Equipment and Supplies.

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

BUDGET SUMMARY

FY 92

Personal Services:

Guilty and Penalty Team-Anchorage	
Attorney V	79.6
Attorney IV	74.8
Investigator III	51.9
Legal Secretary I	32.8

TOTAL 239.1

Travel:

Based on 6 Capital cases per year Employee and non-employee (experts)	50.0
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Contractual:

Based on 6 Capital cases per year	
Experts	80.0
Office space	1
Anchorage	8.0
Printing	2.0
Communications	5.0

TOTAL 95.0

Supplies:

Office, law library	6.0
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Equipment:

Office furniture and machines (one time)	20.0
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TOTAL 410.1

FY 93 - Additional Costs

Personal Services:

Appellate Team - Anchorage	
Attorney V	79.6
Attorney IV	74.8
Investigator III	51.9
Legal Secretary I	32.8
Guilty and Penalty Team-Fairbanks	
Attorney V	90.2
Attorney IV	84.7
Investigator III	53.8
Legal Secretary I	33.9

TOTAL 501.7

Travel:

Based on 6 Capital cases per year	100.0
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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 17

<u>Contractual:</u>		
Based on 6 Capital cases per year	190.0	206.0
Office space: Anchorage, Fairbanks	16.0	
<u>Supplies:</u>		12.0
<u>Equipment:</u>		
Two teams (one time)		<u>40.0</u>
	TOTAL	859.7

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
Type of Expenditure		Justification		
		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. Six capital cases per year are projected for this team and each case will require 8.3 for travel and 15.8 contractual for experts, etc. for a total 145.0. Pro rating these amounts for each attorney allows 25.0 for travel and 47.5 contractual plus office space and other necessities.		
Amount				
1	2	3		
Salary \$5021/mo.	60,252			
Benefits	19,331			
Premium Pay				
Other				
Total Personal Services		79,583		
Travel		25,000		
Contractual		47,500		
Commodities		2,000		
Equipment		2,500		
Other				
Total Cost		156,583		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	156,583		
GF Program Receipts	1005			
Other				

**Request For
New Position**

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

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 Revised Date

FY 92

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 22	
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. Six capital cases per year are projected for this team and each case will require 8.3 for travel and 15.8 contractual for experts, etc. for a total 145.0. Pro rating these amounts for each attorney allows 25.0 for travel and 47.5 contractual plus office space and other necessities.</p>			
	Amount				
1	2				3
Salary	\$4687/mo.				56,244
Benefits					18,601
Premium Pay					
Other					
-----Total Personal Services					74,845
Travel					25,000
Contractual					47,500
Commodities					2,000
Equipment					2,500
Other					
Total Cost		151,845			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	151,845			
GF Program Receipts	1005				
Other					

**Request For
New Position**

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

FY 92

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 Revised Date

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. Six capital cases per year are projected for this team and each case will require 8.3 for travel and 15.8 contractual for experts, etc. for a total 145.0. Pro rating these amounts for each attorney allows 25.0 for travel and 47.5 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		14,589				
Premium Pay						
Other						
Total Personal Services						51,945
Travel						-0-
Contractual						-0-
Commodities						-0-
Equipment						2,500
Other						
Total Cost						54,445
Funding Source for Total Cost						
Federal Receipts	1002					
G. F. Match	1003					
General Fund	1004		54,445			
GF Program Receipts	1005					
Other						

**Request For
New Position**

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

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 Revised Date

FY 92

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																																							
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th colspan="2">Amount</th> </tr> <tr> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary \$1835/mo.</td> <td>22,020</td> <td></td> </tr> <tr> <td>Benefits</td> <td>10,802</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>32,822</td> <td></td> </tr> <tr> <td>Travel</td> <td>-0-</td> <td></td> </tr> <tr> <td>Contractual</td> <td>-0-</td> <td></td> </tr> <tr> <td>Commodities</td> <td>2,000</td> <td></td> </tr> <tr> <td>Equipment</td> <td>12,500</td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td>47,322</td> <td></td> </tr> </tbody> </table>		Type of Expenditure	Amount		1	2	3	Salary \$1835/mo.	22,020		Benefits	10,802		Premium Pay			Other			Total Personal Services	32,822		Travel	-0-		Contractual	-0-		Commodities	2,000		Equipment	12,500		Other			Total Cost	47,322		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																																										
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**Request For
New Position**

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

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Revised Date

FY 92

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CS88 17 (Judiciary) (c)
Publish Date: 3/13/90 UPDATED

FISCAL NOTE

REQUEST:

Revision Date 3/8/90 Agency Affected: Alaska Court System
Title: An act related capital punishment BRU: Trial Courts
Sponsor: Fischer, Kelly, Pearce... Components: _____
Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services			88.9	88.9	88.3	88.3
Travel			112.5	112.5	112.5	112.5
Contractual			166.0	166.0	166.0	166.0
Supplies						
Equipment			15.7			
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	380.5	384.8	364.8	364.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	380.5	364.8	364.8	364.8
Federal Funds						
Other						
TOTAL	0.0	0.0	380.5	364.8	364.8	364.8

POSITIONS:

Full-time			2.0	2.0	2.0	2.0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Jan Strandberg, General Counsel

Division: Alaska Court System

Phone: 264-8228

Date: 03/08/90

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 03/08/90

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)

ALASKA COURT SYSTEM
CSSE 17 (Judiciary) - Capital Punishment
FISCAL IMPACT

Voter approval of capital punishment will result in an estimated 10 capital punishment trials each year. These trials will result in additional costs for the following reasons:

1. Personnel Costs and Related Costs. Extensive legal research is required for capital offenses. Additional law clerks will be needed to research motions and other judicial questions. Courtroom security will have to be strengthened for these cases. Contractual funds for security services in other courts will be needed.

2. Travel Costs. Since death penalty cases are often subject to intense media exposure, expenses associated with jury sequestration and with change of venue can be expected.

3. Juror Selection. Jurors must be questioned individually in capital cases and some courts have required questioning in private. More jurors must be called and the process takes longer, with more challenges for cause, all of which results in higher jury fee expenditures. Similarly, additional bailiff costs can be expected.

4. Transcription Costs. Preparation of the voluminous record which accompanies a death penalty case will result in additional transcribing costs.

5. Equipment. Courtroom security requirements will necessitate the installation metal detectors in major court locations and the use of hand-held detectors in smaller courts to screen trial spectators.

The estimated annual costs associated with these items are summarized in the attached schedule.

ALASKA COURT SYSTEM
CS SB 17 (Judiciary) - Capital Punishment
Fiscal Impact

<u>Personal Services</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Law Clerk I, Range 13D, Anchorage, PFT - 12 Months	\$29,340	\$11,095	\$40,435
Law Clerk I, Range 13D, Fairbanks, PFT - 12 Months	39,816	12,090	<u>45,896</u>
Total Personal Services			<u>86,331</u>

Travel

Jury sequestration - meals and lodging 112,500

Contractual

Security guard services for courts outside Anchorage 10,000
Jury fees 96,000
Balliff costs 10,000
Transcription 50,000

Total Contractual 166,000

Equipment (one-time items)

Standard office equipment and reference materials
for law clerks 3,249

Walk-through metal detectors for Anchorage,
Fairbanks, Juneau, and Ketchikan and hand-held
metal detectors for other superior courts 12,450

Total Equipment 15,699

Total First Year Cost 9380,530

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to capital
 punishment."
 Sponsor: Senator Fischer
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: Statewide Operations
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	300.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	300.0	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Capital construction cost for execution area and attendee waiting area.
 Total of 1,000 square feet at \$300 per square foot.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 03/12/90

Approved by: *Commissioner Humphrey-Barnett* Date: 03/12/90
 Agency: Department of Corrections

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

FISCAL NOTE

REQUEST:

Revision Date: March 12, 1990
Title: "An Act authorizing capital punishment..."
Sponsor: Senate Judiciary
Requestor: Senate Finance

Agency Affected: Department of Law
BRU: Prosecution
Components: Criminal Appeals and Special Prosecutions

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	-0-	380.7	695.9	995.7	995.7	995.7
TRAVEL	-0-	138.5	266.5	394.5	394.5	394.5
CONTRACTUAL	-0-	222.4	506.4	724.4	724.4	724.4
SUPPLIES	-0-	27.9	40.8	55.2	46.2	46.2
EQUIPMENT	-0-	47.5	42.0	41.0	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	817.0	1,551.6	2,210.8	2,160.8	2,160.8
						PLUS
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	817.0	1,551.6	2,210.8	2,160.8	2,160.8
FEDERAL FUNDS						PLUS
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	7	13	19	19	19
PART-TIME						PLUS
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard L. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 12, 1990
Approved by Commissioner: Richard L. Pegues / RR /
Douglas B. Baily, Attorney General Date: March 12, 1990
Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

The Department of Law has been requested to revise its fiscal note for this bill, dated March 3, 1989, on the basis of its current homicide caseload, in order to determine if the caseload assumptions used in the March 3, 1989 fiscal note are still valid. Because of the high cost, which the department could foresee would be necessary to implement the bill, the fiscal note costs were developed in as conservative a manner as possible, as were the assumptions upon which those costs were based.

The department's criminal division currently has sixteen pending murder trials where aggravating factors are present that would justify the death penalty, had the bill already been the law. Likewise, the department's Office of Special Prosecutions and Appeals is currently handling eight first degree murder appeals where these factors are also present. Based on this current data, there cannot be any suggestion that the assumptions used in the 1989 fiscal note were overstated. If anything, they may be understated by as much as one-third or more. However, because the number of murders committed in Alaska varies somewhat from year-to-year, the department believes that the realistic approach is to use the assumptions given in the March 3, 1989 fiscal note. Consequently, this analysis is repeated below.

The department believes firmly that the costs are fairly presented and represent the minimum amount that it would require to carry out the bill's provisions.

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. Section 9 of the Senate Judiciary Committee substitute for the bill adds a new chapter to AS 12, which grants prosecutors the discretion whether to seek the death penalty against a defendant. As was pointed out in the Department of Law's fiscal note of January 20, 1989, the death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors.

Overview

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 sufficient to justify the death penalty; whether mitigating factors exist that outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death. At the current time, there are 10 to 12 first degree murder convictions each year where circumstances may be present that could result in bifurcated trials. In view of the discretion provided to prosecutors by the committee substitute; however, the department anticipates that about six bifurcated trials would be required annually if the bill is enacted.

Consequently, the Department of Law estimates that four capital felony 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 that it will attempt to seek the death penalty in two additional capital felony cases, where it may not be successful. Thus, the department must be prepared to prosecute capital felonies on six occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of four cases per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

In its several reviews of capital penalty laws, the United States Supreme Court has repeatedly stated, "death is different." Consequently, the Supreme Court has required that states accord capital defendants procedural and substantive protections that go far beyond those required for noncapital defendants. The Court has, in effect, mandated that capital defendants be accorded "super" due process. The federal courts have consistently held that capital cases demand special consideration, both at trial and on appellate review, because of the exceptional and irrevocable nature of the penalty involved.

In order to meet this heightened level of due process, it will be necessary for the state to employ far greater prosecution resources. Many of the thirty-seven states having a death penalty, for instance, provide two defense attorneys to capital defendants to insure that the due process safeguards required by the courts are met. Likewise, the state's prosecution case must also be properly represented. During and prior to the trial phase, crime scene evidence will have to be examined and presented by highly qualified forensic experts, because the state's burden of proof will become more severe under these heightened standards. Psychiatric experts will also be required during the trial phase, during sentencing proceedings, and during the appellate review, to rebut and overcome competency and psychiatric defenses to both the substantive charge and the capital sentence. Recent cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about \$60,000, on the average. A lesser, but still significant, cost for experts is also required for appellate reviews.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defense's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. In a recent California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it appears likely that the same level of state resources, needed for the John Kenneth Peel and Neil Mackay trials, will also be needed for many of the capital murder trials. For example, a fivefold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases.

Lastly, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. In the federal system, it is standard and accepted practice for the defense to raise each issue on appeal as a separate action, and new issues are not raised until after the earlier issue has been completely adjudicated, further lengthening the appellate review process. As a result, it should be expected that many years will pass before a death sentence can be carried out.

Implementation

The Department of Law anticipates that the time from when an offense is committed until a capital felony trial takes place will be between one and two years after the bill takes effect, although up to two trials may begin during the first year. Likewise, the post-conviction appellate review process will not commence until sometime during the second year. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add three attorneys, two paraprofessionals, and two legal secretaries to handle capital felony prosecutions. Although only two bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all six capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

The "super" due process required by the courts in death penalty cases, and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with noncapital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could not readily be undertaken in any of the department's offices, except for Anchorage and Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even at Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, four or more additional capital felonies are expected to go to trial, and six new capital felony offenses will occur. At this point, it will be necessary to add one attorney, one paraprofessional, and one legal secretary to help handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first two trials are expected to begin the appellate review process. Initially, one attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

During the third year, the number of bifurcated trials should equal the number of new capital offenses, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

trial problems. Post-conviction capital felony appeals will have reached six by year three, and they will continue to increase at the rate of four new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year.

It is not possible to accurately predict the eventual annual costs of a capital felony law beyond its first three or four years. There are simply too many unknowns. However, the costs that have been predicted are conservative. The following factors have been considered in arriving at these costs.

1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting six first degree murder offenses, at a minimum.

2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.

3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.

4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.

5) Witness travel and subsistence will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.

6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.

7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs of a bifurcated capital felony case has been projected to be \$ 284,300 or 48% of the \$ 597,000 cost of the first Peel trial.

8) The cost for appeals is shown only through the third year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is ten years, and this average is growing each year. At some point, the state will have to provide enough resources to respond to the appeals of forty or more capital felony defendants, annually.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

9) Consequently, the following per trial expense estimates have been used to calculate the costs of this fiscal note.

Capital Felony Trials

- Witness travel and Subsistence, \$50,000 per case.
- Staff travel and Per Diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert Witness Fees, \$60,000 per case.
- Witness fees paid to others, \$6,000 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff Travel, \$7,500 per attorney, \$5,000 per paraprofessional, per annum.
- Expert Witness Fees, legal scholars for years two and three only, \$30,000, each year. Socio-psychiatric experts, \$25,000, per annum.
- Deposition/court reporter costs, \$10,000 per annum.

Fiscal Analysis

Cost Summary (First Year - FY 92 - Capital Trials)

Object	Atty V	Atty IV	Atty IV	Assoc. Atty I	P/A II	Legal Sec I	Legal Sec I	TOTAL
100 - Salaries & Benefits	77.8	73.2	73.2	47.4	44.3	32.4	32.4	380.7
	77.8	73.2	73.2	47.4	44.3	32.4	32.4	380.7
200 - Travel								
Witness Travel & Subsist	20.0	20.0	20.0	20.0	20.0	-0-	-0-	100.0
Staff Travel and Per Diem	7.5	7.5	7.5	5.0	5.0	3.0	3.0	38.5
	27.5	27.5	27.5	25.0	25.0	3.0	3.0	138.5
300 - Contractual								
Communications, Copy, Document Production,	3.6	3.6	3.6	2.4	2.4	2.4	2.4	20.4
Expert Witness	24.0	24.0	24.0	24.0	24.0	-0-	-0-	120.0
Witness Fees	2.4	2.4	2.4	2.4	2.4	-0-	-0-	12.0
Depositions	8.0	8.0	8.0	8.0	8.0	-0-	-0-	40.0
Office Space Leases	3.9	3.9	3.9	2.7	2.2	2.2	2.2	21.0
WP Maintenance	-0-	-0-	-0-	-0-	-0-	1.5	1.5	3.0
Westlaw	1.2	1.2	1.2	1.2	1.2	-0-	-0-	6.0
	43.1	43.1	43.1	40.7	40.2	6.1	6.1	222.4
400 - Supplies								
Office Consumables	1.8	1.8	1.8	1.8	1.8	1.2	1.2	11.4
Law Library	1.2	1.2	1.2	1.2	1.2	-0-	-0-	6.0
New Position Supplies	1.5	1.5	1.5	1.5	1.5	1.5	1.5	10.5
	4.5	4.5	4.5	4.5	4.5	2.7	2.7	27.9
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	2.5	1.5	1.5	1.5	14.5
PC/Word Processing	4.0	4.0	4.0	4.0	4.0	6.5	6.5	33.0
	6.5	6.5	6.5	6.5	5.5	8.0	8.0	47.5
TOTAL	159.4	154.8	154.8	124.1	119.5	52.2	52.2	817.0

Fiscal Analysis CSSB 17 (Jud)

Cost Summary (Second and Third Years Additions - FY93 and FY94 - Capital Trials)

Object	Second Year				Third Year			
	Atty V	Assoc Atty I	Legal Sec I	TOTAL	Atty IV	P/A II	Legal Sec I	TOTAL
100 - Salaries & Benefits	77.8	47.4	32.4	157.6	73.2	44.3	32.4	149.9
	77.8	47.4	32.4	157.6	73.2	44.3	32.4	149.9
200 - Travel								
Witness Travel & Subsist	50.0	50.0	-0-	100.0	50.0	50.0	-0-	100.0
Staff Travel and Per Diem	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
	57.5	55.0	3.0	115.5	57.5	55.0	3.0	115.5
300 - Contractual								
Communications, Copy,								
Document Production,	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Expert Witness	60.0	60.0	-0-	120.0	60.0	60.0	-0-	120.0
Witness Fees	6.0	6.0	-0-	12.0	6.0	6.0	-0-	12.0
Depositions	20.0	20.0	-0-	40.0	20.0	20.0	-0-	40.0
Office Space Leases	3.9	2.7	2.2	8.8	3.9	2.2	2.2	8.3
WP Maintenance	-0-	-0-	1.5	1.5	-0-	-0-	1.5	1.5
Westlaw	1.2	1.2	-0-	2.4	1.2	1.2	-0-	2.4
	94.7	93.5	6.1	194.3	94.7	93.0	6.1	193.8
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	-0-	2.4	1.2	1.2	-0-	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
500 - Equipment								
New Position Equipment	2.5	2.5	1.5	6.5	2.5	2.5	1.5	6.5
PC/Word Processing	4.0	4.0	6.5	14.5	4.0	4.0	6.5	14.5
	6.5	6.5	8.0	21.0	6.5	6.5	8.0	21.0
TOTAL	241.0	206.9	52.2	500.1	236.4	203.3	52.2	491.9

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

Fiscal Analysis CSSB 17 (Jud)

Cost Summary (Second and Third Years Additions - FY93 and FY94 - Appellate Review Process)

Object	Second Year				Third Year			
	Atty V	Assoc Atty I	Legal Sec I	TOTAL	Atty IV	P/A II	Legal Sec I	TOTAL
100 - Salaries & Benefits	77.8	47.4	32.4	157.6	73.2	44.3	32.4	149.9
	77.8	47.4	32.4	157.6	73.2	44.3	32.4	149.9
200 - Travel								
Staff Travel and Per Diem	7.5	5.0	-0-	12.5	7.5	5.0	-0-	12.5
	7.5	5.0	-0-	12.5	7.5	5.0	-0-	12.5
300 - Contractual								
Communications, Copy,								
Document Production,	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Expert Witness	30.0	25.0	-0-	55.0	-0-	-0-	-0-	-0-
Depositions	5.0	5.0	-0-	10.0	-0-	-0-	-0-	-0-
Office Space Leases	3.9	2.7	2.2	8.8	3.9	2.2	2.2	8.3
WP Maintenance	-0-	-0-	1.5	1.5	-0-	-0-	1.5	1.5
Westlaw	2.4	2.4	-0-	4.8	2.4	2.4	-0-	4.8
	44.9	38.7	6.1	89.7	9.9	8.2	6.1	24.2
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	-0-	2.4	1.2	1.2	-0-	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
500 - Equipment								
New Position Equipment	2.5	2.5	1.5	6.5	2.5	2.5	1.5	6.5
PC/Word Processing	4.0	4.0	6.5	14.5	4.0	4.0	6.5	14.5
	6.5	6.5	8.0	21.0	6.5	6.5	8.0	21.0
TOTAL	141.2	102.1	49.2	292.5	101.6	67.5	49.2	218.3

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

Fiscal Analysis CSSB 17 (Jud)

Cumulative Implementation Cost by Year

<u>Object</u>	<u>Prosecution Costs</u>				<u>Appellate Review Costs</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
100 - Personal Services	380.7	538.3	688.2	688.2	-0-	157.6	307.5	307.5
200 - Travel	138.5	254.0	369.5	369.5	-0-	12.5	25.0	25.0
300 - Contractual	222.4	416.7	610.5	610.5	-0-	89.7	113.9	113.9
400 - Supplies	27.9	29.1	36.3	31.8	-0-	11.7	18.9	14.4
500 - Equipment	47.5	21.0	21.0	-0-	-0-	21.0	20.0	-0-
TOTAL	817.0	1,259.1	1,725.5	1,700.0	-0-	292.5	485.3	460.8

1.	POSITION TITLE Attorney IV (2 Positions)				RANGE/STEP 24A	BARG. UNIT PX	PAGE/LINE	GOV.	APPROV.	DISAPP		
2.	TYPE OF POSITION PFT	STAFF MONTHS 24	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION:							
4.	TYPE OF EXPENDITURE				<p>This is to request two Attorney IV positions that will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial considerations and sentencing proceedings are expected to more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full-working level prosecutor classification of Attorney IV. These two attorneys will be needed for the bifurcated capital trials, beginning in FY92.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary		112,488									
6.	Benefits		17,807									
7.	Supplemental Benefits		6,792									
8.	Fixed Benefits		9,288									
9.	TOTAL PERSONAL SERVICES		01	146,375								
10.	Travel		02	55,000								
11.	Contractual		03	86,200								
12.	Commodities		04	9,000								
13.	Equipment		05	13,000								
14.	Other											
15.	TOTAL COST			309,575								
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Match 1003										
18.		General Funds 1004		309,575								
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
	FOR B&M USE ONLY											
	KEY NUMBER - - - - -											

REQUEST FOR
NEW POSITION

AGENCY Department of Law
BRU Prosecution
COMPONENT Criminal Appeals & Special Prosecutions

FY 91

Page 2 of 17
Revised Date

1.	POSITION TITLE Paralegal Assistant II				RANGE/STEP 16A	BARC. UNIT CGU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE				<p>This paralegal assistant position will be needed during the first year after the capital felony law goes into effect to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. The position will be responsible for witness assistance and coordination, and assist with trial logistics. Allocation to the full-working paraprofessional level of Paralegal Assistant II is recommended. This position will be required in FY 1992.</p>					
	1	2	3	AMOUNT						
	PERSONAL SERVICES									
5.	Salary		32,424							
6.	Benefits		5,133							
7.	Supplemental Benefits		2,098							
8.	Fixed Benefits		4,644							
9.	TOTAL PERSONAL SERVICES	01		44,299						
10.	Travel	02		25,000						
11.	Contractual	03		40,200						
12.	Commodities	04		4,500						
13.	Equipment	05		5,500						
14.	Other									
15.	TOTAL COST			119,499						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		119,499						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
	FOR B&M USE ONLY									
	KEY NUMBER - - - - -									

REQUEST FOR
NEW POSITION

AGENCY Department of Law
BRU Prosecution
COMPONENT Criminal Appeals & Special Prosecutions

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1.	POSITION TITLE Legal Secretary I (2 Positions)				RANGE/STEP 10B	BARG. UNIT CGU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RF NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE				Two Legal Secretary positions are needed to provide office services support for the three attorneys and two paraprofessionals who will be required to handle capital felony trials that arise from death sentences, during the first year after the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. These positions will be required in FY 1992.					
	1	2	3							
5.	PERSONAL SERVICES									
	Salary		45,432							
6.	Benefits		7,192							
7.	Supplemental Benefits		2,939							
8.	Fixed Benefits		9,288							
9.	TOTAL PERSONAL SERVICES	01		64,851						
10.	Travel	02		6,000						
11.	Contractual	03		12,200						
12.	Commodities	04		5,400						
13.	Equipment	05		16,000						
14.	Other									
15.	TOTAL COST			104,451						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		104,451						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
KEY NUMBER - - - - -										

REQUEST FOR
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1.	POSITION TITLE Attorney V				RANGE/STEP 25A	BARC. UNIT PX	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This senior level Attorney V position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year four additional trials should be underway and six additional capital felonies will have been committed. The extraordinary due process standards required of the prosecution, in capital cases, necessitate the highest level of legal expertise. Allocation to the Attorney V level is therefore recommended. This position will be required in FY 1993.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary		60,252							
6.	Benefits		9,538							
7.	Supplemental Benefits		3,396							
8.	Fixed Benefits		4,644							
9.	TOTAL PERSONAL SERVICES	01		77,830						
10.	Travel	02		57,500						
11.	Contractual	03		94,700						
12.	Commodities	04		4,500						
13.	Equipment	05		6,500						
14.	Other									
15.	TOTAL COST			241,030						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		241,030						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
KEY NUMBER - - - - -										

REQUEST FOR NEW POSITION

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COMPONENT Criminal Appeals & Special Prosecutions

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1.	POSITION TITLE Associate Attorney I				RANGE/STEP 17A	BARG. UNIT PX	PAGE/LINE	GOV.	APPROV.	DISAPP		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION:							
4.	TYPE OF EXPENDITURE				<p>This advanced paraprofessional position will be required, during the second year the capital felony law is in effect, to handle the growing number of capital trials. Four new trials are expected to commence during the second year, and six new offenses will have been committed. The position will help organize and examine evidence, and assist attorneys with legal research. Allocation to the Associate Attorney I level is therefore recommended. This position will be required in FY 1993.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary		34,920									
6.	Benefits		5,528									
7.	Supplemental Benefits		2,259									
8.	Fixed Benefits		4,644									
9.	TOTAL PERSONAL SERVICES		01								47,351	
10.	Travel		02								55,000	
11.	Contractual		03								93,500	
12.	Commodities		04								4,500	
13.	Equipment		05								6,500	
14.	Other											
15.	TOTAL COST										206,851	
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Match 1003										
18.		General Funds 1004			206,851							
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
FOR B&M USE ONLY												
KEY NUMBER - - - - -												

REQUEST FOR
NEW POSITION

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1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT GGU	PAGE/LINE	GOV.	APPROV.	DISAPP	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.			
3.	CONTINUATION LEVEL				ADDITION						
4.	TYPE OF EXPENDITURE				AMOUNT						
	1		2		3						
	PERSONAL SERVICES										
5.	Salary		22,716								
6.	Benefits		3,596								
7.	Supplemental Benefits		1,470								
8.	Fixed Benefits		4,644								
9.	TOTAL PERSONAL SERVICES		01		32,426						
10.	Travel		02		3,000						
11.	Contractual		03		6,100						
12.	Commodities		04		2,700						
13.	Equipment		05		8,000						
14.	Other										
15.	TOTAL COST				52,226						
JUSTIFICATION:											
This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the growing caseload. Four new capital felony trials are expected to commence, and six new offenses will be committed during the year. Legal documentation for these trials will be intense. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1993.											
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Match 1003									
18.		General Funds 1004				52,226					
19.		I-A Receipts 1005									
20.		Program Receipts 1028									
21.		Other									
FOR B&M USE ONLY											
KEY NUMBER - - - - -											

REQUEST FOR
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1.	POSITION TITLE Attorney V				RANGE/STEP 25A	BARC. UNIT PX	PAGE/LINE	COV.	APPROV.	DISAPP	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.			
3.	CONTINUATION LEVEL				ADDITION						
4.	TYPE OF EXPENDITURE				AMOUNT						
	1				2		3				
	PERSONAL SERVICES										
5.	Salary				60,252						
6.	Benefits				9,538						
7.	Supplemental Benefits				3,396						
8.	Fixed Benefits				4,644						
9.	TOTAL PERSONAL SERVICES		01	77,830							
10.	Travel				02	7,500					
11.	Contractual				03	44,900					
12.	Commodities				04	4,500					
13.	Equipment				05	6,500					
14.	Other										
15.	TOTAL COST					141,230					
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Match 1003									
18.		General Funds 1004			141,230						
19.		I-A Receipts 1005									
20.		Program Receipts 1028									
21.		Other									
FOR B&M USE ONLY KEY NUMBER - - - - -											

JUSTIFICATION:

The Attorney V position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. It is anticipated that two defendants' convictions will be on appeal during the second year. Up to ten years or more may pass before these appeals are finally resolved. Initially, legal attacks on the law itself will go to the Alaska Supreme Court. If upheld, appeals will go to the federal court system, including the U.S. Supreme Court, the U.S. District Court of Appeals, and the U.S. District Court. The highest level of legal expertise will be required to handle these appeals. Allocation to the Attorney V level is therefore recommended. This position will be needed in FY 1993.

REQUEST FOR
NEW POSITION

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Revised Date _____

1.	POSITION TITLE Associate Attorney I			RANGE/STEP 17A	BARG. UNIT PX	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.	
3.	CONTINUATION LEVEL	ADDITION		JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2		3					
	PERSONAL SERVICES								
5.	Salary	34,920							
6.	Benefits	5,528							
7.	Supplemental Benefits	2,259							
8.	Fixed Benefits	4,644							
9.	TOTAL PERSONAL SERVICES	01		47,351					
10.	Travel	02		5,000					
11.	Contractual	03		38,700					
12.	Commodities	04		4,500					
13.	Equipment	05		6,500					
14.	Other								
15.	TOTAL COST			102,051					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		102,051					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
	FOR B&M USE ONLY KEY NUMBER - - - - -								

JUSTIFICATION:
 This Associate Attorney paraprofessional position will be required, during the second year the capital felony law is in effect, to assist handling legal research for the post-conviction appellate review process. It is anticipated that two defendants' convictions will be on appeal during the second year. Legal attacks on the law itself will be before the Alaska Supreme Court, as will appeals of the convictions. Further appeals to the federal court system will commence, if the law is upheld. An enormous amount of research will be required. Allocation to the Associate Attorney I level is therefore recommended. This position will be needed in FY 1993.

REQUEST FOR
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1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT CGU	PAGE/LINE	GOV.	APPRCV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE				<p>This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. This process is expected to begin during the second year, when the first two convictions should be on appeal. This process is document intensive and full-spectrum secretarial services will be required. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1993.</p>					
	1		2	3						
	PERSONAL SERVICES									
5.	Salary		22,716							
6.	Benefits		3,596							
7.	Supplemental Benefits		1,470							
8.	Fixed Benefits		4,644							
9.	TOTAL PERSONAL SERVICES	01		32,426						
10.	Travel	02		-0-						
11.	Contractual	03		6,100						
12.	Commodities	04		2,700						
13.	Equipment	05		8,000						
14.	Other									
15.	TOTAL COST			49,226						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		49,226						
19.		I-A Receipts 1005								
20.		Program Receipts 102B								
21.		Other								
	FOR B&M USE ONLY									
	KEY NUMBER - - - - -									

REQUEST FOR
NEW POSITION

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1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT PX	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE									
	1	2	3							
	PERSONAL SERVICES									
5.	Salary		56,244							
6.	Benefits		8,903							
7.	Supplemental Benefits		3,396							
8.	Fixed Benefits		4,644							
9.	TOTAL PERSONAL SERVICES		01	73,187	<p>This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that six of these trials will be underway in the third year, and six new offenses will have been committed. An enormous amount of attorney time is required to handle these trials because of the heightened due process standards that are mandated for capital prosecutions. These trials require highly skilled prosecutors. Allocation to the full-working level of Attorney IV, is therefore recommended. This position will be needed in FY 1994.</p>					
10.	Travel		02	57,500						
11.	Contractual		03	94,700						
12.	Commodities		04	4,500						
13.	Equipment		05	6,500						
14.	Other									
15.	TOTAL COST			236,387						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			236,387					
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
	FOR B&M USE ONLY									
	KEY NUMBER									

REQUEST FOR
NEW POSITION

AGENCY Department of Law
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1.	POSITION TITLE: Paralegal Assistant II				RANGE/STEP 16A	BARG. UNIT CGU	PAGE/LINE	GOV.	APPROV.	DISAPP		
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION:							
4.	TYPE OF EXPENDITURE				<p>This Paralegal Assistant position will be required, during the third year the capital felony is in effect, to handle the growing number of capital felony trials. It is anticipated that six trials will be underway at this point, and six new offenses will have been committed. This position will assist witnesses, and coordinate witness schedules and trial logistics. Allocation to Paralegal Assistant II level is therefore recommended. This position will be required in FY 1994.</p>							
	1			2							3	
	PERSONAL SERVICES											
5.	Salary		32,424									
6.	Benefits		5,133									
7.	Supplemental Benefits		2,098									
8.	Fixed Benefits		4,644									
9.	TOTAL PERSONAL SERVICES		01	44,299								
10.	Travel		02	55,000								
11.	Contractual		03	93,000								
12.	Commodities		04	4,500								
13.	Equipment		05	6,500								
14.	Other											
15.	TOTAL COST			203,299								
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Match 1003										
18.		General Funds 1004			203,299							
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
	FOR B&M USE ONLY											
	KEY NUMBER - - - - -											

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1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT CCU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE				<p>This Legal Secretary position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felonies. It is anticipated that six capital trials will be underway at this point, and six new offenses will have been committed. The work generated by attorneys will require substantial secretarial assistance. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1994.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	22,716								
6.	Benefits	3,596								
7.	Supplemental Benefits	1,470								
8.	Fixed Benefits	4,644								
9.	TOTAL PERSONAL SERVICES	01		32,426						
10.	Travel	02		3,000						
11.	Contractual	03		6,100						
12.	Commodities	04		2,700						
13.	Equipment	05		8,000						
14.	Other									
15.	TOTAL COST			52,226						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		52,226						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
KEY NUMBER - - - - -										

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NEW POSITION

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1.	POSITION TITLE Paralegal Assistant II				RANGE/STEP 16A	BARG. UNIT CGU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This Paralegal Assistant II position will be required, during the third year of the capital felony law, to assist in the preparation of appellate documentation and legal research. Four new appeals are expected in the third year, bringing the total to be handled to six. These appeals have an average time span of ten years. Enormous amounts of time must be spent researching the law, examining trial records, and preparing legal arguments and briefs. A substantial documents and research effort will be required. Allocation to the Paralegal Assistant II level is therefore recommended. This position will be needed in FY 1994.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary		32,424							
6.	Benefits		5,133							
7.	Supplemental Benefits		2,098							
8.	Fixed Benefits		4,644							
9.	TOTAL PERSONAL SERVICES	01		44,299						
10.	Travel	02		5,000						
11.	Contractual	03		8,200						
12.	Commodities	04		4,500						
13.	Equipment	05		5,500						
14.	Other									
15.	TOTAL COST			67,499						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		67,499						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
	FOR B&M USE ONLY									
	KEY NUMBER - - - - -									

REQUEST FOR
NEW POSITION

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Revised Date _____

1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT GGU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA-Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This Legal Secretary I position will be required, during the third year the capital felony law is in effect, to handle the growing number of post-conviction appellate reviews. It is anticipated that a total of six reviews will be underway at this time, and this number will grow by four reviews, each year, thereafter. Each review lasts about ten years and involves numerous courts, and many court proceedings. Substantial secretarial assistance will be needed to handle this work. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1994.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary		22,716							
6.	Benefits		3,596							
7.	Supplemental Benefit:		1,470							
8.	Fixed Benefits		4,644							
9.	TOTAL PERSONAL SERVICES	01		32,426						
10.	Travel	02		-0-						
11.	Contractual	03		6,100						
12.	Commodities	04		2,700						
13.	Equipment	05		8,000						
14.	Other									
15.	TOTAL COST			49,226						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		49,226						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
KEY NUMBER										

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FISCAL NOTE

REQUEST:

Revision Date: 3/5/90
Title: Relating to Capital Punishment

Agency Affected: Office of the Governor
BRU: Elections

Sponsor: Fischer
Requestor: Fischer

Components: II- Primary & General
Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2*	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2*	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	2.2*	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact for FY 90 is -0-
* Costs included cover 2 to 3 pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes.

Prepared by: Winda Edgeworth
Division: Division of Elections

Phone: 465-4611
Date: 3/5/90

Approved by Commissioner: [Signature]
Agency: Division of Elections

Date: 3.5.90

Distribution (by preparer):

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

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2

Under these circumstances the fiscal note would be:

53.4

Charles Campbell
3020 Douglas Highway
Juneau, Alaska 99801

January 26, 1983

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acknowledge
&
file*

Senator Jan Faiks
Chair, Judiciary Committee
Alaska State Senate
Juneau, Alaska

Re: Senate Bill 17, The Death Penalty

Dear Senator Faiks:

Thank you for letting me testify on Senate Bill 17 last Tuesday afternoon and for your courtesy to all of us who testified in person and by teleconference that day. I am writing to you now in order to get my views on the record and to expand on some of the observations I made on Tuesday.

I speak from the perspective of a private citizen who has had more than thirty years experience in the criminal justice field. I served as Director of Corrections for the State of Alaska for three years beginning in February 1979.

Senate Bill 17 proposes to reauthorize use of the death penalty in Alaska. For this reason I must state my opposition to the bill. I oppose the death penalty on moral grounds, but I intend here to comment on the pragmatic considerations, as I am convinced that reinstatement of the death penalty would be an exceedingly bad idea for Alaska from a purely practical standpoint.

Two arguments are advanced in favor of capital punishment- deterrence and retribution. A third argument, cost, has pretty much been laid to rest. Most people who are seriously interested in the death penalty question have come to recognize that the cost of legally putting an offender to death in the United States is astronomical. By comparison, the cost of maintaining an offender in close confinement for the term of his natural life, is insignificant. No matter what changes might occur in the personnel of the Supreme Court in the foreseeable future, the Court will not overturn Gregg v. Georgia or the other decisions that have given condemned prisoners so many avenues of appeal. For this reason and for other reasons as well, the cost of executions will continue to be astronomical.

And so we are left with two arguments for the death penalty- deterrence and retribution. With respect to deterrence- during the eight year moratorium following the decision in Furman v. Georgia, the U.S. Supreme Court considered reams of material on the issue of deterrence and was unable to conclude that there was a deterrent value to capital punishment. Indeed some of the studies found evidence that executions may have a negative effect, so far as deterrence is concerned. One of the more significant studies on deterrence was not published until 1980 and thus not considered by the Court. It was performed by Professors Pierce and Bowers of Northeastern University. They examined the effect of executions in New York State over a period of 60 years, looking at the incidence of murder during the months following each execution. The pattern they observed suggested that persons predisposed to violence were more likely to be incited to violence by executions than deterred. I mention this study because it was a carefully designed, major study and is highly respected in the academic community. Its findings cannot be viewed as incontrovertible, nor can the findings of any other study on the question of deterrence. There are too many variables. But the evidence it offers can hardly be ignored. In any case, it should suffice when we recognize that the whole body of research into this matter over the past twenty years fails to show credible evidence

that the death penalty has a deterrent effect. Among criminologists, it is hardly a matter of debate anymore.

Those who choose not to rely on the research done by academics, who feel that it is simply a matter of common sense— that it is only reasonable to assume that the threat of execution should deter most potential murderers, fail to recognize that the mental processes of individuals who are predisposed to vicious, pathological kinds of criminal acts, are completely different from the thought processes of emotionally healthy people. The thought processes of people predisposed to cold blooded, premeditated murder are bizarre. It really should not be surprising that the death penalty does not deter.

Proponents of the death penalty like to point out that the death penalty unmistakably deters those who are executed. This is true. It is also true that there are superior means of dealing with murders, means that do not carry the possibility of the tragic, irreversible mistake. With the exception of South Africa, every other industrialized country in the Western world has chosen other means, as have Australia, New Zealand and large numbers of developing countries such as Mexico and Nicaragua. Where the death penalty question is concerned we continue to keep company with such nations as Libya, Iraq, Syria, Iran and the Warsaw Pact nations.

Let me comment on the proposition that retribution is in itself an adequate justification for use of the death penalty. I have respect for those who honestly take the view that society has a need and a right to kill the perpetrators of vicious capital crimes, for no other reason than to exact retribution. I don't share such a view, but it is an honest view. I identify with— indeed I share, the outrage and the anger that are inevitable reactions when we hear of certain kinds of crimes. But we must remember that outrage and anger, however normal, however healthy, are emotions that, if nurtured and sustained, get in the way of wisdom. Those who subscribe to the validity of retribution as the sole justification for the death penalty— indeed whatever reasons they may have for wanting to see restoration of the death penalty in Alaska, should have these considerations in mind. Of the thirty seven states that chose to re-write and pass death penalty legislation after *Gregg v. Georgia*, only thirteen have carried out executions. Three quarters of all executions carried out in the U.S. during the past twenty years were done in only four states, Texas, Louisiana, Florida and Georgia, all states with exceptionally large minority populations. There is an appalling unevenness in the use of the death penalty. The racial and cultural bias in the use of the death penalty has been proven. Ted Bundy, who was executed last Tuesday morning, became something like a celebrity because he was a serial killer, but also because he was a college educated white man. How many of us can recall the name of a single other one of the 105 people who have been executed since Gary Gilmore went down in what he considered to be a blaze of glory twelve years ago? The overwhelming majority of that anonymous 104 were poor, undereducated if not illiterate, and not serial killers like Ted Bundy. Many were poorly defended at original trial by appointed counsel. A disproportionate number of them were black. Most of them were victims of the luck of the draw. It was a matter of how circumstances fell for them. Even in those states that execute a lot of people, like Texas, Florida, Louisiana and Georgia, there are hundreds of people serving prison sentences whose crimes were more vicious than many of those who have been executed. There is an intrinsic capriciousness in use of the death penalty, and there's no way to correct it.

We must think about these problems, and consider the forces of discord and despair that would be unleashed within the small, racially diverse community of people who comprise our state's population. We do not have a problem that would be addressed by restoration of the death penalty. If ever imposed, it would create a morass of ugly, culturally divisive, costly problems for us. There are far better, more civilized, more reasonable ways

to respond to serious criminal acts. It cannot be reasonably argued that there would be one iota of improvement in the safety, the happiness or the general welfare of the people of Alaska resulting from restoration of the death penalty. Alaska will save itself a lot of grief by remaining in the company of those staunch thirteen states of our nation where the death penalty is not authorized.

I deeply hope that you will use your influence to see that the Senate does not move forward with this bill.

Sincerely,

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to 2 percent). Furthermore, they discovered that the race of the victim was critical. In cases involving a black defendant and a white victim, 36 percent of the defendants were sentenced to death while in all other cases, only 2 percent of the defendants received the death sentence.

Findings in similar studies led the Supreme Court of the United States to conclude that capital punishment was being applied in a capricious and arbitrary manner. In Furman v Georgia (1972), the court declared the capital punishment laws of most states to be unconstitutional. As a result of the Furman case, states drafted new capital punishment laws that contained sentencing guidelines and appeals procedures intended to remove discretionary application of the death penalty. In Gregg v Georgia these state laws were found to be constitutional.

Bowers and Pierce studied the effect of these new laws by examining all cases of criminal homicide in the states of Florida, Texas, Georgia and Ohio that occurred between the passage of new capital punishment laws and 1978. They concluded that the racial sentencing patterns that were observed in the pre-Furman period persisted. Generally, black defendants had a greater chance of receiving the death sentence than white defendants and killers of whites had a better chance of the death sentence than killers of blacks.

Radelet and Vandiver examined the effect of state appeals procedures in mitigating the effect of racially biased sentencing in Florida. Appeals to state supreme courts are one method recognized by the United States Supreme Court of removing arbitrary sentencing in death penalty cases. However, the authors discovered that appeal to the state supreme court did not necessarily compensate for sentencing bias, and, in fact, the decisions of the appeals court reinforced the bias of the lower courts.

We could find no statistical evidence to refute the findings that the death penalty has been discriminately applied. Most statistical evidence presented in favor of the death penalty focuses on the issue of the deterrent effect of capital punishment. However, several proponents of the death penalty, most notably Ernest Van Den Haag, argue that equality in the application of justice, although desirable, is not practical. He argues that society could enforce no law if required to assure that all guilty individuals were punished equally. Furthermore, unequal punishment does not mean that the guilty are any less guilty and deserving of punishment. Therefore, he concludes that racial bias in the application of the death penalty is morally undesirable, but does not necessarily require its abolition.

Sentencing Patterns in Alaska. The Alaska Judicial Council produced a series of reports that studied felony sentencing patterns in Alaska from 1974-1980. The first felony sentencing report which covered the

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period 1974-1976 found that sentencing in Alaska was influenced by the defendant's race, age, education, income and occupation. Black defendants received longer sentences than white defendants in drug and property-related felonies. Defendants under 21 years of age received shorter sentences for drug convictions than defendants over age 21.

Low income meant a longer drug felony sentence, while education beyond high school meant a shorter one. Professionals and individuals in supervisory positions received generally shorter sentences for a drug conviction than individuals in "blue collar" positions.

A subsequent study of sentencing for felony convictions, covering the period 1976-1979, indicated that although some of the racial bias in sentencing had disappeared, it still persisted among black defendants convicted of drug felonies. In addition, this study found that the type of defense attorney was significant in determining sentence length. Among fraud and drug-related felonies, representation by a court appointed attorney was associated with longer sentences while representation by a public defender was associated with shorter sentences.

The third felony sentencing report analyzed all felony convictions during 1980. This report concluded that the impact on sentencing caused by the type of attorney had been eliminated. Also, the report found that previous racial bias in sentencing had been eliminated.

PERSONS CURRENTLY AWAITING EXECUTION IN THE UNITED STATES

Although we could find no current information concerning the economic class of individuals currently awaiting execution, Table 1 provides a summary of the race of each of these individuals. As the table indicates, of the 1,470 condemned persons, 727 (49.2 percent) are non-white while 752 (50.8 percent) are white. According to the 1980 census, the portion of the United States population that was black, hispanic and American Indian was 12 percent, 6.43 percent and .62 percent respectively. A comparison of the racial composition of the United States population with the racial composition of death row inmates indicates that blacks, hispanics and Native Americans are all disproportionately represented within the group of prisoners under sentence of death.

TABLE 1
Race of Persons Under Sentence of Death

<u>Race</u>	<u>Number</u>	<u>Percent</u>
White	742	50.8
Black	620	42.0
Hispanic	84	5.7
Native American	18	1.2
Asian American	<u>5</u>	<u>.3</u>
Total	1,479	100

Source: American Civil Liberties Union.

* * * *

CAPITAL PUNISHMENT IN ALASKA AND THE UNITED STATES

Eight men have been executed in Alaska; all of these executions occurred between 1903 and 1950.¹ Reference has been made to a ninth execution, but our research has not confirmed this event. Of the eight men known to have been executed, two were white, three were Alaska Natives, two were black and the race of one was unknown. Although the number of executions is too small to statistically analyze for patterns of discrimination, it is evident that non-Whites have been executed in Alaska in disproportionate numbers. However, without knowing the nature of the offenses for which the men were executed or the numbers and types of offenses for which other defendants were not executed, it is impossible to prove a pattern of discrimination in the application of the death sentence in Alaska.

The American Civil Liberties Union reports that since 1972, 38 individuals have been executed in the United States. Of this number, 12 (32 percent) were black. These data, combined with the information concerning death row prisoners in Table 1, indicates that a disproportionate number of black individuals have been executed or are currently

¹Correspondence between Charles Zibulka and the Alaska Historical Library, August 10, 1965.

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Wolfgang and Riedel studied the relationship between the imposition of the death sentence and the following nonracial variables: offender characteristics (age, marital status, prior criminal record, previous imprisonment, employment status); victim characteristics (age, marital status, dependent children, reputation); relation between victim and offender; and the circumstance of the offence (contemporaneous offense, type of entry and location of offense). After testing these nonracial variables, the authors discovered that:

Not one of these nonracial variables has withstood the test of statistical significance. That is, in none of the seven states carefully analyzed can it be said that any of the nonracial factors account for the statistically significant and disproportionate number of blacks sentenced to death for rape...⁴

After eliminating nonracial factors, Wolfgang and Riedel conclude:

It cannot be said that blacks are more frequently sentenced to death because they have a longer prior criminal record than whites, because they used more force on the victim, because they committed a robbery or burglary, because they entered premises without authorization...because they more frequently attacked persons under the age of sixteen, and so forth. All the nonracial factors "wash out", that is, they have no bearing on the imposition of the death penalty in disproportionate numbers upon blacks. The only variable of statistical significance that remains is race.⁵

The bias that Wolfgang and Riedel discovered in the application of the death sentence was the basis of the argument used in 1972 by the Supreme Court in Furman v Georgia, which set aside the death penalty in all of the states. The court ruled that, although capital punishment was not unconstitutional per se, state laws that allowed the death sentence to be used unfairly and arbitrarily violated the "cruel and unusual" punishment clause of the eighth amendment of the Constitution of the United States.

As a result of the Furman case, states drafted new capital punishment laws written to address the arbitrary application problem that the Supreme Court identified. These state laws provide sentencing guidelines to be used by judges and juries and a method of automatic appeal to state supreme courts in attempts to reduce capricious use of the death penalty. The Supreme Court reviewed these state laws in Gregg v Georgia in 1976 and found them to be constitutional.

⁴Bedau, The Death Penalty; In America, page 204.

⁵Bedau, The Death Penalty In America, page 204.

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Bowers and Pierce analyzed the application of the post-Furman capital punishment laws (that were affirmed by the Supreme Court in the Gregg case) of the states of Florida, Texas, Georgia and Ohio.⁶ The authors examined cases of criminal homicide that occurred in each state between the time that the new laws became effective and 1978. Table 2 summarizes information concerning the probability of receiving a death sentence in these states based on the race of the offender and victim.

As the table indicates, in all four of the states, black defendants whose victims were white had the highest probability of receiving the death sentence. White offenders whose victims were also white had the next highest probability of receiving the death sentence followed by black offenders/black victims and white offenders/black victims. Based on these statistics, Bowers and Pierce note that:

...Stark difference by race of both offender and victim in all four states are apparent...The racial pattern is consistent across states and similar to the experience under pre-Furman statutes. Thus, black killers and the killers of whites are substantially more likely to receive a death sentence in all four states. And, as in the pre-Furman era, race of the victim tends to overshadow race of the offender as a basis for differential treatment...⁷

Bowers and Pierce went on to question the possibility that the increased probability that blacks and killers of whites receive the death sentence more often than other homicide defendants is due to the nature of the crimes committed. The nature of the crime seems particularly relevant in the post-Furman period because many of the state laws upheld by the Supreme Court provide sentencing guidelines to judges and juries based on aggravating factors related to the crime. For example, in Florida and Georgia, if the homicide is committed during the course of another felony, such as rape or robbery, the homicide qualifies for the death sentence. To test the impact that the crime has on the chances of receiving the death penalty, the authors tested homicide data from Texas, Florida and Georgia by race of offender and victim for two separate categories: murders committed in the course of committing another felony (felony type) and murders committed in the absence of another felony (nonfelony type).

⁶William Bowers and Glenn Pierce, Racial Discrimination and Criminal Homicide Under Post-Furman Capital Statutes, from The Death Penalty In America, edited by Hugo Adam Bedau, Oxford University Press, 1982.

⁷Bedau, The Death Penalty In America, Page 209.

TABLE 2

Probability of Receiving a Death Sentence for Criminal Homicide,
 by Race of Offender and Victim for Selected States from Date of
 Enactment of Capital Punishment Law Through 1977

<u>Offender/Victim Combination</u>	<u>Estimated Number of Offenders</u>	<u>Persons Sentenced to Death</u>	<u>Overall Probability of Death Sentence</u>
Florida			
Black/White	240	53	.221
White/White	1,768	82	.046
Black/Black	1,922	12	.006
White/Black	80	0	.000
Georgia			
Black/White	258	43	.167
White/White	1,006	42	.042
Black/Black	2,458	12	.005
White/Black	71	2	.028
Texas			
Black/White	344	30	.087
White/White	3,616	56	.015
Black/Black	2,597	2	.001
White/Black	143	1	.007
Ohio			
Black/White	173	44	.254
White/White	803	37	.046
Black/Black	1,170	20	.017
White/Black	47	0	.000

Source: Bedau, The Death Penalty In America, Page 209.

* * * *

Bowers and Pierce found that although the death penalty is much more likely to be imposed in felony-type murders, this application does not explain the racial differences observed in Table 2. In fact, in each of these three states, whether looking at felony or nonfelony-type murder, a black offender whose victim is white has a greater chance of receiving the death sentence than any other offender/victim combination.

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A white offender and white victim is the next most likely combination to result in the death sentence followed by the black offender/black victim and white offender/black victim. This ordering by offender/victim combination, which is similar to the order found in Table 2, indicates that controlling for felony or nonfelony-type homicide does not account for racial bias in sentencing.

From the data analyzed, Bowers and Pierce came to the following conclusion:

The data in this section point to more than arbitrariness and discrimination in isolation. They reflect a twofold departure from even-handed justice which is consistent with a single underlying racist tenant: that white lives are worth more than black lives. From this tenant it follows that death as punishment is more appropriate for the killers of whites than for the killers of blacks and more appropriate for black than for white killers. Either discrimination by race of offender or disparities of treatment by race of victim of the magnitudes we have seen here are a direct challenge to the constitutionality of the post-Furman capital statutes. Together these elements of arbitrariness and discrimination may represent a two-edged sword of racism in capital punishment that is beyond statutory control.⁸

The United States Supreme Court in the Gregg decision affirmed the death penalty laws of several states in part because they contained rules that would guide judges and juries in deciding who would receive the death penalty and who would not. The Supreme Court's view was that these provisions would help to eliminate the arbitrary use of the death penalty. The Florida death penalty law contains a provision that allows defendants to appeal the death penalty directly to the state supreme court.

Radelet and Vandiver have studied all direct appeals made to the Florida Supreme Court between January 1, 1972 and December 31, 1981.⁹ The authors, after examination of previous studies, concluded that the death penalty in Florida is given disproportionately to black defendants. The purpose of this study, then, was to determine if the supreme court appeals procedure was helping to lessen this sentencing bias.

⁸Bedau, The Death Penalty In America, Page 215.

⁹Michael Radelet and Margaret Vandiver, The Florida Supreme Court and Death Penalty Appeals, Journal of Criminal Law and Criminology, 1983, Vol. 74, No. 3, page 913.

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The study discovered that the Florida Supreme Court reversed nearly one-half of the death penalty cases reviewed between 1972 and 1981. The two most important factors concerning a change in sentencing were related to the legal environment. The strongest predictor of a supreme court reversal of a death sentence was a jury recommendation of life imprisonment that was ignored by the sentencing judge. The second best predictor was the number of victims; as the number of victims increases, the supreme court is less likely to change the original sentence.

Radlett and Vandiver, however, discovered three other factors that relate to nonlegal issues that impact the appeals decision of the court: defendant's race, victim's sex and the interaction between victim's sex and defendant's race. Their statistical analysis shows that white defendants are slightly more likely to receive a favorable decision than black defendants (50 percent versus 54 percent), and those with female victims are slightly more likely to have their death sentences changed than those with male victims.

However, the statistical impact of the defendant's race can be skewed by considering the victim's sex. For example, 39 percent of the black defendants with female victims had their death sentences changed compared with 61 percent of the white defendants with female victims. Of the 23 cases with a black defendant and a female victim, 20 of the victims were white. Among the cases of a black defendant and male victim, 50 percent of the sentences were changed while among the cases involving a white defendant and a male victim only 42 percent of the death sentences were changed.

Based on their statistical findings, Radlett and Vandiver conclude:

While the identification of extra-legal correlates of decisions at one point in the capital sentencing process is noteworthy, its principal importance emerges in the context of comparison with other racially biased decisions made at earlier points. That is, although the death penalty in Florida is given disproportionately to black defendants, the Florida Supreme Court is not correcting the discrepancy in its decisions on direct appeals. In fact, the relationship between the defendant's race and outcome indicates the possibility that the Supreme Court is reinforcing the biases against black defendants which may be observed at earlier stages of the criminal justice process...¹⁰

¹⁰Radelet and Vandiver, page 925.

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Although we contacted several reputable sources of criminal justice information including the National District Attorney Association, The Justice Center at the University of Alaska-Anchorage (and through them the Bureau of Justice Statistics), the American Bar Association and the National Conference of State Legislatures we could find no statistical studies that refute the conclusion that the application of the death penalty is racially biased. (We are still attempting to contact several sources and should these contacts provide any relevant information, we will forward it to you.)

Most of the literature in support of the death penalty concerns the issues of deterrence and the general protection of society. Although the question of deterrence is discussed extensively in the literature, it is not the major focus of this memorandum.¹¹

However, one argument made in the face of charges of discriminatory application of the death penalty is that it is impossible to enforce any law equally. This reasoning argues that penalties could never be applied if society insisted that penalties be inflicted on a guilty person only if they are inflicted on all guilty people.

Furthermore, proponents of this view contend that justice does not necessarily demand equal application to be valid. Ernest Van Den Haag notes:

The utilitarian (political) effects of unequal justice may well be detrimental to the social fabric because they outrage our passion for equality before the law. Unequal justice also is morally repellant. Nonetheless, unequal justice is still justice. The guilty do not become innocent or less deserving of punishment because others escape it. Nor does any innocent deserve punishment because others suffer it. Justice remains just, however unequal, while injustice remains unjust, however equal. While both are desired, justice and equality are not identical. Equality before the law should be extended and enforced--but not at the expense of justice.¹²

¹¹The House Research Agency has collected a variety of information on the deterrent effect of the death penalty. Also see House Research memoranda 82-161 (Capital Punishment) and 85-185 (Capital Punishment Costs and Effect on Murder Rates).

¹²Ernest Van Den Haag, In Defense of the Death Penalty: A Practical and Moral Analysis, from The Death Penalty in America, edited by Hugo Adam Bedau, Oxford University Press, 1982, page 324.

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Proponents of this view recognize that the death penalty may not be equally applied to all defendants. However, they maintain that no law can ever be equally applied and to apply the law unequally does not invalidate the justness of applying it to those who are guilty. Racial bias in the application of the death sentence is morally undesirable and should be eliminated, however, the existence of the bias does not necessarily argue for elimination of the death sentence.

CRIMINAL JUSTICE IN ALASKA

Since 1977, the Alaska Judicial Council has produced three reports that analyze the reasons for variations in length of sentences for felony convictions and two reports that analyze misdemeanor sentences. The first report contained information on felony convictions for the period 1974-1976, the second for the period 1976-1979 and the third for 1980. In each of the felony studies, all convictions for the study period were assigned to one of six felony classes: murder/kidnapping, violent felonies, property offenses, fraud offenses, drug offenses and morals offenses. However, the first and last classes, murder/kidnappings and morals offenses, were excluded because not enough cases were available for meaningful statistical analysis. Felonies within the remaining four categories were analyzed to isolate the factors that contributed to the length of sentence received by defendants. A similar classification scheme was used to analyze the misdemeanor sentences. The findings of these studies are summarized below.

Alaska Sentencing Felony Patterns (1974-1976)¹³

The largest single factor that affected the length of felony sentences was the type of crime that was committed. In fact, this variable explained more of the variation in sentence length than any other factor.

The defendant's criminal history also had a positive relationship on the length of the sentence for all four of the felony classes studied in depth. Having a prior felony or misdemeanor record meant a longer sentence, ranging from 38.6 months longer for violent felony to 4.4 months longer for burglary, larceny, receiving and concealing.

¹³Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974-1976), Alaska Judicial Council, April 1977.

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Multiple convictions also increased the sentence, particularly in cases of multiple felonies. However, in two felony classes, violent felonies and fraud felonies, the fact that there were other unrelated charges against the defendant, even though he or she had not yet been convicted, meant a longer sentence: 27.3 months for violent felonies and 7.4 months for fraud felonies.

The effect of the judge's "strictness" or "leniency" was also found to be an important variable in sentence length.¹⁴ For example, a defendant convicted of a violent felony and sentenced by a "strict" judge received a sentence estimate to be 45.6 months longer than a sentence imposed by a judge who was not "strict". In cases of drug felonies, judicial "strictness" added an estimated 22 months to the sentence. "Leniency", although affecting sentence length, did not have as great an impact as on sentence length as "strictness".

In two felony classes, violent felonies and fraud felonies, the fact that the defendant had been unemployed 18 months or more out of the two years prior to prosecution was positively related to longer sentences. For violent felony convictions, it was estimated that unemployment for the two years preceding the conviction could mean an increased sentence of up to 18.8 months. For fraud felonies, the additional sentence length caused by unemployment was estimated to be 6.9 months.

The study found that the defendant's race, age, income, education level and occupation had a significant impact on the length of sentence received for drug-related felonies and a less significant impact on other felony classifications. All of the personal characteristics mentioned above were associated with the length of sentences for drug related felonies. Defendants that were under 21 years of age received sentences that were generally 9.3 months shorter than if the defendant was older than 21 years. Being black contributed an estimated 11.9 months to the defendant's sentence. Low income meant a longer drug felony sentence (about 6.2 months) and education beyond high school meant a shorter sentence by 6.4 months. A "blue collar" worker received a sentence for conviction of a drug felony that was 7.2 months longer than a professional or individual in a supervisory position would receive.

The sentence length for other types of felony convictions also was affected by these personal characteristics. A black individual convicted of a property felony was likely to receive a sentence that was 6.5 months longer than the sentence received by all other offenders for

¹⁴"Strict", "lenient" or "other" is determined by comparing the mean sentence length of each offense class with the sentences imposed by the judge.

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similar offenses. A "white collar" professional was likely to receive a sentence that was 4.6 months shorter than a "blue collar" worker for a conviction for fraud.

A defendant with a history of drug dependence was more likely to receive a longer sentence for fraud but not necessarily for violent felonies and property-related felonies.

Alaska Felony Sentences 1976-1979¹⁵

As a result of the findings of racial disparities in sentencing that surfaced during the first judicial council study, the legislature appropriated funds for a follow-up study to include all felony convictions between 1976 and 1979. This study used the same classifications of felony convictions but divided the data into urban and rural segments.

The methodology used to analyze data in this study is virtually identical to the methods used in the previous study. Within each class of felony, the most significant factors associated with the increase or decrease of a typical sentence were identified and their impact determined.

In comparing the results of the urban data with the findings of the previous study, the authors concluded that:

Analysis of our new (1976-1979) data indicates dramatic reduction in sentencing disparity by race. Racially disproportionate sentences among property and fraud offenses have completely disappeared. In addition, our analysis indicates that, other things being equal, native defendants convicted of violent felonies (class 2) actually receive a sentence less than those of either blacks or whites.¹⁶

In fact, the study found that, for violent felonies, Native defendants received sentences 15.6 months less than those imposed on blacks and whites. However, the study also found that blacks convicted of drug-related felonies in the period 1976-1979 continued to receive sentences that were approximately 11.4 months longer than those received by other defendants convicted of drug felonies. One other socio-economic factor

¹⁵Nicholas Maroules and Theresa White, Alaska Felony Sentences: 1976-1979, Alaska Judicial Council, November 1980.

¹⁶Alaska Felony Sentences 1976-1979, page 13.

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was found to be significant: for fraud felonies, defendants with monthly incomes of less than \$500 received sentences that were 4.2 months less than defendants with income over \$500 per month.

It was also discovered that the type of defense attorney representing the defendant seemed to influence sentence length. Among both fraud and drug-related felonies, representation by a court-appointed attorney increased sentence length 15.4 and 11.9 months respectively. However, among drug convictions, representation by a public defender decreases the sentence length by 8.7 months.

As in the previous study, the defendant's prior record, the number of contemporaneous offenses committed and the "strictness" or "leniency" of the judge impacted the sentence length. It was also discovered that in almost all felony classes, presentence reports submitted by probation officers significantly impacted the length of the sentence. In addition, if the defendant was in jail prior to trial (did not make bail or was not released on his or her own recognizance) the sentence was substantially increased.

The analysis of 1976-1979 felony data also included sentencing patterns for rural Alaska. However, due to the small number of fraud, drug and morals cases, the only felony classes that could be analyzed for sentence length factors were violent and property felonies.

Within the category of violent felonies committed in rural Alaska, the most significant influence on length of sentence was the specific offense. Conviction for rape resulted in sentences that were 55.5 months longer than the average length of sentence for violent felonies, while sentences for manslaughter/negligent homicide convictions resulted in sentences that were 78.4 months longer than typical violent felony sentences. This contrasts with urban sentence length in which convictions for rape resulted in the greatest contribution to sentence length.

As in the data presented in the earlier study and the urban component of this study, sentence length for violent felonies was substantially increased if the defendant had a prior felony conviction. Each prior felony conviction contributed 26.9 months to sentence length. Also, the custodial status of the defendant proved to be significant. If the defendant did not make bail or was not released on his or her own recognizance, a typical sentence was increased by 24 months. An unfavorable characterization of the defendant in the presentence report increased sentence length by 16.1 months.

Two background/socio-economic factors were also found to influence sentence length. A "bad" discharge from the military was found to increase sentence length by 52.9 months while having a monthly income of less than \$500 increased sentence length by nearly 9 months.

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The factors influencing sentencing for property felonies were similar to those influencing violent felonies with two exceptions. First, the employment status of the defendant influenced sentence length in two ways. Being employed for thirty days or more at the time of the conviction reduced sentences by 3.3 months while seasonal employment reduced a sentence by 3.9 months. Secondly, race was significantly associated with sentence length. Blacks convicted of property felonies received sentences that were 2.2 months longer than sentences received by white or Native defendants.

Alaska Felony Sentences: 1980¹⁷

Alaska Felony Sentences: 1980 is the third report in the series of statistical studies concerning felony sentencing in Alaska. This report analyzes all felonies committed in Alaska during 1980 with an emphasis on the impact of the revision of Alaska's criminal code in 1980. For the purposes of this memorandum, however, we will continue to concentrate on the personal characteristics and socio-economic factors that influence sentence length rather than structural changes in the criminal justice system.

In comparing the outcomes of the 1976-1979 study with the results of the 1980 study, the Judicial Council concluded that "the present analysis of 1980 offenses reveals that racially disproportionate sentencing outcomes have been totally eliminated."¹⁸ A second finding related to the influence of the type of attorney in sentencing outcomes. The Judicial Council reports that:

Our analysis of the felony sentencing reveals that the earlier attorney-type outcome differences have been completely eliminated. Differences in sentence outcomes according to type of defense attorney did not survive the screening in any class of offense, strongly suggesting that the Court System's response eliminated the problem.¹⁹

The 1980 study found that, in general, sentence length for all classes of felonies was influenced by one or more of the following: the specific crime committed, the record of the defendant, the number of contemporaneous convictions, the presentence report, presumptive sentencing, if the defendant was jailed at the time of conviction and the "strictness" or "leniency" of the sentencing judge.

¹⁷Alaska Judicial Council, Alaska Felony Sentences: 1980, December 1982.

¹⁸Alaska Felony Sentences: 1980, page 57.

¹⁹Alaska Felony Sentences: 1980, page 59.

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Alaska Misdemeanor Sentences: 1980²⁰

Alaska Misdemeanor Sentences: 1980 analyzes sentences imposed by Alaska judges and magistrates in misdemeanor cases during 1980. The study concentrated on two types of relationships: defendant characteristics and sentence length and community characteristics and sentence length. Three types of defendant characteristics influenced the length of the sentence: financial status (which was based on an index which considered type of attorney, employment status and bail or custody status at the time of sentencing), prior criminal history and history of treatment for alcohol or drug problems. The study determined that wealthy defendants tended to receive shorter sentences for vehicular and disorderly conduct convictions than nonwealthy defendants. However, the defendant's wealth did not affect sentencing for violent, property or alcohol/drug offenses.

Prior criminal history and treatment contributed more to sentence length than wealth did. Prior conviction for felony offenses added 22.4 days to violent misdemeanor convictions and 58.7 days to property offenses. Defendants who had been referred to alcohol or drug programs in the past but had not attended the program, received longer sentences than those defendants who finished these programs: 24.6 days for violent offenses, 49 days for vehicular offenses and 7 days for alcohol/drug offenses.

Community characteristics were also found to influence sentencing. Fines were required far less frequently in Nome, Bethel and Barrow than in other areas. In addition, the actual fines that were paid in these three locations tended to be less. However, defendants in Nome and Bethel were more likely to serve time in jail than defendants in other areas of the state for vehicular offenses, violent offenses, and disorderly conduct.

I hope that this information is useful. If you require additional research, please contact us.

JL

²⁰Alaska Judicial Council, Alaska Misdemeanor Sentences: 1981, December 1983.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

HAYDEN
re: Death Penalty

May 8, 1985

MEMORANDUM

TO: Representative Mike Navarre

ATTN: Pat Malone

FROM: Jay Livey *JL*
Legislative Analyst

RE: Racial Bias in the Application of the Death Penalty in the U.S.
and the Sentencing of Convicted Felons in Alaska
Research Request 85-292

You asked that we provide you with the following information concerning application of the death penalty in Alaska and the United States:

- the race and social class of persons currently under sentence of death in the United States;
- information concerning previous applications of the death penalty in Alaska and the United States; and
- evidence, if any, of discrimination by race or economic condition in sentencing in Alaska.

SUMMARY

Individuals Currently Under the Death Sentence. There are currently 1,470 individuals on death row in the United States: 51 percent of these individuals are white; 42 percent are black; 5.7 percent are hispanic; 1.2 percent are Native American; and .3 percent are Asian. Blacks, hispanics and Native Americans are all disproportionately represented on death row in relation to their portion of the entire United States population.

Death Penalty in the United States. A significant amount of evidence exists that the death penalty in America has been applied in an arbitrary and biased manner. Wolfgang and Riedel found that, from 1945 to 1965, black defendants convicted of rape in eleven predominantly southern states had a significantly greater chance of receiving the death penalty than white defendants convicted of the same crime (13 percent

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to 2 percent). Furthermore, they discovered that the race of the victim was critical. In cases involving a black defendant and a white victim, 36 percent of the defendants were sentenced to death while in all other cases, only 2 percent of the defendants received the death sentence.

Findings in similar studies led the Supreme Court of the United States to conclude that capital punishment was being applied in a capricious and arbitrary manner. In Furman v Georgia (1972), the court declared the capital punishment laws of most states to be unconstitutional. As a result of the Furman case, states drafted new capital punishment laws that contained sentencing guidelines and appeals procedures intended to remove discretionary application of the death penalty. In Gregg v Georgia these state laws were found to be constitutional.

Bowers and Pierce studied the effect of these new laws by examining all cases of criminal homicide in the states of Florida, Texas, Georgia and Ohio that occurred between the passage of new capital punishment laws and 1978. They concluded that the racial sentencing patterns that were observed in the pre-Furman period persisted. Generally, black defendants had a greater chance of receiving the death sentence than white defendants and killers of whites had a better chance of the death sentence than killers of blacks.

Radelet and Vandiver examined the effect of state appeals procedures in mitigating the effect of racially biased sentencing in Florida. Appeals to state supreme courts are one method recognized by the United States Supreme Court of removing arbitrary sentencing in death penalty cases. However, the authors discovered that appeal to the state supreme court did not necessarily compensate for sentencing bias, and, in fact, the decisions of the appeals court reinforced the bias of the lower courts.

We could find no statistical evidence to refute the findings that the death penalty has been discriminately applied. Most statistical evidence presented in favor of the death penalty focuses on the issue of the deterrent effect of capital punishment. However, several proponents of the death penalty, most notably Ernest Van Den Haag, argue that equality in the application of justice, although desirable, is not practical. He argues that society could enforce no law if required to assure that all guilty individuals were punished equally. Furthermore, unequal punishment does not mean that the guilty are any less guilty and deserving of punishment. Therefore, he concludes that racial bias in the application of the death penalty is morally undesirable, but does not necessarily require its abolition.

Sentencing Patterns in Alaska. The Alaska Judicial Council produced a series of reports that studied felony sentencing patterns in Alaska from 1974-1980. The first felony sentencing report which covered the

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period 1974-1976 found that sentencing in Alaska was influenced by the defendant's race, age, education, income and occupation. Black defendants received longer sentences than white defendants in drug and property-related felonies. Defendants under 21 years of age received shorter sentences for drug convictions than defendants over age 21.

Low income meant a longer drug felony sentence, while education beyond high school meant a shorter one. Professionals and individuals in supervisory positions received generally shorter sentences for a drug conviction than individuals in "blue collar" positions.

A subsequent study of sentencing for felony convictions, covering the period 1976-1979, indicated that although some of the racial bias in sentencing had disappeared, it still persisted among black defendants convicted of drug felonies. In addition, this study found that the type of defense attorney was significant in determining sentence length. Among fraud and drug-related felonies, representation by a court appointed attorney was associated with longer sentences while representation by a public defender was associated with shorter sentences.

The third felony sentencing report analyzed all felony convictions during 1980. This report concluded that the impact on sentencing caused by the type of attorney had been eliminated. Also, the report found that previous racial bias in sentencing had been eliminated.

PERSONS CURRENTLY AWAITING EXECUTION IN THE UNITED STATES

Although we could find no current information concerning the economic class of individuals currently awaiting execution, Table 1 provides a summary of the race of each of these individuals. As the table indicates, of the 1,470 condemned persons, 727 (49.2 percent) are non-white while 752 (50.8 percent) are white. According to the 1980 census, the portion of the United States population that was black, hispanic and American Indian was 12 percent, 6.43 percent and .62 percent respectively. A comparison of the racial composition of the United States population with the racial composition of death row inmates indicates that blacks, hispanics and Native Americans are all disproportionately represented within the group of prisoners under sentence of death.

TABLE 1

Race of Persons Under Sentence of Death

<u>Race</u>	<u>Number</u>	<u>Percent</u>
White	742	50.8
Black	620	42.0
Hispanic	84	5.7
Native American	18	1.2
Asian American	5	.3
Total	1,479	100

Source: American Civil Liberties Union.

* * * *

CAPITAL PUNISHMENT IN ALASKA AND THE UNITED STATES

Eight men have been executed in Alaska; all of these executions occurred between 1903 and 1950.¹ Reference has been made to a ninth execution, but our research has not confirmed this event. Of the eight men known to have been executed, two were white, three were Alaska Natives, two were black and the race of one was unknown. Although the number of executions is too small to statistically analyze for patterns of discrimination, it is evident that non-whites have been executed in Alaska in disproportionate numbers. However, without knowing the nature of the offenses for which the men were executed or the numbers and types of offenses for which other defendants were not executed, it is impossible to prove a pattern of discrimination in the application of the death sentence in Alaska.

The American Civil Liberties Union reports that since 1972, 38 individuals have been executed in the United States. Of this number, 12 (32 percent) were black. These data, combined with the information concerning death row prisoners in Table 1, indicates that a disproportionate number of black individuals have been executed or are currently

¹Correspondence between Charles Zibulka and the Alaska Historical Library, August 10, 1965.

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sentenced to death. These statistics, however, do not by themselves prove discrimination in the application of capital punishment. To prove discrimination, it is necessary to show that differences in sentencing occurred for similar crimes. Three studies that focus on this differentiation in sentencing are discussed below.

Wolfgang and Riedel studied cases of rape from the period 1945 to 1966 in eleven predominantly southern states.² Sample counties from each state were chosen and, from these counties, information concerning 3,000 rape convictions from 230 counties was collected. Because the study addressed only sentencing differences among convicted defendants, the effect of racial factors on the criminal justice process prior to sentencing were not considered.

Wolfgang and Riedel analyzed 1,265 cases from five states and found that, of the 823 cases in which blacks were convicted of rape, 110 black defendants (13 percent) were sentenced to death while among the 442 whites convicted of rape, 9 (2 percent) were sentenced to death. The authors also discovered that a disproportionate number of black defendants whose victims were white were sentenced to death. From a total of 1,238 convictions in six states, 317 involved a black defendant and a white victim and 921 involved all other combinations of defendant and victim: including black/black, white/white and white/black. Of the 317 black defendants whose victims were white, 113 or approximately 36 percent were sentenced to death while in the other 921 cases, 19 (2 percent) of the convicted defendants were sentenced to death.³

However, as mentioned previously, these statistics do not necessarily prove racial discrimination in sentencing. To examine the issue of racial discrimination, it is necessary to study the data and to determine if other variables may be present that explain the sentencing differences.

²Marvin Wolfgang and Marc Riedel, Racial Discrimination, Rape, and the Death Penalty, from Death Penalty In America edited by Hugo Adam Bedau, Oxford University Press, 1982.

³The discrepancy in the number of cases and number of Black defendants who received the death sentence occurs because data from different states was used for each analysis discussed. Although Wolfgang and Riedel collected information from eleven states, they selected seven states for further analysis. Because the data from these seven states were not uniform, the authors found it necessary to selectively use the data depending on the analysis undertaken.

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Wolfgang and Riedel studied the relationship between the imposition of the death sentence and the following nonracial variables: offender characteristics (age, marital status, prior criminal record, previous imprisonment, employment status); victim characteristics (age, marital status, dependent children, reputation); relation between victim and offender; and the circumstance of the offense (contemporaneous offense, type of entry and location of offense). After testing these nonracial variables, the authors discovered that:

Not one of these nonracial variables has withstood the test of statistical significance. That is, in none of the seven states carefully analyzed can it be said that any of the nonracial factors account for the statistically significant and disproportionate number of blacks sentenced to death for rape...⁴

After eliminating nonracial factors, Wolfgang and Riedel conclude:

It cannot be said that blacks are more frequently sentenced to death because they have a longer prior criminal record than whites, because they used more force on the victim, because they committed a robbery or burglary, because they entered premises without authorization...because they more frequently attacked persons under the age of sixteen, and so forth. All the nonracial factors "wash out", that is, they have no bearing on the imposition of the death penalty in disproportionate numbers upon blacks. The only variable of statistical significance that remains is race.⁵

The bias that Wolfgang and Riedel discovered in the application of the death sentence was the basis of the argument used in 1972 by the Supreme Court in Furman v Georgia, which set aside the death penalty in all of the states. The court ruled that, although capital punishment was not unconstitutional per se, state laws that allowed the death sentence to be used unfairly and arbitrarily violated the "cruel and unusual" punishment clause of the eighth amendment of the Constitution of the United States.

As a result of the Furman case, states drafted new capital punishment laws written to address the arbitrary application problem that the Supreme Court identified. These state laws provide sentencing guidelines to be used by judges and juries and a method of automatic appeal to state supreme courts in attempts to reduce capricious use of the death penalty. The Supreme Court reviewed these state laws in Gregg v Georgia in 1976 and found them to be constitutional.

⁴Bedau, The Death Penalty In America, page 204.

⁵Bedau, The Death Penalty In America, page 204.

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Bowers and Pierce analyzed the application of the post-Furman capital punishment laws (that were affirmed by the Supreme Court in the Gregg case) of the states of Florida, Texas, Georgia and Ohio.⁶ The authors examined cases of criminal homicide that occurred in each state between the time that the new laws became effective and 1978. Table 2 summarizes information concerning the probability of receiving a death sentence in these states based on the race of the offender and victim.

As the table indicates, in all four of the states, black defendants whose victims were white had the highest probability of receiving the death sentence. White offenders whose victims were also white had the next highest probability of receiving the death sentence followed by black offenders/black victims and white offenders/black victims. Based on these statistics, Bowers and Pierce note that:

...Stark difference by race of both offender and victim in all four states are apparent...The racial pattern is consistent across states and similar to the experience under pre-Furman statutes. Thus, black killers and the killers of whites are substantially more likely to receive a death sentence in all four states. And, as in the pre-Furman era, race of the victim tends to overshadow race of the offender as a basis for differential treatment...⁷

Bowers and Pierce went on to question the possibility that the increased probability that blacks and killers of whites receive the death sentence more often than other homicide defendants is due to the nature of the crimes committed. The nature of the crime seems particularly relevant in the post-Furman period because many of the state laws upheld by the Supreme Court provide sentencing guidelines to judges and juries based on aggravating factors related to the crime. For example, in Florida and Georgia, if the homicide is committed during the course of another felony, such as rape or robbery, the homicide qualifies for the death sentence. To test the impact that the crime has on the chances of receiving the death penalty, the authors tested homicide data from Texas, Florida and Georgia by race of offender and victim for two separate categories: murders committed in the course of committing another felony (felony type) and murders committed in the absence of another felony (nonfelony type).

⁶William Bowers and Glenn Pierce, Racial Discrimination and Criminal Homicide Under Post-Furman Capital Statutes, from The Death Penalty In America, edited by Hugo Adam Bedau, Oxford University Press, 1982.

⁷Bedau, The Death Penalty In America, Page 209.

TABLE 2

Probability of Receiving a Death Sentence for Criminal Homicide,
 by Race of Offender and Victim for Selected States from Date of
 Enactment of Capital Punishment Law Through 1977

<u>Offender/Victim Combination</u>	<u>Estimated Number of Offenders</u>	<u>Persons Sentenced to Death</u>	<u>Overall Probability of Death Sentence</u>
Florida			
Black/White	240	53	.221
White/White	1,768	82	.046
Black/Black	1,922	12	.006
White/Black	80	0	.000
Georgia			
Black/White	258	43	.167
White/White	1,006	42	.042
Black/Black	2,458	12	.005
White/Black	71	2	.028
Texas			
Black/White	344	30	.087
White/White	3,616	56	.015
Black/Black	2,597	2	.001
White/Black	143	1	.007
Ohio			
Black/White	173	44	.254
White/White	803	37	.046
Black/Black	1,170	20	.017
White/Black	47	0	.000

Source: Bedau, The Death Penalty In America, Page 209.

* * * *

Bowers and Pierce found that although the death penalty is much more likely to be imposed in felony-type murders, this application does not explain the racial differences observed in Table 2. In fact, in each of these three states, whether looking at felony or nonfelony-type murder, a black offender whose victim is white has a greater chance of receiving the death sentence than any other offender/victim combination.

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A white offender and white victim is the next most likely combination to result in the death sentence followed by the black offender/black victim and white offender/black victim. This ordering by offender/victim combination, which is similar to the order found in Table 2, indicates that controlling for felony or nonfelony-type homicide does not account for racial bias in sentencing.

From the data analyzed, Bowers and Pierce came to the following conclusion:

The data in this section point to more than arbitrariness and discrimination in isolation. They reflect a twofold departure from even-handed justice which is consistent with a single underlying racist tenant: that white lives are worth more than black lives. From this tenant it follows that death as punishment is more appropriate for the killers of whites than for the killers of blacks and more appropriate for black than for white killers. Either discrimination by race of offender or disparities of treatment by race of victim of the magnitudes we have seen here are a direct challenge to the constitutionality of the post-Furman capital statutes. Together these elements of arbitrariness and discrimination may represent a two-edged sword of racism in capital punishment that is beyond statutory control.⁸

The United States Supreme Court in the Gregg decision affirmed the death penalty laws of several states in part because they contained rules that would guide judges and juries in deciding who would receive the death penalty and who would not. The Supreme Court's view was that these provisions would help to eliminate the arbitrary use of the death penalty. The Florida death penalty law contains a provision that allows defendants to appeal the death penalty directly to the state supreme court.

Radelet and Vandiver have studied all direct appeals made to the Florida Supreme Court between January 1, 1972 and December 31, 1981.⁹ The authors, after examination of previous studies, concluded that the death penalty in Florida is given disproportionately to black defendants. The purpose of this study, then, was to determine if the supreme court appeals procedure was helping to lessen this sentencing bias.

⁸Bedau, The Death Penalty In America, Page 215.

⁹Michael Radelet and Margaret Vandiver, The Florida Supreme Court and Death Penalty Appeals, Journal of Criminal Law and Criminology, 1983, Vol. 74, No. 3, page 913.

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The study discovered that the Florida Supreme Court reversed nearly one-half of the death penalty cases reviewed between 1972 and 1981. The two most important factors concerning a change in sentencing were related to the legal environment. The strongest predictor of a supreme court reversal of a death sentence was a jury recommendation of life imprisonment that was ignored by the sentencing judge. The second best predictor was the number of victims; as the number of victims increases, the supreme court is less likely to change the original sentence.

Radlett and Vandiver, however, discovered three other factors that relate to nonlegal issues that impact the appeals decision of the court: defendant's race, victim's sex and the interaction between victim's sex and defendant's race. Their statistical analysis shows that white defendants are slightly more likely to receive a favorable decision than black defendants (50 percent versus 54 percent), and those with female victims are slightly more likely to have their death sentences changed than those with male victims.

However, the statistical impact of the defendant's race can be skewed by considering the victim's sex. For example, 39 percent of the black defendants with female victims had their death sentences changed compared with 61 percent of the white defendants with female victims. Of the 23 cases with a black defendant and a female victim, 20 of the victims were white. Among the cases of a black defendant and male victim, 50 percent of the sentences were changed while among the cases involving a white defendant and a male victim only 42 percent of the death sentences were changed.

Based on their statistical findings, Radlett and Vandiver conclude:

While the identification of extra-legal correlates of decisions at one point in the capital sentencing process is noteworthy, its principal importance emerges in the context of comparison with other racially biased decisions made at earlier points. That is, although the death penalty in Florida is given disproportionately to black defendants, the Florida Supreme Court is not correcting the discrepancy in its decisions on direct appeals. In fact, the relationship between the defendant's race and outcome indicates the possibility that the Supreme Court is reinforcing the biases against black defendants which may be observed at earlier stages of the criminal justice process...¹⁰

¹⁰Radlett and Vandiver, page 925.

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Although we contacted several reputable sources of criminal justice information including the National District Attorney Association, The Justice Center at the University of Alaska-Anchorage (and through them the Bureau of Justice Statistics), the American Bar Association and the National Conference of State Legislatures we could find no statistical studies that refute the conclusion that the application of the death penalty is racially biased. (We are still attempting to contact several sources and should these contacts provide any relevant information, we will forward it to you.)

Most of the literature in support of the death penalty concerns the issues of deterrence and the general protection of society. Although the question of deterrence is discussed extensively in the literature, it is not the major focus of this memorandum.¹¹

However, one argument made in the face of charges of discriminatory application of the death penalty is that it is impossible to enforce any law equally. This reasoning argues that penalties could never be applied if society insisted that penalties be inflicted on a guilty person only if they are inflicted on all guilty people.

Furthermore, proponents of this view contend that justice does not necessarily demand equal application to be valid. Ernest Van Den Haag notes:

The utilitarian (political) effects of unequal justice may well be detrimental to the social fabric because they outrage our passion for equality before the law. Unequal justice also is morally repellant. Nonetheless, unequal justice is still justice. The guilty do not become innocent or less deserving of punishment because others escape it. Nor does any innocent deserve punishment because others suffer it. Justice remains just, however unequal, while injustice remains unjust, however equal. While both are desired, justice and equality are not identical. Equality before the law should be extended and enforced--but not at the expense of justice.¹²

¹¹The House Research Agency has collected a variety of information on the deterrent effect of the death penalty. Also see House Research memoranda 82-161 (Capital Punishment) and 85-185 (Capital Punishment Costs and Effect on Murder Rates).

¹²Ernest Van Den Haag, In Defense of the Death Penalty: A Practical and Moral Analysis, from The Death Penalty in America, edited by Hugo Adam Bedua, Oxford University Press, 1982, page 324.

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Proponents of this view recognize that the death penalty may not be equally applied to all defendants. However, they maintain that no law can ever be equally applied and to apply the law unequally does not invalidate the justness of applying it to those who are guilty. Racial bias in the application of the death sentence is morally undesirable and should be eliminated, however, the existence of the bias does not necessarily argue for elimination of the death sentence.

CRIMINAL JUSTICE IN ALASKA

Since 1977, the Alaska Judicial Council has produced three reports that analyze the reasons for variations in length of sentences for felony convictions and two reports that analyze misdemeanor sentences. The first report contained information on felony convictions for the period 1974-1976, the second for the period 1976-1979 and the third for 1980. In each of the felony studies, all convictions for the study period were assigned to one of six felony classes: murder/kidnapping, violent felonies, property offenses, fraud offenses, drug offenses and morals offenses. However, the first and last classes, murder/kidnappings and morals offenses, were excluded because not enough cases were available for meaningful statistical analysis. Felonies within the remaining four categories were analyzed to isolate the factors that contributed to the length of sentence received by defendants. A similar classification scheme was used to analyze the misdemeanor sentences. The findings of these studies are summarized below.

Alaska Sentencing Felony Patterns (1974-1976)¹³

The largest single factor that affected the length of felony sentences was the type of crime that was committed. In fact, this variable explained more of the variation in sentence length than any other factor.

The defendant's criminal history also had a positive relationship on the length of the sentence for all four of the felony classes studied in depth. Having a prior felony or misdemeanor record meant a longer sentence, ranging from 38.6 months longer for violent felony to 4.4 months longer for burglary, larceny, receiving and concealing.

¹³Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974-1976), Alaska Judicial Council, April 1977.

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Multiple convictions also increased the sentence, particularly in cases of multiple felonies. However, in two felony classes, violent felonies and fraud felonies, the fact that there were other unrelated charges against the defendant, even though he or she had not yet been convicted, meant a longer sentence: 27.3 months for violent felonies and .4 months for fraud felonies.

The effect of the judge's "strictness" or "leniency" was also found to be an important variable in sentence length.¹⁴ For example, a defendant convicted of a violent felony and sentenced by a "strict" judge received a sentence estimate to be 45.6 months longer than a sentence imposed by a judge who was not "strict". In cases of drug felonies, judicial "strictness" added an estimated 22 months to the sentence. "Leniency", although affecting sentence length, did not have as great an impact as on sentence length as "strictness".

In two felony classes, violent felonies and fraud felonies, the fact that the defendant had been unemployed 18 months or more out of the two years prior to prosecution was positively related to longer sentences. For violent felony convictions, it was estimated that unemployment for the two years preceding the conviction could mean a increased sentence of up to 18.8 months. For fraud felonies, the additional sentence length caused by unemployment was estimated to be 6.9 months.

The study found that the defendant's race, age, income, education level and occupation had a significant impact on the length of sentence received for drug-related felonies and a less significant impact on other felony classifications. All of the personal characteristics mentioned above were associated with the length of sentences for drug related felonies. Defendants that were under 21 years of age received sentences that were generally 9.3 months shorter than if the defendant was older than 21 years. Being black contributed an estimated 11.9 months to the defendant's sentence. Low income meant a longer drug felony sentence (about 6.2 months) and education beyond high school meant a shorter sentence by 6.4 months. A "blue collar" worker received a sentence for conviction of a drug felony that was 7.2 months longer than a professional or individual in a supervisory position would receive.

The sentence length for other types of felony convictions also was affected by these personal characteristics. A black individual convicted of a property felony was likely to receive a sentence that was 6.5 months longer than the sentence received by all other offenders for

¹⁴"Strict", "lenient" or "other" is determined by comparing the mean sentence length of each offense class with the sentences imposed by the judge.

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similar offenses. A "white collar" professional was likely to receive a sentence that was 4.6 months shorter than a "blue collar" worker for a conviction for fraud.

A defendant with a history of drug dependence was more likely to receive a longer sentence for fraud but not necessarily for violent felonies and property-related felonies.

Alaska Felony Sentences 1976-1979¹⁵

As a result of the findings of racial disparities in sentencing that surfaced during the first judicial council study, the legislature appropriated funds for a follow-up study to include all felony convictions between 1976 and 1979. This study used the same classifications of felony convictions but divided the data into urban and rural segments.

The methodology used to analyze data in this study is virtually identical to the methods used in the previous study. Within each class of felony, the most significant factors associated with the increase or decrease of a typical sentence were identified and their impact determined.

In comparing the results of the urban data with the findings of the previous study, the authors concluded that:

Analysis of our new (1976-1979) data indicates dramatic reduction in sentencing disparity by race. Racially disproportionate sentences among property and fraud offenses have completely disappeared. In addition, our analysis indicates that, other things being equal, native defendants convicted of violent felonies (class 2) actually receive a sentence less than those of either blacks or whites.¹⁶

In fact, the study found that, for violent felonies, Native defendants received sentences 15.6 months less than those imposed on blacks and whites. However, the study also found that blacks convicted of drug-related felonies in the period 1976-1979 continued to receive sentences that were approximately 11.4 months longer than those received by other defendants convicted of drug felonies. One other socio-economic factor

¹⁵Nicholas Maroules and Theresa White, Alaska Felony Sentences: 1976-1979, Alaska Judicial Council, November 1980.

¹⁶Alaska Felony Sentences 1976-1979, page 13.

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was found to be significant: for fraud felonies, defendants with monthly incomes of less than \$500 received sentences that were 4.2 months less than defendants with income over \$500 per month.

It was also discovered that the type of defense attorney representing the defendant seemed to influence sentence length. Among both fraud and drug-related felonies, representation by a court-appointed attorney increased sentence length 15.4 and 11.9 months respectively. However, among drug convictions, representation by a public defender decreases the sentence length by 8.7 months.

As in the previous study, the defendant's prior record, the number of contemporaneous offenses committed and the "strictness" or "leniency" of the judge impacted the sentence length. It was also discovered that in almost all felony classes, presentence reports submitted by probation officers significantly impacted the length of the sentence. In addition, if the defendant was in jail prior to trial (did not make bail or was not released on his or her own recognizance) the sentence was substantially increased.

The analysis of 1976-1979 felony data also included sentencing patterns for rural Alaska. However, due to the small number of fraud, drug and morals cases, the only felony classes that could be analyzed for sentence length factors were violent and property felonies.

Within the category of violent felonies committed in rural Alaska, the most significant influence on length of sentence was the specific offense. Conviction for rape resulted in sentences that were 55.5 months longer than the average length of sentence for violent felonies, while sentences for manslaughter/negligent homicide convictions resulted in sentences that were 78.4 months longer than typical violent felony sentences. This contrasts with urban sentence length in which convictions for rape resulted in the greatest contribution to sentence length.

As in the data presented in the earlier study and the urban component of this study, sentence length for violent felonies was substantially increased if the defendant had a prior felony conviction. Each prior felony conviction contributed 26.9 months to sentence length. Also, the custodial status of the defendant proved to be significant. If the defendant did not make bail or was not released on his or her own recognizance, a typical sentence was increased by 24 months. An unfavorable characterization of the defendant in the presentence report increased sentence length by 16.1 months.

Two background/socio-economic factors were also found to influence sentence length. A "bad" discharge from the military was found to increase sentence length by 52.9 months while having a monthly income of less than \$500 increased sentence length by nearly 9 months.

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The factors influencing sentencing for property felonies were similar to those influencing violent felonies with two exceptions. First, the employment status of the defendant influenced sentence length in two ways. Being employed for thirty days or more at the time of the conviction reduced sentences by 3.3 months while seasonal employment reduced a sentence by 3.9 months. Secondly, race was significantly associated with sentence length. Blacks convicted of property felonies received sentences that were 2.2 months longer than sentences received by white or Native defendants.

Alaska Felony Sentences: 1980¹⁷

Alaska Felony Sentences: 1980 is the third report in the series of statistical studies concerning felony sentencing in Alaska. This report analyzes all felonies committed in Alaska during 1980 with an emphasis on the impact of the revision of Alaska's criminal code in 1980. For the purposes of this memorandum, however, we will continue to concentrate on the personal characteristics and socio-economic factors that influence sentence length rather than structural changes in the criminal justice system.

In comparing the outcomes of the 1976-1979 study with the results of the 1980 study, the Judicial Council concluded that "the present analysis of 1980 offenses reveals that racially disproportionate sentencing outcomes have been totally eliminated."¹⁸ A second finding related to the influence of the type of attorney in sentencing outcomes. The Judicial Council reports that:

Our analysis of the felony sentencing reveals that the earlier attorney-type outcome differences have been completely eliminated. Differences in sentence outcomes according to type of defense attorney did not survive the screening in any class of offense, strongly suggesting that the Court System's response eliminated the problem.¹⁹

The 1980 study found that, in general, sentence length for all classes of felonies was influenced by one or more of the following: the specific crime committed, the record of the defendant, the number of contemporaneous convictions, the presentence report, presumptive sentencing, if the defendant was jailed at the time of conviction and the "strictness" or "leniency" of the sentencing judge.

¹⁷Alaska Judicial Council, Alaska Felony Sentences: 1980, December 1982.

¹⁸Alaska Felony Sentences: 1980, page 57.

¹⁹Alaska Felony Sentences: 1980, page 59.

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Alaska Misdemeanor Sentences: 1980²⁰

Alaska Misdemeanor Sentences: 1980 analyzes sentences imposed by Alaska judges and magistrates in misdemeanor cases during 1980. The study concentrated on two types of relationships: defendant characteristics and sentence length and community characteristics and sentence length. Three types of defendant characteristics influenced the length of the sentence: financial status (which was based on an index which considered type of attorney, employment status and bail or study status at the time of sentencing), prior criminal history and history of treatment for alcohol or drug problems. The study determined that wealthy defendants tended to receive shorter sentences for vehicular and disorderly conduct convictions than nonwealthy defendants. However, the defendant's wealth did not affect sentencing for violent, property or alcohol/drug offenses.

Prior criminal history and treatment contributed more to sentence length than wealth did. Prior conviction for felony offenses added 22.4 days to violent misdemeanor convictions and 58.7 days to property offenses. Defendants who had been referred to alcohol or drug programs in the past, but had not attended the program, received longer sentences than those defendants who finished these programs: 24.6 days for violent offenses, 49 days for vehicular offenses and 7 days for alcohol/drug offenses.

Community characteristics were also found to influence sentencing. Fines were required far less frequently in Nome, Bethel and Barrow than in other areas. In addition, the actual fines that were paid in these three locations tended to be less. However, defendants in Nome and Bethel were more likely to serve time in jail than defendants in other areas of the state for vehicular offenses, violent offenses, and disorderly conduct.

I hope that this information is useful. If you require additional research, please contact us.

JL

²⁰Alaska Judicial Council, Alaska Misdemeanor Sentences: 1981, December 1983.