SB

17

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 3/13/90

2/27/89

Mr. President:

FINANCE Committee considered SB 17

authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies; directing an advisory vot on whether the capital punishment law should take effect; efd and recommended

[ ] replace with ___ CS_____)[] same title
[✓] or adopt _____ CS SB 17 (Jud))[] new title
[] technical title change (HB only)

[ ] attached amendment(s) and

[ ] _____ letter of intent adopted

Fiscal Notes: Elections - $2.2 3/15/90
Corrections - 0 FY 91 3/12/90
300.0 Cap. FY92
Courts - 0 FY91 3/8/90
380.5 FY92
Law - 0 FY91 3/12/90
810.0 FY92
DOA - Advocacy 3/12/90
0 FY91
782.7 FY92
Pub. Defender
0 FY91 3/12/90
$10.1 FY92

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) [ ] zero [✓] fiscal impact [ ] appropriation no FN
6 [✓] new [ ] updated [ ] previous
[ ] same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

J. Duncan - Do not Pass

Paul Fraser. - Paul Fraser No Rec -

Ruth Kelly No Rec

Dolores Bailey

Chairman signature and recommendation

DO NOT PASS - THE ONLY THING THAT SHOULD BE KILLED IS THIS BILL!

[ ] Committee Backup attached

R/O SFC 3-13-90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (Jud)
PUBLISH DATE: 2/27/89

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: Linda Edgeworth
Phone: 465-4611
Division: Division of Elections
Date: 3/5/90

Approved by Commissioner:
Date: 3.5.90
Agency: Division of Elections

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

R/O SFC 3-13-90
BILL VERSION: CSSB 17(Jud)
PUBLISH DATE: 03/12/90

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)

R/O SFC 3-13-90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSSB 17 (Judiciary)
Publish Date: 2/27/90

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			86.3	86.3	86.3	86.3
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	364.8	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 — Phone: 264-8228
Division: Alaska Court System — Date: 03/08/90

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 03/08/90
Agency: Alaska Court System

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

ALASKA COURT SYSTEM
CSSB 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

Personal Services	Salary	Benefits	Total
Law Clerk I, Range 13D, Anchorage, PFT – 12 Months	$29,340	$11,095	$40,435
Law Clerk I, Range 13D, Fairbanks, PFT – 12 Months	33,816	12,080	45,896
Total Personal Services			86,331
Travel			
Jury sequestration – meals and lodging			112,500
Contractual			
Security guard services for courts outside Anchorage			10,000
Jury fees			96,000
Bailiff 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			$380,530

R/O SFC 3-13-90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (JUD)
PUBLISH DATE:

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
Richard I. Pegues, Director
Division: Administrative Services
Phone: 465-3672
Date: March 12, 1990

Approved by Commissioner: Richard L. Pegues /PDR/
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)

* DOLAW FISCAL NOTE

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.

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

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

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.

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.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

Page 8 of 10

Fiscal Analysis CSSB 17 (Jud)

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

	Second Year				Third Year			
Object	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

Fiscal Analysis CSSB 17 (Jud)

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

	Second Year				Third Year			
Object	Atty V	Asst 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

Fiscal Analysis CSSB 17 (Jud)

Cumulative Implementation Cost by Year

	Prosecution Costs				Appellate Review Costs			
Object	Year 1	Year 2	Year 3	Year 4+	Year 1	Year 2	Year 3	Year 4+
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

R/O SFC 3-13-90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (Jud)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
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)

DOA FISCAL NOTE / PUBLIC ADVOCACY

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	=	32.8
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		350.0
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

R/O SFC 3-13-90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS SB 17
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 3/12/90
Title: "An Act authorizing capital punishment..."
Sponsor: Senators Fischer, Kelly, 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						

REVENUE						

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
Phone: 279-7541
Division: Public Defender Agency
Date: 3/12/90

Approved by Commissioner: Frank Baxter
Date: 3/12/90
Agency: Department of Administration

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

DOA FISCAL NOTE (PUBLIC DEFENDER)

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 Habeus 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:			
Guilt 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
Contractual:			
Based on 6 Capital cases per year			
Experts	80.0		
Office space			
Anchorage	8.0		
Printing	2.0		
Communications	5.0	TOTAL	95.0
Supplies:			
Office, law library			6.0
Equipment:			
Office furniture and machines (one time)			20.0
		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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 17

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

R/O SFC 3-13-90

Offered: 2/27/89
Referred: Finance

6-0343J

Original sponsors: Fischer, Kelly, Pearce, et al.

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 17 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies; directing an advisory vote on whether the capital punishment law should take effect; amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 210, and 212, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that imposition of the death penalty for the crime of murder in the first degree

(1) is consistent with the criminal sentencing goal of deterrence in that, by the example of its imposition, a member of the community who calculates a murder would rationally consider the harsh consequences of that act;

(2) is consistent with the criminal sentencing goal of community condemnation in that, by its use, the state affirms society's norms and condemns most severely the premeditative taking of human life or the taking of life under circumstances manifesting extreme indifference to its value;

(3) does not violate state constitutional guarantees against the imposition of cruel and unusual punishment, but rather is fully consistent with those guarantees;

(4) conforms to contemporary standards of decency in that there

is no evidence that Alaska's tradition and history suggest a significantly different attitude toward capital punishment in this state from those that prevail nationwide, and there is a widely held belief in the society that capital punishment is an appropriate penalty for murder in the first degree;

(5) serves the state's interest in justice by punishing the person who is guilty according to what is deserved for the most morally offensive conduct with a sentence more stringent than an extended term of life imprisonment;

(6) serves the state's interest in public protection by assuring that the most serious offenders will never again pose a threat to the public; and

(7) is consistent with due process requirements in that the circumstances in which the death penalty may be imposed provide guidance to the court and jury that safeguard against the elements of arbitrariness and capriciousness condemned by the United States Supreme Court in cases concerning the death penalty statutes of other states.

* Sec. 2. AS 11.31.100(d) is amended to read:

(d) An attempt is

(1) an unclassified felony if the crime attempted is <u>a capital felony</u> [MURDER IN THE FIRST DEGREE];

(2) a class A felony if the crime attempted is an unclassified felony other than <u>a capital felony</u> [MURDER IN THE FIRST DEGREE];

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

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

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

C felony;

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

* Sec. 3. AS 11.31.110(c) is amended to read:

(c) Solicitation is a

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

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

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

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

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

* Sec. 4. AS 11.41.100(b) is amended to read:

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

* Sec. 5. AS 12.30.020(a) is amended to read:

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is a capital felony, an unclassified felony, or a class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow

the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community.

* Sec. 6. AS 12.30.040(b) is amended to read:

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

* Sec. 7. AS 12.47.110(b) is amended to read:

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at

the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony, [OR] unclassified felony, or capital felony.

* Sec. 8. AS 12.55.125(a) is amended to read:

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

* Sec. 9. AS 12 is amended by adding a new chapter to read:

CHAPTER 58. CAPITAL PUNISHMENT.

ARTICLE 1. ELECTION TO SEEK DEATH PENALTY.

Sec. 12.58.010. PROSECUTOR'S ELECTION TO SEEK DEATH PENALTY. The district attorney assigned to the prosecution of a capital felony shall determine whether to seek the death penalty against the defendant. If the prosecutor elects to seek the death penalty, the prosecutor shall give notice of election to the court, the defendant, and the defendant's attorney within 10 days of arraignment of the defendant on the capital felony indictment, or within 10 days of arraignment of the defendant if indictment has been waived.

ARTICLE 2. IMPOSITION OF SENTENCE.

Sec. 12.58.100. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a) If, after trial by jury, the defendant is convicted of a capital felony in which the district attorney has elected under AS 12.58.010 to seek the death penalty, the court shall conduct a separate

sentencing proceeding before the trial jury as soon as practicable. If a jury trial has been waived or if the defendant pleads guilty, the sentencing proceeding shall be held before a jury impaneled for the purpose.

(b) During the sentencing proceeding, evidence may be presented as to any matter relevant to the nature of the crime, the character of the defendant, or any aggravating or mitigating factor that the court considers to have probative value, regardless of the admissibility of the evidence under the rules of evidence. The defendant shall have an opportunity to rebut hearsay evidence that is admitted. The state and the defendant or the defendant's counsel shall be permitted to present oral statements. This subsection does not authorize the introduction of evidence secured in violation of the Constitution of the State of Alaska or the Constitution of the United States.

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

(1) aggravating factors exist to justify the death sentence;

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

(3) the defendant should be sentenced to death.

Sec. 12.58.110. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a) In a case in which the district attorney has elected under AS 12.58.010 to seek the death penalty, after considering the evidence and the recommended sentence, the court shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).

(b) The court may not impose the death sentence unless the jury

(1) finds at least one aggravating factor that is not

outweighed by the mitigating factors; and

(2) recommends that the defendant be sentenced to death.

(c) The court may not impose the death sentence

(1) if the jury findings do not include an aggravating factor;

(2) if the jury findings include an aggravating factor that is outweighed by one or more of the mitigating factors; or

(3) if the jury does not recommend a sentence of death.

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

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

(2) mitigating factors considered by the court.

(e) A judgment of conviction for which a sentence of death is imposed is subject to automatic review under AS 12.58.200.

Sec. 12.58.120. AGGRAVATING FACTORS. In determining whether to impose a sentence or death, the following aggravating factors may be considered:

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

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

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

(4) the defendant has a prior conviction for a felony that involved the use of violence against a person or for murder under AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law

of another jurisdiction with substantially similar elements;

(5) the defendant knowingly directed the conduct constituting the offense at the President of the United States or the governor of this state;

(6) the defendant knowingly directed the conduct constituting the offense at an active or former law enforcement officer, prosecuting attorney, fireman, judicial officer, or correctional officer during or because of the exercise of official duties;

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

(8) the defendant was on release under AS 12.30.020 - 12.30.040 for another felony charge or conviction having assault as a necessary element.

Sec. 12.58.130. MITIGATING FACTORS. In determining whether to impose the death sentence, all mitigating factors shall be considered, including, but not limited to, the following:

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

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

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

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

ARTICLE 3. SENTENCE REVIEW.

Sec. 12.58.200. REVIEW OF JUDGMENT OF CONVICTION OF A CAPITAL

FELONY. (a) A judgment of conviction of a capital felony for which a sentence of death is imposed shall automatically be reviewed by the supreme court within 60 days after imposition of the sentence. This time limit may be extended by the supreme court for good cause.

(b) A review under this section has priority over all other cases and the case shall be heard in accordance with rules adopted by the supreme court. On review, the court shall determine whether

(1) the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor;

(2) the evidence supports the finding of an aggravating factor under AS 12.58.120 and whether the court has properly considered mitigating factors under AS 12.58.130;

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

(4) any other issue that the defendant may raise as a point on appeal.

(c) In its consideration of an automatic appeal under (a) and (b) of this section, the supreme court

(1) may not require the defendant to file a notice of appeal, unless the defendant raises an issue as a point on appeal under (b)(4) of this section;

(2) may not require the defendant to pay a fee;

(3) shall designate the entire record of the proceedings before the sentencing court as the record on appeal;

(4) shall prepare the transcript of the proceedings for the record on appeal at public expense; and

(5) may not require the defendant to submit and file a brief, unless the defendant raises an issue as a point on appeal under

(b)(4) of this section.

Sec. 12.58.210. ISSUANCE OF DEATH WARRANT. If the supreme court upholds a judgment of conviction and sentence of death, the court shall issue a death warrant that specifies a date of execution. The specified date of execution must be not less than 30 days nor more than 60 days after the date of the warrant. The death warrant shall be delivered to the commissioner of corrections.

ARTICLE 4. EXECUTION.

Sec. 12.58.300. EXECUTION UNDER SUPREME COURT DEATH WARRANT. After receiving a supreme court warrant issued under AS 12.58.210, the commissioner shall specify the time and place of execution.

Sec. 12.58.310. EXECUTION BY LETHAL INJECTION. After consulting a licensed physician, the commissioner shall select a method of injection and a drug or combination of drugs to be used for an execution by lethal injection.

Sec. 12.58.320. WITNESSES. The commissioner and a licensed physician chosen by the commissioner shall be present at an execution under this chapter.

Sec. 12.58.330. INVITEES. The commissioner may invite not more than nine citizens, who are 19 years of age or older, to be present at an execution, including the prosecuting attorney, the defense attorney, relatives and friends of the defendant, or religious representatives designated by the defendant. A person who is invited by the commissioner may not attend an execution as a matter of right.

Sec. 12.58.340. COVERAGE BY NEWS MEDIA. (a) The commissioner shall permit at an execution the attendance of not more than six members of the print and broadcast news media selected by the commissioner in accordance with regulations adopted by the department. The selected news media members shall serve as a pool for other members of

the news media as a condition of attendance.

(b) The use of photographic or recording equipment may not be permitted at the execution site until the execution is completed, the body is removed and the site has been restored to an orderly condition. The physical arrangements for the execution may not be disturbed.

(c) A person who violates (b) of this section is guilty of a class B misdemeanor.

Sec. 12.58.350. PROVISIONS GOVERNING ATTENDANCE AT EXECUTION. (a) Persons attending an execution are subject to a reasonable search as a condition of attendance.

(b) Persons other than the physician and necessary staff designated by the commissioner and others permitted under AS 12.58.330 - 12.58.340 may not be permitted to attend an execution, nor may any person under the age of 19 attend.

(c) The department shall adopt regulations governing the attendance of persons at an execution.

Sec. 12.58.360. RETURN OF DEATH WARRANT. After the execution the commissioner shall make a return upon the death warrant, showing the time and place in which the defendant was executed.

ARTICLE 5. STAY OF EXECUTION.

Sec. 12.58.400. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO DEATH. If, after a sentence of death is imposed, the commissioner has reason to believe that the defendant has become incompetent to proceed with the execution or that the defendant is pregnant, the commissioner shall immediately give written notice to the court in which the sentence of death was imposed, the prosecuting attorney, and counsel for the defendant. The execution of sentence shall be stayed pending further order of the court.

Sec. 12.58.410. EXAMINATION INTO COMPETENCY. (a) On receipt of notice under AS 12.58.400 that the defendant is believed to be incompetent, the sentencing court shall examine the mental condition of the defendant in the same manner as provided for examining persons for competency to stand trial under AS 12.47.070.

(b) If the sentencing court finds that the defendant is incompetent, the court shall immediately certify that finding to the supreme court and the commissioner, and shall enter an order for commitment in the same manner as provided for commitment under AS 12.47.110.

(c) If the sentencing court finds that the defendant is competent, the court shall immediately certify the finding to the supreme court and the commissioner. The supreme court shall issue and deliver another warrant to the commissioner under AS 12.58.210, together with a copy of the certified finding. Unless the sentencing court's finding is appealed in accordance with applicable court rule, the warrant shall specify a date of execution that is not less than 30 days nor more than 60 days after the date of the warrant.

Sec. 12.58.420. DISPOSITION PENDING PREGNANCY. (a) If the defendant is pregnant, the sentencing court shall immediately certify that finding to the supreme court and the commissioner. The supreme court shall issue an order staying the execution of the sentence of death during the pregnancy.

(b) When the defendant is no longer pregnant, the sentencing court shall immediately certify the finding to the supreme court and the commissioner. The supreme court shall issue and deliver another warrant under AS 12.58.210, together with a copy of the certified finding. Unless the sentencing court's finding is appealed under applicable court rule, the warrant shall specify a date of execution not less than 30 days nor more than 60 days after the date of the

warrant.

ARTICLE 6. GENERAL PROVISIONS.

Sec. 12.58.900. DEFINITIONS. In this chapter,

(1) "commissioner" means the commissioner of corrections;

(2) "department" means the Department of Corrections.

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

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

(1) criminal prosecution, <u>except prosecution for a capital felony for which a death sentence is imposed</u>;

(2) post-conviction relief;

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

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

* Sec. 11. AS 22.07.020(b) is amended to read:

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

* Sec. 12. ADVISORY VOTE AUTHORIZED. The lieutenant governor shall place before the qualified voters of the state at the next statewide general election the question advisory to the legislature of whether capital punishment for murder in the first degree as now authorized by law should go into effect on August 15, 1991. The question shall appear on the ballot

in substantially the following form:

Q U E S T I O N

Shall capital punishment for murder in the first degree as now authorized by law go into effect on August 15, 1991?

Yes [ ] No [ ]

* Sec. 13. APPLICABILITY TO CRIMINAL RULES. AS 12.58, added by sec. 9 of this Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska Supreme Court.

* Sec. 14. APPLICABILITY TO APPELLATE RULES. AS 12.58.200, added by sec. 9 of this Act, has the effect of amending Rules 204, 210, and 212, Alaska Rules of Appellate Procedure, by establishing procedures and limitations on procedures relating to the filing and disposition of appeals of sentences in cases in which the death penalty is imposed.

* Sec. 15. Except for sec. 12 of this Act, this Act takes effect August 15, 1991.

* Sec. 16. Section 12 of this Act takes effect immediately under AS 01.10.070(c).

Adopted 3/12/90
Rescinded

6-0343M
Chenoweth
3/12/90

Original sponsor(s): SEN. FISCHER, Kelly, Pearce, Halford, Faiks

IN THE SENATE

CS FOR SENATE BILL NO. 17 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that imposition of the death penalty for the crime of murder in the first degree

(1) is consistent with the criminal sentencing goal of deterrence in that, by the example of its imposition, a member of the community who calculates a murder would rationally consider the harsh consequences of that act;

(2) is consistent with the criminal sentencing goal of community condemnation in that, by its use, the state affirms society's norms and condemns most severely the premeditative taking of human life or the taking of life under circumstances manifesting extreme indifference to its value;

(3) does not violate state constitutional guarantees against the imposition of cruel and unusual punishment, but rather is fully consistent with those guarantees;

(4) conforms to contemporary standards of decency in that there is no evidence that Alaska's tradition and history suggest a significantly different attitude toward capital punishment in this state from those that prevail nationwide, and there is a widely held belief in the society that

capital punishment is an appropriate penalty for murder in the first degree;

(5) serves the state's interest in justice by punishing the person who is guilty according to what is deserved for the most morally offensive conduct with a sentence more stringent than an extended term of life imprisonment;

(6) serves the state's interest in public protection by assuring that the most serious offenders will never again pose a threat to the public; and

(7) is consistent with due process requirements in that the circumstances in which the death penalty may be imposed provide guidance to the court and jury that safeguard against the elements of arbitrariness and capriciousness condemned by the United States Supreme Court in cases concerning the death penalty statutes of other states.

* Sec. 2. AS 11.31.100(d) is amended to read:

(d) An attempt is

(1) an unclassified felony if the crime attempted is <u>a capital felony</u> [MURDER IN THE FIRST DEGREE];

(2) a class A felony if the crime attempted is an unclassified felony other than <u>a capital felony</u> [MURDER IN THE FIRST DEGREE];

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

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

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

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

* Sec. 3. AS 11.31.110(c) is amended to read:

(c) Solicitation is a

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

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

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

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

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

* Sec. 4. AS 11.41.100(b) is amended to read:

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

* Sec. 5. AS 12.30.020(a) is amended to read:

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is a capital felony, an unclassified felony, or a class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appear-

ance of the person, or will pose a danger to other persons and the community.

* Sec. 6. AS 12.30.040(b) is amended to read:

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

* Sec. 7. AS 12.47.110(b) is amended to read:

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defen-

dant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony, [OR] unclassified felony, or capital felony.

* Sec. 8. AS 12.55.125(a) is amended to read:

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

* Sec. 9. AS 12 is amended by adding a new chapter to read:

CHAPTER 58. CAPITAL PUNISHMENT.

ARTICLE 1. ELECTION TO SEEK DEATH PENALTY.

Sec. 12.58.010. PROSECUTOR'S ELECTION TO SEEK DEATH PENALTY. The district attorney assigned to the prosecution of a capital felony shall determine whether to seek the death penalty against the defendant. If the prosecutor elects to seek the death penalty, the prosecutor shall give notice of election to the court, the defendant, and the defendant's attorney within 10 days of arraignment of the defendant on the capital felony indictment, or within 10 days of arraignment of the defendant if indictment has been waived.

ARTICLE 2. IMPOSITION OF SENTENCE.

Sec. 12.58.100. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a) If, after trial by jury, the defendant is convicted of a capital felony in which the district attorney has elected under AS 12.58.010 to seek the death penalty, the court shall conduct a separate sentencing proceeding before the trial jury as soon as practicable. If a jury trial has been waived or if the defendant pleads guilty, the sentencing proceeding shall be held before a jury impaneled for the

purpose.

(b) During the sentencing proceeding, evidence may be presented as to any matter relevant to the nature of the crime, the character of the defendant, or any aggravating or mitigating factor that the court considers to have probative value, regardless of the admissibility of the evidence under the rules of evidence. The defendant shall have an opportunity to rebut hearsay evidence that is admitted. The state and the defendant or the defendant's counsel shall be permitted to present oral statements. This subsection does not authorize the introduction of evidence secured in violation of the Constitution of the State of Alaska or the Constitution of the United States.

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

(1) aggravating factors exist to justify the death sentence;

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

(3) the defendant should be sentenced to death.

Sec. 12.58.110. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a) In a case in which the district attorney has elected under AS 12.58.010 to seek the death penalty, after considering the evidence and the recommended sentence, the court shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).

(b) The court may not impose the death sentence unless the jury

(1) finds at least one aggravating factor that is not outweighed by the mitigating factors; and

(2) recommends that the defendant be sentenced to death.

(c) The court may not impose the death sentence

(1) if the jury findings do not include an aggravating factor;

(2) if the jury findings include an aggravating factor that is outweighed by one or more of the mitigating factors; or

(3) if the jury does not recommend a sentence of death.

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

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

(2) mitigating factors considered by the court.

(e) A judgment of conviction for which a sentence of death is imposed is subject to automatic review under AS 12.58.200.

Sec. 12.58.120. AGGRAVATING FACTORS. In determining whether to impose a sentence of death, the following aggravating factors may be considered:

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

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

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

(4) the defendant has a prior conviction for a felony that involved the use of violence against a person or for murder under AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law of another jurisdiction with substantially similar elements;

(5) the defendant knowingly directed the conduct constituting the offense at the President of the United States or the

governor of this state;

(6) the defendant knowingly directed the conduct constituting the offense at an active or former law enforcement officer, prosecuting attorney, fireman, judicial officer, or correctional officer during or because of the exercise of official duties;

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

(8) the defendant was on release under AS 12.30.020 - 12.30.040 for another felony charge or conviction having assault as a necessary element.

Sec. 12.58.130. MITIGATING FACTORS. In determining whether to impose the death sentence, all mitigating factors shall be considered, including, but not limited to, the following:

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

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

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

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

Sec. 12.58.140. ISSUANCE OF DEATH WARRANT. If the court imposes a sentence of death, the court shall issue a death warrant that specifies a date of execution. Unless the sentencing court's finding is appealed under applicable court rule, the warrant shall specify a date of execution not less than 30 days nor more than 60 days after the

date of the warrant. The death warrant shall be delivered to the commissioner of corrections.

ARTICLE 3. EXECUTION.

Sec. 12.58.200. EXECUTION UNDER DEATH WARRANT. After receiving a warrant issued under AS 12.58.140, the commissioner shall specify the time and place of execution.

Sec. 12.58.210. EXECUTION BY LETHAL INJECTION. After consulting a licensed physician, the commissioner shall select a method of injection and a drug or combination of drugs to be used for an execution by lethal injection.

Sec. 12.58.220. WITNESSES. The commissioner and a licensed physician chosen by the commissioner shall be present at an execution under this chapter.

Sec. 12.58.230. INVITEES. The commissioner may invite not more than nine citizens, who are 19 years of age or older, to be present at an execution, including the prosecuting attorney, the defense attorney, relatives and friends of the defendant, or religious representatives designated by the defendant. A person who is invited by the commissioner may not attend an execution as a matter of right.

Sec. 12.58.240. COVERAGE BY NEWS MEDIA. (a) The commissioner shall permit at an execution the attendance of not more than six members of the print and broadcast news media selected by the commissioner in accordance with regulations adopted by the department. The selected news media members shall serve as a pool for other members of the news media as a condition of attendance.

(b) The use of photographic or recording equipment may not be permitted at the execution site until the execution is completed, the body is removed and the site has been restored to an orderly condition. The physical arrangements for the execution may not be

disturbed.

(c) A person who violates (b) of this section is guilty of a class B misdemeanor.

Sec. 12.58.250. PROVISIONS GOVERNING ATTENDANCE AT EXECUTION. (a) Persons attending an execution are subject to a reasonable search as a condition of attendance.

(b) Persons other than the physician and necessary staff designated by the commissioner and others permitted under AS 12.58.230 - 12.58.240 may not be permitted to attend an execution, nor may any person under the age of 19 attend.

(c) The department shall adopt regulations governing the attendance of persons at an execution.

Sec. 12.58.260. RETURN OF DEATH WARRANT. After the execution the commissioner shall make a return upon the death warrant, showing the time and place at which the defendant was executed.

ARTICLE 4. STAY OF EXECUTION.

Sec. 12.58.300. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO DEATH. If, after a sentence of death is imposed, the commissioner has reason to believe that the defendant has become incompetent to proceed with the execution or that the defendant is pregnant, the commissioner shall immediately give written notice to the court in which the sentence of death was imposed, the prosecuting attorney, and counsel for the defendant. The execution of sentence shall be stayed pending further order of the court.

Sec. 12.58.310. EXAMINATION INTO COMPETENCY. (a) On receipt of notice under AS 12.58.300 that the defendant is believed to be incompetent, the sentencing court shall examine the mental condition of the defendant in the same manner as provided for examining persons for competency to stand trial under AS 12.47.070.

(b) If the sentencing court finds that the defendant is incompetent, the court shall immediately certify that finding to the commissioner, and shall enter an order for commitment in the same manner as provided for commitment under AS 12.47.110.

(c) If the sentencing court finds that the defendant is competent, the court shall immediately certify the finding to the commissioner. The court shall issue and deliver another warrant to the commissioner under AS 12.58.140, together with a copy of the certified finding. Unless the sentencing court's finding is appealed in accordance with applicable court rule, the warrant shall specify a date of execution that is not less than 30 days nor more than 60 days after the date of the warrant.

Sec. 12.58.320. DISPOSITION PENDING PREGNANCY. (a) If the defendant is pregnant, the sentencing court shall immediately certify that finding to the commissioner. The court shall issue an order staying the execution of the sentence of death during the pregnancy.

(b) When the defendant is no longer pregnant, the sentencing court shall immediately certify the finding to the commissioner. The court shall issue and deliver another warrant under AS 12.58.140, together with a copy of the certified finding. Unless the sentencing court's finding is appealed under applicable court rule, the warrant shall specify a date of execution not less than 30 days nor more than 60 days after the date of the warrant.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 12.58.900. DEFINITIONS. In this chapter,

(1) "commissioner" means the commissioner of corrections;

(2) "department" means the Department of Corrections.

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

(a) The court of appeals has appellate jurisdiction in actions

and proceedings commenced in the superior court involving:

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

(2) post-conviction relief;

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

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

* Sec. 11. AS 22.07.020(b) is amended to read:

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

* Sec. 12. ADVISORY VOTE AUTHORIZED. The lieutenant governor shall place before the qualified voters of the state at the next statewide general election the question advisory to the legislature of whether capital punishment for murder in the first degree as now authorized by law should go into effect on August 15, 1991. The question shall appear on the ballot in substantially the following form:

Q U E S T I O N

Shall capital punishment for murder in the first degree as now authorized by law go into effect on August 15, 1991?

Yes [ ] No [ ]

* Sec. 13. Except for sec. 12 of this Act, this Act takes effect August 15, 1991.

* Sec. 14. Section 12 of this Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 9981
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 12, 1990

SUBJECT: Draft CSSB 17 ( )

TO: Senator Paul Fischer
ATTN: David Moses

FROM: Jack Chenoweth
Legislative Counsel

The bill draft that accompanies this memo, version "M," was prepared in response to a request to prepare a draft that eliminates all reference to court rule changes, if possible. The draft differs from one prepared late last week by eliminating bill section 13, noting that the effect of AS 12.58.100 - 12.58.130, added in bill section 9, is to "[modify] the sentencing provisions of Rule 32(c), Alaska Rules of Criminal Procedure, by establishing exclusive procedures for determining mitigating and aggravating factors applicable to imposition of a death sentence in a capital felony." The sections noted in bill section 9--AS 12.58.100 - 12.58.130, relating to the determination of whether the death sentence shall be imposed--are not amended.

Under current law, the application of aggravating and mitigating factors in the imposition of a sentence is reserved to the court (i.e. the judge). The jury has no role. See, in this regard, AS 12.55.015 and following sections. In this measure establishing capital punishment, the jury would be assigned responsibility for sentence imposition through the evaluation of aggravating and mitigating factors. 1/

1/ The role of the jury in determining whether to impose the death sentence is not central to recent decisions sustaining capital punishment against constitutional challenges. Indeed, there are recent decisions concluding that there is no federal constitutional requirement that the death sentence be imposed by a jury rather than by the trial court. Spaziano v. Florida, 468 U.S. 447, 82 L.Ed.2d 340, 104 S.Ct. 3154 (1984), Richmond v. Arizona, 434 U.S. 1323, 54 L.Ed.2d 34, 98 S.Ct. 8 (1977), reh. den. 434

The constitutional provision applicable to legislative amendment of court rules is article IV, section 15:

> The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

To avoid application of the requirements of art. IV, sec. 15, one would have to assert that the material proposed in AS 12.58.100 - 12.58.130 does not constitute a change to an existing court rule dealing with practice and procedure. The court rule in question, Criminal Rule 32(c), sets out the procedures under which the trial court is to address application of aggravating and mitigating factors when required to do so under applicable sentencing laws.

I offer an argument to defend the legislature's adoption of a capital punishment measure without reference to a court rule change without offering an evaluation of whether the

---

(1/ continued)
U.S. 976, 54 L.Ed.2d 469, 98 S.Ct. 537 (1977); State v. Gillies, 691 P.2d 655 (Ariz. 1984), cert. den. sub nom. Gillies v. Arizona, 470 U.S. 1059, 84 L.Ed.2d 834, 105 S.Ct. 1775 (1985).

The Spaziano decision notes that, at that time (1984), four states--Arizona, Idaho, Montana, and Nebraska--provide that the trial court judge, not the jury, is to impose sentence. See 82 L.Ed.2d 340, at 354, 355, note 9. The state authorities cited in the decision note are Ariz. Rev. Stat. Ann. §13-703, Idaho Code §19-2515, Mont. Code Ann. §46-18-301, and Neb. Rev. Stat. §29-2520. In light of those precedents, I suggest that this bill could be redrafted to provide that the trial court, not the jury, is assigned responsibility for determination of imposition of the death sentence through consideration of applicable aggravating and mitigating factors.

argument would prevail. 2/ I respectfully suggest that these notes be made a part of the legislature's consideration of the measure. 3/ Under the argument, because the material being added by AS 12.58.100 - 12.58.130 entirely addresses the exercise of responsibility by the jury in determining whether or not to apply the death sentence, the principal effect is to enact substantive law, not to alter the law applicable to current sentencing practices and procedures wherein sentencing is reserved to the court. Thus, it is only incidentally, if at all, that the material

---

2/ I have a sense that the argument might prevail. In Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969), the court resolved an art. IV, sec. 15 based challenge on the basis of whether matter purporting to affect a court rule was substantive or procedural. Terming subject matter that is "substantive in nature" as "matter within [the] legislative prerogative," the supreme court found a distinction from procedural law as law that "prescribes the method of enforcing rights." Arguably, under an extension of the analysis, the material in AS 12.58.100 - 12.58.130 is set out to assure that the jury treats a defendant facing the possibility of a death sentence fairly, without prejudice that may amount to a violation of the constitutional prohibition against imposition of cruel and unusual punishment.

3/ Elimination of the court rule change reference does not, of course, eliminate all requirements in this measure that relate to securing a two-thirds vote. There is an effective date clause covering all sections of the bill except the public vote provision. That effective date clause delays the effective date of the legislation until August, 1991, pending the advisory question vote. Should the two-thirds vote fail on the effective date clause, the bill would take effect 90 days after gubernatorial signature or taking effect without gubernatorial signature, or 90 days after final legislative approval over the governor's veto. That would open up the strong possibility that the measure may become law prior to the advisory vote.

proposed in AS 12.58.100 - 12.58.130 may be said to amend or change existing rules bearing upon how the court shall consider statutory aggravating and mitigating factors in all other sentencing situations.

* * *

Version "M," like version "D" before it, eliminates all provisions for mandatory appellate review of death sentences. Under either of the two drafts, appellate review would be permissive, albeit all such appeals would be heard by the Alaska Supreme Court and not by the Alaska Court of Appeals. See, in this regard, sections 10 and 11 of both versions.

The earlier drafts of this bill (and previous versions of other death sentence measures) incorporated a mandatory review feature. That mandatory review was incorporated to both ascertain that the imposition of a death sentence in a particular crime was appropriate in that it was proportionate to sentences imposed for similar crimes, and to assure that each death penalty was not so randomly, arbitrarily, or capriciously determined so as to amount to a violation of constitutional prohibitions against imposition of cruel and unusual punishment. However, a leading United States Supreme Court case has determined that the absence of a special appellate review to conduct a so-called proportionality review is not per se unconstitutional, 4/ so it appears that the elimination of mandatory appellate review in this draft may not necessarily be constitutionally fatal.

JC:pl
WKP3/038

Enclosure

4/ Pulley v. Harris, 465 U.S. 37, 79 L.Ed.2d 29, 104 S.Ct. 871 (1984), on remand 726 F.2d 569 (9th Circ. 1984), appeal after remand 852 F.2d 1546 (9th Circ. 1988). See also Wright v. State, 494 So.2d 726 (Ala. App. 1985) (citing Pulley, supra), aff. sub nom. Ex parte Wright, 494 So.2d 745 (Ala. 1986), cert. den., 479 U.S. 1101, 94 L.Ed.2d 183, 107 S.Ct. 1331 (1987).

~~3/~~/90
3/7/90

Charles Campbell
Juneau, Alaska March 1990

TWELVE REASONS WHY ALL ALASKANS SHOULD OPPOSE THE DEATH PENALTY

More often than not, debate over the death penalty involves discussion of irresolvable philosophical, ethical and theological considerations. Opponents are convinced that violence begets violence and that use of the death penalty brutalizes all of us. Proponents tell us, on the other hand, that certain crimes are so reprehensible as to place a requirement on society to take the life of the perpetrator. Most religious leaders oppose the death penalty on theological and moral grounds, but ministers in a few of the more conservative Christian churches manage to find justification in the scriptures (primarily in the Old Testament) for use of the death penalty. I offer here twelve reasons for my opposition to the death penalty, none of which are based on philosophical or religious grounds. I will not deny that my personal convictions would prevent me from approving of the death penalty even if these practical reasons for opposing it did not exist, but these compelling considerations do exist. You may find certain of them debatable, but by no means all of them; the first of them, for example:

1. <u>The death penalty is irreversible</u>: James Adams was executed by the State of Florida in 1984. He had unwaveringly maintained his innocence throughout the trial and during the years of the appeal process. Substantial evidence has subsequently come to light, including forensic evidence gathered by the Florida Office of Law Enforcement, that almost certainly would have resulted in Adam's acquittal. Other persons who had substantial claims of innocence were Timothy Baldwin, executed in Louisiana in 1984, Edward Earl Johnson, executed in Mississippi in 1987 and Willie Jasper Darden, executed in Florida in March 1988. Perhaps all of these latter three were guilty, but reasonable doubts have been raised and there is no bringing them back. A study published by the Stanford University Press in 1987 documents the innocence of twenty three persons executed in our country during this century. One hundred sixteen others were sentenced to death and would have been executed had it not been for the belated appearance of witnesses establishing innocence, or the discovery of suppressed evidence. We will never know how many innocent people have been executed. ~~Amnesty International estimates the number to be about 350~~. In any case, an absolute certainty is that innocent people have been killed by the state, and will be killed occasionally, as long as we continue to retain the death penalty as a criminal sanction.

2. <u>The death penalty has no value as a deterrent</u>: The overwhelming consensus among criminologists and others qualified to perform and evaluate empirical studies is that the deterrent value of the death penalty, as opposed to other criminal

sanctions, has not been demonstrated. This is true despite an almost frenzied effort to prove a deterrent value to capital punishment since the 1972 Furman v. Georgia decision. Moreover, certain highly respected studies strongly suggest that the death penalty may have the opposite effect. Glenn Pierce and William Bowers of Northeastern University analyzed data on all of the executions that occurred in New York State over a period of fifty seven years. The evidence presented by this study indicates that individuals who are predisposed to violent crime are more likely to be incited than deterred by executions. This finding should not be surprising, given the bizarre thought processes of especially brutal, vicious murderers. No social scholar has yet been able to refute the findings of Robert Rantoul, who conducted his extensive studies over a hundred years ago, and demonstrated an unmistakable pattern of increases in homicide rates following increased use of the death penalty. Incidentally, a recent F.B.I. Uniform Crime Reports publication, "Crime in the U.S." reported that murder rates in states that have abolished the death penalty average 4.9 murders per 100,000 population; states still using the death penalty average 7.4 murders. We can't know the precise meaning of these figures, or the exact significance of the lower incidence of murder in Canada since abolition of the death penalty in that country in 1976, but these facts are hardly supportive of arguments for restoration of the death penalty in Alaska.

3. <u>The death penalty is exorbitantly expensive:</u> In its 1976 Gregg v. Georgia ruling, which restored the legality of the death penalty, the U.S Supreme Court established stringent guidelines that render prosecutions of capital cases far more expensive than non-capital 1st degree murder cases, and far more expensive than holding the offender in prison for life. The "death is different" concept emerged from this ruling. Thus, the guidelines established provide the defendant with what lawyers call "super due process," a many layered labyrinth of appeals that invariably require many years to complete. It is unrealistic to expect an execution to take place in less than seven years from time of conviction. Hundreds of defendants have been on death rows across the country for more than ten years. The process has been successful in correcting errors. More than a third of all death penalty sentences have been set aside or commuted since 1976. Florida and Texas have spent more than $100 million in order to execute forty nine people since 1976 (one of them almost certainly innocent.) The 121 executions carried out during the past twelve years have cost the taxpayers from two to six million dollars each. At present there are more than two thousand three hundred people on death rows across the country, comprising a dollar drain that will reach into the billions.

4. <u>The death penalty weakens law enforcement:</u> Every case designated for death penalty prosecution requires an inordinate investment of law enforcement resources. An extensive amount of investigative work is uniquely required in capital cases and an exceedingly heavy load falls on the office of the prosecutor.

Because of the unique appeal process the burden continues long after conviction and sentencing. We are thus deprived of effort and resources that would otherwise be devoted to solving crimes. The "death is different" concept, which issues from U.S. Supreme Court rulings on the death penalty, results in an additional disadvantage for law enforcement. Lower courts are inclined to exercise more stringent standards than might otherwise be required in ruling on Miranda questions, search and seizure and other such matters. These rulings can adversely effect the prosecution of non-capital cases.

5. The death penalty is capricious: Since 1977 there have been about 200,000 homicides in the United States. There have been only 121 executions. By no means could all of those executed be considered more deserving of death than thousands of others convicted and sent to prison during the period. Most of those executed were victims of the luck of the draw. As often as not, decisions to seek the death penalty are based on the quality of the evidence, the availability of witnesses and other considerations that may have nothing to do with the offense itself. If a case is filed at a time when the prosecuting agency has funds and the staff isn't too busy, the death penalty is more likely to be sought than at times when funds are tight and caseloads are heavy. There is an intrinsic capriciousness in the use of the death penalty and no way to correct it in a justice system governed by our constitution.

6. The death penalty is unfair: Available data tells us that poor people who must depend on court appointed counsel during the original trial phase are far more likely to be executed than defendants who can afford "the best defense money can buy." Because of certain court rulings, further unfairness is inherent in the way juries are selected in death penalty cases. When a defendant goes on trial for his or her life, guilt or innocence will invariably be decided by a "death qualified jury," one in which there can be found "no taint of bias against the death penalty." What this means, of course, is that jurors who try capital cases are more likely to be conviction prone than certain members of juries that try non-capital cases. In a mystifying departure from the usual standard of fairness, the Supreme Court decided that a state's right to a jury, all of whose members are morally untroubled by the death penalty, must take precedence over the defendant's right to trial by a jury from which individuals more likely to be sympathetic to the defense have not been systematically excluded. In effect, the majority of the Court took the position that it is acceptable for persons on trial for their lives to have a trial that is less fair than the trials of defendants in non-capital cases.

7. The death penalty is cruel and unusual: The history of the use of the death penalty during recent years is replete with accounts of botched executions. Death specialists in Florida, Texas, Louisiana and Texas have acquired reasonable proficiency, but expertise in this line of work is hard to find elsewhere in

our society. Especially when done infrequently, chances of a botched execution are very high. John Louis Evans, Alabama's first victim since the Gregg v. Georgia decision, underwent a gruesome fourteen minutes of agony before he died. The ordeal was so horrifying as to cause the authorities to drop the curtain in front of the witnesses viewing window while Evans was still smoking and writhing in the electric chair. As recently as July 1989, again in Alabama, a mentally retarded man was subjected to nineteen minutes of macabre ineptitude before dying. Indiana botched at least one of its executions even worse. The advent of lethal injections has not solved the problem. In 1988 executioners in Texas, despite all of their experience, took forty minutes of probing the arms and legs of Steven Peter Morin before finding a vein that would accept the poison. It is absolutely true that many executed offenders have been convicted of inflicting more horrifying cruelties on their innocent victims, but should we allow our government to sink to the level of such behavior?

8. <u>The death penalty is destructive to the families of victims</u>: Because of the many long years of appeal, the families of victims are unable to begin the process of giving closure to their grief. In Canada, in Mexico, in Australia, in most of South America and all of western Europe, as well as in the fourteen jurisdictions in our country where the death penalty is not an option, successful first degree murder prosecutions can be concluded with relative speed, typically resulting in sentences of life or ninety nine years. The families of victims are then able to begin the hard process of working through their grief and putting the ordeal behind them. Not so when the death penalty has been ordered. As often as not, family members feel a requirement to remain involved and to nurture their bitterness and grief over the many years of the appeal process.

9. <u>The death penalty is creating an ever growing problem for correctional systems across the country</u>: More than two thousand three hundred individuals are presently under sentence of death in the United States. From 200 to 300 are added to this number each year, while an average of fewer than eleven have been executed each year during the past thirteen years. Supporters of the death penalty offer no realistic proposals as to what should be done about the burgeoning population on death row. Each person under sentence of death requires expensive, high security housing, as well as twenty four hour close supervision and an inordinate amount of staff time for other reasons. Offenders sentenced to life imprisonment tend to be tractable. Typically, they become productive workers who are managed in the prisoner population at minimal cost. The prison industries earnings of such prisoners often go toward the support of their families, and should also be directed toward a fund for compensation of the victims of violent crime.

10. <u>The death penalty is a relic of less civilized times, not favored by the American people</u>: During the course of public

testimony before the Alaska Senate Judiciary Committee on the Senate Bill 17, sixty seven Alaskans spoke in opposition to the death penalty; forty one were in favor of it. This does not appear to be in accord with polls conducted in Alaska. In any case, most of us do not know the whole truth about the polls that presume to tell us that seventy to eighty percent of our fellow Americans approve of the death penalty. A more careful look at these polls provides some surprising insights. In Georgia, for example, one of the most death penalty prone states in the country, a recent study indicated that while 75% of Georgians approve of the death penalty, 52% would favor abolition of the death penalty if replaced by life imprisonment with no parole eligibility for twenty five years, combined with a work program with earnings going to the families of victims. Similar polls conducted elsewhere have shown similar results. A national survey commissioned by the Justice Department two years ago resulted in only 37% of the respondents polled choosing the death penalty over legislatable options. With the exception of South Africa, the United States is the only industrialized country in the western world in which the death penalty continues to be used. Many Americans are becoming increasingly uncomfortable about our keeping company with the likes of Libya, Iraq, Syria, and Iran, where use of the death penalty is concerned. We should take note of the rapidity with which democratization in Eastern Europe will result in the abolition of the death penalty.

11. <u>The death penalty is racially biased</u>: In McClesky v. Kemp the U.S. Supreme Court acknowledged racial bias in the use of the death penalty in Georgia, but allowed the execution in question to proceed because racial bias had not been proven in that particular case. Thus, the Court's implied concession was that previous death penalty convictions in Georgia were tainted by empirically proven racial bias. The Alaskan system of criminal jurisprudence and Alaskan juries might, or might not, be able to perform better than the system in Georgia, in avoiding racial bias in the trial process. But we are similar to Georgia in that most of the people who come before our criminal courts are economically disadvantaged members of an ethnic minority. Implementation of a death penalty law in our racially and culturally diverse state would become a cause celebre, and almost certainly arouse divisive, bitter, destructive conflict among the people of Alaska.

12. <u>The death penalty serves no purpose</u>: Alaska's criminal code is very tough on violent crime, and there has surely been no tendency to leniency among the state's Superior Court judges. Charles Meach, who killed four teen-agers in Anchorage in 1982, is now serving a sentence of 396 years. Had he been sentenced to death his case would most likely still be under appeal, with perhaps another one or two million dollars in expense to the state. Senate Bill 17, which proposes to reinstate use of the death penalty, was introduced in the Alaska State Legislature early in the 1989 session. For reasons unrelated to its merits, the bill did not advance to a floor vote. In any case, during

committee hearings on the bill, remarkably little effort to make a case for it was made by its sponsors or other members of the legislature. There was no articulation of a purpose to be served, need to be met, problem to be solved or advantage to be gained, by resumption of capital punishment in Alaska after its abolition by the territorial legislature more than thirty years ago. Perhaps the explanation is that neither deterrence nor cost savings are persuasive justifications. Proponents of the death penalty are left with vengeance. Very few Alaskans, many of whom take biblical injunctions seriously, will be supportive of such a profound redirection in criminal justice policy when they realize that the essential rationale is based on vengeance.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM February 7, 1989

SUBJECT: Capital punishment: assertion that its imposition would violate state constitutional provision relating to cruel and unusual punishments and penal administration (Senate Bill 17)

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Jack Chenoweth
Legislative Counsel

Article I, section 12 of the Alaska Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.

You have asked whether that section would, independently of the federal constitutional protection against cruel and unusual punishment, bar imposition of the death penalty.

It is my opinion that it would not.

". . . cruel and unusual punishment [shall not be] inflicted":

The language of this part of the state constitutional provision tracks the Eighth Amendment of the federal constitution. The Eighth Amendment prohibition is applicable to the states through the due process clause of the Fourteenth Amendment. Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), reh. den. 371 U.S. 905, 83 S.Ct. 202, 9 L.Ed.2d 166 (1962). The United States Supreme Court has concluded that imposition of the death penalty is not inherently cruel and unusual punishment and therefore not in all cases an Eighth Amendment violation.

LEGAL SERVICES OPINION ON CONSTITUTIONALITY

Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346, (1972), reh. den. 409 U.S. 902, 93 S.Ct. 89, 34 L.Ed.2d 163 (1972); Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976). The court has observed that the Eighth Amendment's prohibition against cruel punishment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 89, 78 S.Ct. 590, 2 L.Ed.2d 630, 642 (1958). Finally, the United States Supreme Court has also interpreted the cruel and unusual punishment provision so as to impart a "proportionality" test to criminal sentences, determining in Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983), that "as a matter of principle . . . a criminal sentence must be proportionate to the crime for which the defendant was convicted." 77 L.Ed.2d 637, 649.

As to article I, section 12 of the state constitution, the Alaska Supreme Court has determined that the "cruel and unusual punishment" provision applies to render inapplicable as unconstitutional

> [o]nly those punishments which are cruel and unusual in the sense that they are inhuman and barbarous, or so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice, . . .

Green v. State, 390 P.2d 433 (Alaska 1964), at 435; quoted in Thomas v. State, 566 P.2d 630 (Alaska 1977), Davis v. State, 566 P.2d 640 (Alaska 1977). The Alaska Supreme Court, in Green, expressly ruled that "in this jurisdiction punishment for crime need not be strictly proportioned to the offense", 390 P.2d 433, at 435. However, the United States Supreme Court's later decision in Solem v. Helm, relying on the Eighth Amendment to find a proportionality requirement, does require that sentencing be in some measure related to the seriousness of the crime for which convicted. Dancer v. State, 715 P.2d 1174, 1180, n. 6 (Alaska Ct. App. 1986).

The constitutions of a majority of the states incorporate closely comparable provisions. In those that allow a death penalty, and in which death penalty challenges based on an interpretation of a "cruel and unusual punishment" provision—like Alaska's have been considered, I have found only two--California and Massachusetts--in which the state's highest court has applied the provision to conclude that

imposition of the death penalty was constitutionally impermissible with reference to a state constitutional provision. People v. Anderson, 6 Cal.3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (Cal. 1972), cert. den. 406 U.S. 958, 92 S.Ct. 2060, 32 L.Ed.2d 344 (1972) (subsequently set aside by a constitutional amendment adopted by the voters, and endorsed in People v. Frierson, 25 Cal.3d 142, 599 P.2d 587, 158 Cal. Rptr. 281 (Cal. 1979), validating the death penalty as permissible punishment); District Attorney for the Suffolk District v. Watson et al., 411 N.E.2d 1274 (Mass. 1980) (concluding from "examination of the actual operation of capital punishment provisions in Massachusetts, that the death penalty [statute enacted by c. 488, St. 1979], with its full panoply of concomitant physical and mental tortures, is impermissibly cruel under art. 26 [of the state constitution] when judged by contemporary standards of decency"). In the remainder of the states, the decisions have not found the death penalty to be cruel and unusual punishment. State v. Gillies, 662 P.2d 1007 (Ariz. 1983); State v. Sheppard, 331 A.2d 142 (Del. 1974); Gilreath v. State, 279 S.E.2d 650 (Ga. 1981); People v. Gaines, 430 N.E.2d 1046 (Ill. 1981); Brewer v. State, 417 N.E.2d 889 (Ind. 1981); State v. Myles, 389 So.2d 12 (La. 1979); Tichnell v. State, 415 A.2d 830 (Md. 1980); State v. Williams, 652 S.W.2d 102 (Mo. 1983); State v. Anderson, 296 N.W.2d 440 (Neb. 1980); Shuman v. State, 578 P.2d 1183 (Nev. 1978); State v. Ramseur, 524 A.2d 188 (N.J. 1987); State v. Rondeau, 553 P.2d 688 (N.M. 1976); Commonweath v. Zettlemoyer, 454 A.2d 937 (Pa. 1982), cert. den., 461 U.S. 970, 103 S.Ct. 2444, 77 L.Ed.2d 1327 (1983); State v. Austin, 618 S.W.2d 738 (Tenn. 1981); Ex parte Granviel, 561 S.W.2d 503 (Tex. Crim. App. 1978); Stamper v. Commonwealth, 357 S.E.2d 808 (Va. 1979). cert. den. 445 U.S. 972, 100 S.Ct. 1666, 94 L.Ed.2d 239 (1980); State v. Rupe, 683 P.2d 571 (Wash. 1984); Hopkinson v. State, 632 P.2d 79 (Wyo. 1981).

"Penal administration shall be based upon the principle of reformation and upon the need for protecting the public."

From an historical perspective, this second sentence of article I, section 12 may not be a strong basis for an argument against imposition of capital punishment.

The Alaska Constitution Convention twice took up consideration of this provision, once in preliminary discussion of language recommended by its Committee on the

Preamble and Bill of Rights, and again in consideration of a delegate's amendment to that language. In each instance, the colloquy among the delegates strongly implied that the language being adopted was not intended to preclude imposition of capital punishment.

When first offered, the proposed language in question read:

> The administration of criminal justice shall be founded on principles of reformation, and not vindictiveness.

As the committee reported and explained its first draft, the following exchange occurred on the Convention floor:

> PRESIDENT EGAN: . . . Mr. Emberg.
>
> DELEGATE EMBERG: I would like to ask a question in regard to the last sentence of Section 10, page 4, lines 3, 4, and 5. It reads, "The administration of criminal justice shall be founded on principles of reformation, and not vindictiveness." Now, I have no quarrel with the thought expressed here, except as it relates to the establishment of a code which might provide forfeiture of life, capital punishment, in other words. Is there any relation between the two?
>
> DELEGATE AWES (chair of the Bill of Rights and Preamble Committee): Is your question whether or not this would eliminate capital punishment?
>
> DELEGATE EMBERG: Yes.
>
> DELEGATE AWES: That was brought up in the Committee, and this provision is found in several other state constitutions, and in those states the courts have ruled that this language does not prohibit capital punishment.
>
> . . . .

Journal of the Alaska Constitutional Convention, vol. 2, at pp. 1286, 1287.

The question arose again as the Convention formally considered and acted on the Committee's report:

PRESIDENT EGAN: Are there amendments to be proposed to . . . Section 10? Mr. Ralph Rivers.

DELEGATE RALPH RIVERS: I submit one.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: Page 4, Section 10, line 3, delete the last sentence commencing on line 3 and substitute the following: 'The administration of criminal justice shall be founded upon the principle of reformation as well as upon the need to protect the public.'

. . .

DELEGATE RALPH RIVERS (speaking in support of a motion to adopt): Mr. President, the reason for this [amendment] is that I think the administration of criminal justice should definitely be founded upon the need for protecting the public. I think that, secondarily, it is a very good idea for us to try to reform the people who have breached the law and become antisocial, but I don't want to completely overlook the protection of the public. I also think this business about "and not on vindictiveness" sounds a little odd. You can't legislate away that kind of sin. If a district attorney is mean, he is mean. I don't care, so I merely submit that to say that the administration of criminal justice shall be founded upon the principle of reformation as well as upon the need for protecting the public. It covers the subject better than it is now.

PRESIDENT EGAN: Mr. McLaughlin.

DELEGATE MCLAUGHLIN: I would like to ask the Chairman of the Bill of Rights [Committee] a question. Was it the intention of this clause to abolish capital punishment on the theory that you can't reform a dead man?

DELEGATE AWES: I made the same observation as did one or two others on the Committee. However, this sentence has used almost the identical words as in other state constitutions, and in those states the supreme court upheld that it does not abolish capital punishment.

PRESIDENT EGAN: Mr. Doogan.

DELEGATE DOOGAN: Mr. Chairman, to clarify this article more, this clause was originally taken from Indiana[,] I believe it is. I forget the article and section number, but the way it was written in there, although it stated that it had been tested and did not preclude capital punishment, after discussion in the Committee it was purported to intend that this clause would have nothing to do until the time a person was sentenced, but in view of the penal institutions and governments in their work to rehabilitate prisoners rather than lock them up on bread and water and forget about them, that this statement was more or less advisory or instructive to the penal institutions that they would work on the basis of reformation and not go back to the bread and water stage, but it was intended that it would apply after a person received sentence. It was not to apply up until that time, and I think that is what the criminal justice is supposed to mean.

PRESIDENT EGAN: Mrs. Hermann.

DELEGATE HERMANN: Mr. President, I also do not like the word "vindictiveness". I would like to believe that there is never any vindictiveness in the punishment of people who have violated the laws of the country, though I am compelled to admit that sometimes I have seen evidences [sic] of it, but I do think that Mr. Ralph Rivers is correct in saying that the chief aim of criminal justice is the protection of the public and that the reformation and rehabilitation of the persons who have been found guilty of a crime is vastly important also, so if I understand Mr. Rivers' motion correctly, I am going to support it. I think that it is high time that some state constitution had in it some mention of the need of

> reformation of people who seem criminally inclined rather than the need of constantly stressing punishment for them. When we learn to have preventive instead of punitive measures on our statute books[,] we are going a long ways further toward really administering criminal justice.
>
> PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. . . . .

Journal of the Proceedings of the Alaska Constitutional Convention, vol. 2, pp. 1308 - 1310.

Delegate Doogan's recollection that the provision was derived from a comparable provision of the Indiana constitution seems correct. Article I, section 18, of the Indiana Constitution of 1851 includes a provision that its state penal code should be founded on principles of reformation, not vindictive justice.

Delegate Awes's responses concerning the relationship between the Indiana provision and that state's death penalty were equally apt: both before and since the Alaska Constitutional Convention, the Indiana Supreme Court has consistently construed the state's constitutional provision so as not to bar imposition of the death penalty. McCutcheon v. State, 155 N.E. 544 (Ind. 1927); Hawkins v. State, 37 N.E.2d 79 (Ind. 1941); Brewer v. State, 417 N.E.2d 889 (1981), cert. den. 458 U.S. 1122, 102 S.Ct. 3510, 73 L.Ed.2d 1384, reh. den. 458 U.S. 1132, 103 S.Ct. 18, 73 L.Ed.2d 1403 (1982); Williams v. State, 430 N.E.2d 759 (Ind. 1982), app. dismissed, 459 U.S. 808, 103 S.Ct. 33, 74 L.Ed.2d 47, reh. denied, 459 U.S. 1059, 103 S.Ct. 479, 74 L.Ed.2d 626 (1982). And, as Delegate Awes remarked, a similar provision appears in the constitution of Wyoming (article I, section 15: "The penal code shall be framed on humane principles of reformation and prevention."). Wyoming imposes a death penalty, but there is nothing of record to note that the court has ever squarely faced a death penalty challenge grounded on article I, section 15 of that state's constitution. Substantively similar provisions also appear in the constitutions of New Hampshire (article I, section

18), Oregon (article I, section 15), and the 1889 constitution of Montana (article III, section 24), but in the case of each of these three, the respective constitutional provision includes or is accompanied by additional language explicitly or implicitly authorizing the imposition of capital punishment.

However, the Indiana precedent may be distinguished. For purposes of interpreting and applying the comparable Alaska constitutional provisions, the Indiana cases decided before Alaska's Constitutional Convention are the more pertinent. 1/ The constitutional challenge raised in the earlier of the two, McCutcheon v. State, 155 N.E. 544 (Ind. 1927), was based on the clause of article I, section 18 of the Indiana constitution that disallowed use of a penal code grounded on "vindictive justice." 2/ Alaska's constitution omits that term, substituting in its place a reference to "protecting

---

1/ The theory--one of statutory construction and interpretation--is based on the well-settled rule that, when the meaning of a statute is in doubt, reference to legislation in a state statute from which the language was taken is helpful. The theory also applies to construction of constitutional provisions. While the application of the rule of judicial interpretation followed in the originating state would not be binding, the conclusions reached by the originating state's high court, and the reasoning of those judicial opinions may be helpful.

2/ Specifically, the Indiana Supreme Court said:

> Nor is the punishment of death for murder in the first degree in conflict with article I, section 18 of the Constitution (section 70, Burns' R.S. 1926) -- "the Penal Code shall be founded on the principles of reformation, and not of vindictive justice." Such punishment [i.e. capital punishment] "Is not * * * vindictive, but is even-handed justice" (Driskell v. State, 7 Ind. 338, 343 [(1855)]), necessarily meted out for the maintenance of the peace and the protection of the citizens of the state.

McCutcheon v. State, 155 N.E. 544, at 548.

the public." The later of the two, Hawkins v. State, 37 N.E.2d 79 (Ind. 1941), disposes of the constitutional challenge merely by citing the earlier decision and concluding that the law is "settled otherwise." 37 N.E.2d 79, at 87.

The debate may be joined on this point. Surely the explanations and conclusions offered by Delegates Awes and Doogan persuaded their colleagues to make the substantive change urged by Delegate Ralph Rivers. In so doing, both acknowledged that the Indiana (and other state court) opinions as they understood them did not interpret the language so as to preclude imposition of capital punishment. On the other hand, a closer look at the Indiana decisions construing that state's comparable constitutional provision, made before the Alaska Constitutional Convention convened in late 1955, discloses that those decisions turned on analysis and application language that was not carried forward into this state's constitution.

In the absence of a definitive interpretation, I am of the view that the decision remains open to debate, though on balance the determination would not seem to favor a successful article I, section 12 challenge.

JC:gc
WKG6/101

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

☒ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 14, 1989

The Honorable Mike Szymanski
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

FEB 15 1989

Dear Senator Szymanski:

You have asked whether capital punishment would be constitutional in light of Article I, Section 12 of the Alaska Constitution which requires that "penal administration shall be based on the principle of reformation and upon the need for protecting the public." The short answer to your question is that capital punishment, per se, is not unconstitutional in Alaska.

We would caution, however, that the approach of the judicial system to capital punishment cases is extremely complex. Our opinion relating to the constitutionality of the death penalty is primarily based on a review of the minutes of the constitutional convention and is not intended as a comprehensive analysis of either SB 17 or the constitutionality of capital punishment in Alaska.

The touchstone of interpretation of a law is to ascertain the intent of its drafters. Kenai Peninsula Borough v. State of Alaska, 612 F.2d 1210 (9th Cir. 1980), aff'd, 451 U.S. 259 (1981). Similarly, in interpreting a constitutional provision its history and the insight it provides into the intent of the drafters is important. See, e.g., North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978). The language utilized in Artile I, Section 12 was specifically discussed at the Alaska Constitutional Convention.

The Bill of Rights Committee of the Alaska Constitutional Convention originally proposed that the state's counterpart to the eighth amendment of the U.S. Constitution include a provision borrowed from the Indiana Constitution which stated, "The penal code shall be founded on the principles of reformation, and not vindictive justice."[1] At the Convention proceedings, however, Delegate Ralph J. Rivers proposed that the Indiana provision be replaced with the sentence, "The administration of criminal justice

---

[1]Ind. Const., art. I, §18.

DEPT. OF LAW OPINION ON CONSTITUTIONALITY

shall be founded upon the principle of reformation as well as upon the need to protect the public."[2] The sponsor of the amendment explained that the proposed language was preferable to the Indiana provision because "the administration of criminal justice should definitely be founded upon the need for protecting the public. I think that, secondarily, it is a very good idea for us to try to reform the people who have breached the law and become antisocial, but I don't want to completely overlook the protection of the public."[3]

Delegates expressed concern that the effect of the provision was to abolish capital punishment. This concern was answered by members of the Bill of Rights Committee, who assured delegates that the provision had been tested in the courts and was held not to preclude capital punishment.[4] According to Delegate Awes, "This [provision] has used almost the identical words as in other state constitutions, and in those states the supreme court upheld that it does not abolish capital punishment."[5]

Delegate Doogan went on to note that the provision was not intended to apply to sentencing of convicted criminals, but rather was adopted "in view of penal institutions and governments in their work to rehabilitate prisoners rather than lock them up on bread and water and forget about them, that this statement was more or less advisory or instructive to the penal institutions that they would work on the basis of reformation and not go back to the bread and water stage ..."[6] The only other delegate to comment on the reformation-protection of the public provision expressed her support for it, stating that although the chief aim of criminal justice is the protection of the public, "I think that it is high time that some state constitution had in it some mention of the

---

[2]Minutes of the Proceedings of the Alaska Constitutional Convention, 1955-56, Part 2 at 1308 (hereafter "Convention Minutes"). A copy of the relevant Convention Minutes is attached as Appendix A.

[3]Convention Minutes, Part 2 at 1309 (comments of Delegate Rivers).

[4]Id. (comments of Chairman George M. McLaughlin and Delegate James P. Doogan).

[5]Id. It is important to note that Alaska had a capital punishment law at the time art. I, §12 was adopted by the delegates to the constitutional convention.

[6]Id. (emphasis added).

need for reformation of people who seem criminally inclined rather than the need of constantly stressing punishment for them."[7]

The legislative history of the reformation provision thus makes clear that members of the Bill of Rights Committee and delegates to the Convention did not intend to abolish capital punishment. Rather, the intent was to adopt a provision advising prison administrators to consider rehabilitation as one goal in administering the prisons. Most importantly, the originally proposed provision was deleted in favor of the present reformation-protection of the public provision because delegates felt the original proposal focused too much on reformation and did not give sufficient weight to the protection of the public as a legitimate goal of penal administration.

We have not provided you with a comprehensive analysis of the constitutionality of the death penalty for two primary reasons. The first is that we wanted to expeditiously provide you with a response to your question, and an in-depth analysis of this issue would be extremely time-consuming. The second reason for an abbreviated response is based on the ad hoc approach to constitutional analysis that is applied by the courts in death penalty cases.

As a theoretical punishment, the death penalty has repeatedly been held by the courts to be constitutional. The practical application of the punishment, however, is often found to violate constitutional protections. A simple answer to the question, "When may the state constitutionally impose death as a punishment?" does not exist. As one commentator pointed out:

> The countless possible constitutional challenges and the infinite variety of circumstances surrounding a murder warrants a case-by-case approach. Although careful drafting of death penalty statutes can eliminate some arbitrariness, implementation of these statutes is subject to much discretion by prosecutors, judges, and juries. Thus, while statutes may specify the special circumstances justifying a death sentence, only a reviewing court can determine if the sentence correctly and constitutionally applied those circumstances in any particular case. The Supreme Court's approach recognizes that only the courts can fully maintain the

---

[7] Id. at 1309-10 (comments of Delegate Mildred R. Hermann) (emphasis added).

constitutionally required dividing line between capital and noncapital defendants.[8]

If you have any additional questions about capital punishment or SB17, please contact us at your convenience.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

Attachment: Appendix A
cc: Bob Evans
✓bcc: The Honorable Paul Fisher

[8]Margot Garey, "The Cost of Taking a Life: Dollars and Sense of the Death Penalty," 18 U.C. Davis L. Rev 1221, 1226-28 (1985).

PRESIDENT EGAN: Mr. Davis moves the adoption of the proposed amendment. Is there a second?

NORDALE: I second the motion.

TAYLOR: I wonder if we could have a three-minute recess?

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for three or four minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Davis.

DAVIS: Mr. President, with reference to my pending amendment, and also with reference to all of Section 7, I am advised that Mr. Buckalew who is not present today had a good deal to do with preparation of Section 7, also Mr. Hellenthal who is ill today, and so for that reason I would like to ask unanimous consent at this time to pass Section 7 and go on to Section 8 and consider Section 7 tomorrow when we expect the other two men will be here.

PRESIDENT EGAN: If there is no objection, we will pass Section 7 subject to the time that Mr. Buckalew and Mr. Hellenthal will be present. Are there amendments to Section 8? Are there amendments to be proposed to Section 9? Section 10? Mr. Ralph Rivers.

R. RIVERS: I submit one.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: Page 4, Section 10, line 3, delete the last sentence commencing on line 3 and substitute the following: 'The administration of criminal justice shall be founded upon the principle of reformation as well as upon the need to protect the public.'"

PRESIDENT EGAN: What is your pleasure, Mr. Rivers?

R. RIVERS: I move the adoption of this proposed amendment.

PRESIDENT EGAN: Mr. Ralph Rivers moves the adoption of the proposed amendment. Is there a second?

KNIGHT: I second the motion.

PRESIDENT EGAN: Please read the amendment again.

(The Chief Clerk read the amendment again.)

R. RIVERS: Mr. President, the reason for that is that I think the administration of criminal justice should definitely be founded upon the need for protecting the public. I think that, secondarily, it is a very good idea for us to try to reform the people who have breached the law and become antisocial, but I don't want to completely overlook the protection of the public. I also think this business about "and not on vindictiveness" sounds a little odd. You can't legislate away that kind of sin. If a district attorney is mean, he is mean. I don't care, so I merely submit that to say that the administration of criminal justice shall be founded upon the principle of reformation as well as upon the need for protecting the public. It covers the subject better than it is now.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: I would like to ask the Chairman of the Bill of Rights a question. Was it the intention of this clause to abolish capital punishment on the theory that you cannot reform a dead man?

AWES: I made the same objection as did one or two others on the Committee. However, this sentence has used almost the identical words as in other state constitutions, and in those states the supreme court upheld that it does not abolish capital punishment.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. Chairman, to clarify this article more, this clause was originally taken from Indiana I believe it is. I forget the article and section number, but the way it was written in there, although it stated that it had been tested and did not preclude capital punishment, after discussion in the Committee it was purported to intend that this clause would have nothing to do until the time a person was sentenced, but in view of penal institutions and governments in their work to rehabilitate prisoners rather than lock them up on bread and water and forget about them, that this statement was more or less advisory or instructive to the penal institutions that they would work on the basis of reformation and not go back to the bread and water stage, but it was intended that it would apply after a person had received sentence. It was not to apply up until that time, and I think that is what the criminal justice is supposed to mean.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I also do not like the word "vindictiveness". I would like to believe that there is never any vindictiveness in the punishment of people who have violated the laws of the country, though I am compelled to admit that sometimes I have seen evidences of it, but I do think that Mr. Ralph

Rivers is correct in saying that the chief aim of criminal justice is the protection of the public and that the reformation or rehabilitation of the persons who have been found guilty of a crime is vastly important also, so if I understand Mr. Rivers' motion correctly, I am going to support it. I think that it is high time that some state constitution had in it some mention of the need of reformation of people who seem criminally inclined rather than the need of constantly stressing punishment for them. When we learn to have preventive instead of punitive measures on our statute books we are going to be a long ways further towards really administering criminal justice.

PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 10? Are there proposed amendments to Section 11? Mr. Taylor.

TAYLOR: I am preparing one, Mr. President.

PRESIDENT EGAN: Mr. Taylor is preparing one. The Convention will be at ease for a moment while Mr. Taylor prepares his amendment. The Convention will come to order. The Chief Clerk will read the proposed amendment as offered by Mr. Taylor.

CHIEF CLERK: "Section 11, page 4, line 12, after the word 'seized' insert the following sentence: 'That the legislature shall provide by law for penalties for officers of the state or any subdivision thereof violating the right of the citizens under this section.'"

PRESIDENT EGAN: What is your pleasure, Mr. Taylor?

TAYLOR: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Taylor moves the adoption of the proposed amendment. Mr. Davis.

DAVIS: May we have it read again slowly?

PRESIDENT EGAN: The Chief Clerk will please read the amendment again slowly.

(The Chief Clerk read the amendment again.)

TAYLOR: You left out the word "penalties".

CHIEF CLERK: I am sorry. "That the legislature shall provide

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269

State Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

MEMORANDUM

TO: Senator Rick Uehling, Co-Chairman
Senate Finance Committee

FROM: Senator Paul Fischer PF.

SUBJECT: Committee Substitute for Senate Bill 17 (Judiciary)
(capital punishment)

DATE: February 28, 1989

I would appreciate your scheduling the above referenced bill for a hearing before the Senate Finance Committee at the earliest possible time.

As you may be aware, the Senate Judiciary Committee conducted numerous public hearings on this legislation and new fiscal notes from the affected departments accompanied the committee substitute. I have attached a report from the Bureau of Justice Statistics entitled "Capital Punishment 1987" to be included in the member's files. Additional materials are available from my office if the committee so desires.

Your consideration would be greatly appreciated.

PAF/sgn

Attachments

cc: Senator Johne Binkley, Co-Chairman
Senate Finance Committee

Report of the N.Y. Bar Association attached

Statement of Charles Campbell on CSSB 17 before the Senate Finance Committee
March 8, 1989

Thank you Mr. Chairman. My name is Charles Campbell. I am a resident of Juneau. I served as Director of Corrections for Alaska for three years beginning early in 1979. I am speaking as a private citizen from the perspective of 38 years experience in the criminal justice field.

Those of you who have managed to get your mail read over the past 48 hours may have heard all you want to hear from me on the death penalty question. I've tried to make it clear to you why deterrence cannot be depended on as a justification for reinstitution of the death penalty in Alaska. I have cautioned you that some of the more extensive and well regarded empirical studies strongly suggest that executions are more likely to trigger violence than deter- especially in the sort of twisted individual most apt to commit the particularly heinous, brutal crime. You know my arguments as to the inevitable capriciousness and the unavoidable unfairness of the death penalty, given the enormous discretion required by our criminal justice system.

With respect to the subject more specifically the concern of this committee- if anyone here continues to believe the death penalty is a cheap, efficient criminal sanction, I am confident you will be persuaded otherwise, by the fiscal notes and the testimony that will follow. If we are looking for an affordable, effective way of responding to the worst kinds of violent crime- we really shouldn't be talking about the death penalty at all. It is an enormously expensive, protracted process- and because of the Supreme Court's 1977 ruling in Gregg v. Georgia and the other decisions that locked the "death is different" concept into this nation's criminal justice structure, the death penalty can never be anything but an enormously expensive, protracted, troublesome process. As a matter of fact, in that ruling, a ruling that was desperately needed in order to reduce the slovenliness that characterized use of the death penalty prior to the Furman v. Georgia decision, the Court pronounced something of a protracted, but well deserved death sentence on capital punishment in the U.S. I am not at all sure the death penalty will survive this century. It is not a viable option under our constitution.

75% of the 106 executions that have occurred since the 1977- the resumption year- have been carried out by four states- Florida, Georgia, Louisiana and Texas. Needless to say the people of those states are paying the price- with executions costing from two to three million dollars each, modestly estimated. There have been increases, not decreases in the murder rates. In fact, those states have realized nothing of benefit. They have squandered, and continue to squander, desperately needed resources.

The death penalty has been a rare phenomenon in other parts of the country, but still there are about two thousand, two hundred people on death row throughout the United States. Two to three hundred are added every year, but there has been an average of fewer than nine executions a year during the past twelve years. Think about where that's taking us. And every single member of that vast, growing snakepit requires expensive, twenty four hour special handling by the correctional system and every one of them is a continuing legal drain on the State that's trying to put them to death. Let me read you two sentences from last year's report of the Criminal Justice section of the N.Y.Bar Association on the proposed reinstitution of the death penalty in that state, directed to men and women in the same situation you are in right now: "We believe that reinstitution of death as a punishment for crime in New York would create grave and irreversible crises in our state at every level of government. We observe that in every other state which now imposes death as punishment such crises exist and have not been avoided even with the expenditure of enormous and

unprecedented resources."

I have copies of the report for you that spells out the sober details.

Finally, let me pass along to you some information that relates to the politics of the death penalty. We read and are told constantly that 75% to 80% of Alaskans favor the death penalty- indeed that 75% to 80% of people across the country favor the death penalty. This is information that needs to be challenged. I haven't seen any poll on death penalty attitudes among Alaskans, but a careful look at polls conducted elsewhere around the country provides some surprising insights. In Georgia, for example, one of the most death penalty prone states in the country, a recent study indicated that while 75% of Georgians approve of the death penalty, 52% would favor abolition of the death penalty if replaced by life imprisonment with no parole eligibility for 25 years, combined with a program of work with earnings going to the families of victims. A national survey commissioned by the Justice Department indicates that only 36% of respondents polled nationally choose the death penalty when given acceptable options. This final piece of information about the politics of the death penalty. Finally, this instructive little study conducted in Nebraska. Voters in Nebraska were reminded that their unicameral legislature had voted on abolition of the death penalty during the session just past. They were asked how their representatives voted. 95% of the respondents didn't know or couldn't recall. Only 23% of them indicated that they would be less likely to vote for their representative as result of a vote to abolish the death penalty. These kinds of studies convince me that support for the death penalty is no where near as strong as generally supposed- Furthermore it's very obvious that many of the 75% of Alaskans who are reported to be in favor of the death penalty, approve of it because of inaccurate assumptions. Those of you who would choose to do so could do much toward correcting those wrong assumptions. In any case, ladies and gentlemen, I plead with you to consider the critical needs of law enforcement, corrections, drug abuse and alcoholism treatment, schools, child care agencies and all of the agencies of our state that deal with human problems- before giving consideration to funding so much as a dime for such a failed idea as the death penalty. Thank you.

REPORT OF THE CRIMINAL JUSTICE SECTION
REINSTITUTION OF DEATH AS PUNISHMENT

Introduction

There are many issues associated with the discussion of the appropriateness of the reinstatement in New York of the use of the imposition of death as the punishment for crime. Most familiar are the moral issue of killing by the state, the question of whether the death penalty is a deterrent, whether there is discriminatory imposition of the death penalty on racial minorities and the poor, and the risk of horrible irreversible mistake in the execution of innocent persons. Our resolution at this time does not focus on these important issues. Instead, at this time we wish to give emphasis to another most critical aspect which has not been part of the public discussion. The Criminal Justice Section, composed of judges, prosecutors and defense attorneys has much to say and is in agreement. We are compelled to conclude that reinstatement of the death penalty in New York should not be approved.

Our point is that the unprecedented crises which reinstitution of the use of death as a penalty would cause because of impact on the administration of criminal justice, the enormous costs associated with such a measure, and the serious negative impact on the delivery of prosecution and defense services to the communities throughout the state that will result.

We believe that reinstitution of death as punishment for crime in New York would create grave and irreversible crises in our state at every level of government (and in every county). We observe that in every other state which now imposes death as punishment such crises exist and have not been avoided even with the expenditure of enormous and unprecedented resources.

Following are factors which contribute to the crises if the death penalty were reinstated in New York.

I. The nature of death penalty litigation.

The Supreme Court has recognized that "Death is different." Cases involving the potential imposition of death as punishment require an elevated level of effort by the prosecution, defense and the court system.

A. Proceedings at the trial level. Death penalty cases require two separate trials, one on the guilt issue; one on the penalty - death or life imprisonment. This alone makes such cases consume substantially greater resources than other serious felony cases. Additionally, the importance of capital cases requires more resources for investigation, social scientists, psychological investigation, forensic experts. Where five to ten substantive motions might be argued and decided in a typical serious felony matter, three or four times that number are necessary in a properly contested death penalty case. Because of the highly charged circumstances which lead to the decision to charge a capital offense, such cases are likely to be the cases resulting in change of venue and other extraordinary measures designed to protect the right to a fair trial.

B. Appellate review of convictions. Apart from the intensity of trial level proceedings, there would be at least 11 stages in the review process of a properly defended death sentence. There would be a mandatory direct review to the State Court of Appeals, then a Petition for Certiorari, to the Supreme Court a motion pursuant to CPL Art. 440 in the Trial Court and review of that motion in the appellate courts and petition for Certiorari. Next would come Federal habeas corpus, with an appeal, en banc petition and Certiorari petition. Then there would be the clemency application process. The listing of these proceedings assumes no other extraordinary applications are warranted and of course does not include the proceedings which might eventuate if a retrial or remand is ordered at any stage of the proceedings.

II. The demands of death penalty litigation on our system. Those things which make death penalty cases dramatically different from other major felony litigation likely to be encountered by local prosecutors around the state impose tremendous demands on our system.

1. The court system.

Our Trial Courts are now overburdened. In no respect are proper funds available to meet the present demands made on our court system. We consider the situation no better than in 1965 when the State Temporary Commission on Revision of the Penal Law and Criminal Code recommended abolition of the death penalty. Indeed, the situation is now worse than then, and expectations of the intensity of death penalty litigation are greater. We quote:

> . . .[O]wing to their importance, capital cases take longer to litigate at the trial level and obstruct the general administration of criminal justice accordingly; . . . the appellate ramifications are intricate and extensive;
> . . .the pursuit of other post-judgment remedies leads to many courts, both state and federal, involving substantial segments of the judiciary;. . .the battle to save the "doomed" man reaches into the executive branch of the government; and, in general,. . .capital cases are disruptive of the orderly process of criminal justice.
>
> ****
>
> [W]hatever aspect of the death penalty one examines, one finds nothing but obstruction, confusion and waste.

(Leg. Doc. No 25 at p. 97 [1965] -- Fourth Interim Report: Special Report on Capital Punishment, 1965).

Appellate courts in other States repeatedly point out the excessive amount of time spent on the relatively small number of death penalty cases. Our appellate courts are already overburdened.

2. The provision of defense services.

Because of the elevated level of advocacy required for competent representation in death penalty cases, it is inconceivable that such representation will be available wherever such cases might arise. Grave questions already exist about the ability of New York to provide consistent effective representation to those accused of serious crimes across the state --

from the most populous to the most rural regions. The standards which must be met in capital cases are, of course, much greater. See, Standards for the Appointment and Performance of Counsel in Death Penalty Cases (NLADA, 1988); Goodpaster, "The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases," 58 N.Y.U.L. Rev. 299 (1983).

There can be no serious suggestion that these standards could be met at the present time or that New York is somehow inherently going to be able to accomplish in this regard what has uniformly been proven to be unachievable in states which presently have death as punishment.

Inadequate defense services will lead to greater costs as cases progress. The dangers of additional extraordinary and successful post-conviction applications increases, with the likelihood for new trials, if counsel at the trial level is not thoroughly effective. Problems of effectiveness of counsel were poignantly addressed in the recent column by Professor Alan Dershowitz about the arguments before the United States Supreme Court in the case involving the death sentence imposed on a mentally retarded person. There were grave questions raised about the competence of counsel even before that Court.

In New York State there are 62 counties with more than 80 separate plans for providing counsel to persons unable to afford the assistance of private counsel. There is no mechanism for central administration of death penalty defense. It is hard to imagine any person being able to afford the costs of defending a capital charge.

We have the gravest reservations about placing the burden of defending such cases on a system which is strained to the extent that our current public defense system is.

3. Prosecution services.

Prosecutors, even from the largest metropolitan areas acknowledge the reinstitution of the death penalty would wreak havoc on the maintenance of an acceptable level and distribution of prosecution effort, especially at a time when resources needed for presently indicated effort are not available.

The additional effort which would be required on the part of prosecutors must be recognized. Here too, most prosecutors in this state have never tried a capital murder case. Being confronted with the circumstances which compel them to seek the death penalty would not only destroy their general effort at law enforcement by the diversion of resources, but, by inexperience or inability to control other events, make the occurrence of error at the trial level more likely with the risk of compounding the damage if the case must be retried.

II. Costs.

We believe that there are necessarily associated with the quality of prosecution and defense services and the administration of justice, enormous financial costs which also have not been publicly discussed.

It has been estimated that the cost of a trial involving the death penalty in New York State would be at least $1.8 million. "Capital Losses: The Price of the Death Penalty for New York State," a Report from the Public Defense Backup Center to the Senate Finance Committee, the Assembly Ways and Means Committee and the Division of the Budget (1982).

In Texas the cost has been estimated at $2,000,000 per case. (Houston Chronicle, March 13, 1988 p.6). In Florida the publicly stated costs of execution were $57 million between 1973 and 1988, during which time there were only 18 executions, at a cost of $3,178,623 per execution. (Miami Herald, July 10, 1988 p. 1A, Von Drehle, "Capital Punishment in Paralysis." One Pennsylvania journalist estimated the cost of a capital case to be $5 to $7 million.

Just at the federal level, the report for the Criminal Justice Act Division of the Administrative Office of the United States Courts (Spangenberg Group 1987) projects $15,000,000 for CJA representation (defense alone) in habeas corpus petitions in federal courts in capital cases. See, Garey, The Cost of Taking a Life: Dollars and Sense in the Death Penalty, 18 U.C. Davis L. Rev. 1221 (1985). Counties in Nevada, California and

elsewhere have taken action to convert cases in which the death penalty has been sought to non-capital cases because of the enormity of the costs. "Lawyers, County Battle over Funds for El Centro Trial," Los Angeles Daily Journal, January 13, 1983.

Since 1977 there have nationally been over 200,000 homicides. Two thousand people are on death row. There have been 104 executions. The enormity of the funds expended must be compared to the small number of cases which have resulted in execution. At no time -- even before the criminal procedure "revolution" of the 1960's has the number of persons executed been more than a tiny percentage of those accused, tried and convicted for capital offenses. Although this would be relevant to the question of whether deterrence is possible when the frequency of implementation of death is so low, here we are concerned with the disproportion between the enormous costs -- financially and in terms of scarce, overburdened judicial prosecution, and defense services – and the putative "benefit" of the actual infrequent imposition of death, given its infrequency.

Summary

We think it clear that our judicial system and our prosecution and defense service systems are strained, even under the present demands made upon them. We believe that the impact on these systems, and the economic impact of the reinstitution of the death penalty are not only of momentous proportion, but we believe that these consequences have not been properly or responsibly considered or confronted by those proposing reinstatement. We believe that popular support for the death penalty would diminish dramatically if the public were aware of the enormity of the impact and cost of such action, and the infrequent nature of the "benefit" supposed to be achieved: the execution of offenders.

Our pressing needs for basic police services and equipment, emergency 911 systems, support for efforts to prevent and prosecute serious offenses against children and trafficking in narcotics, the need for additional judges and probation services, crime

victims' assistance, and so on, all overshadow the argued benefits of reinstatement of the death penalty.

It is our conclusion, on these considerations alone, that the wise and rational allocation of the resources of our state should not contemplate bearing these enormous costs to achieve the small number of executions that can be expected, even if it were assumed that such executions provided the benefits which death penalty proponents believe.

This is especially so given there can be no reasonable assurance that it is possible to return to the use of death as punishment without irreversible crises to our system of criminal justice and to the delivery of effective prosecution and defense services.

Criminal Justice Section, New York State Bar Association

U.S. Department of Justice
Bureau of Justice Statistics

pg-446 198

Bureau of Justice Statistics Bulletin

Capital Punishment 1987

Eight States executed 25 prisoners during 1987, bringing the total number of executions to 93 since 1976, the year that the U.S. Supreme Court reinstated the death penalty. Those executed during 1987 had spent an average of 7 years and 2 months awaiting execution.

During 1987, 299 prisoners were received under sentence of death from the courts. Seventy-nine persons had their death sentences vacated or commuted during the year, and 11 died while under a death sentence. At year-end, 34 States reported a total of 1,984 prisoners under sentence of death; all but 1 had been convicted of murder (an inmate admitted during 1986 for the capital rape of a child in Mississippi). The median time since the death sentence was imposed for the 1,984 prisoners was 3 years and 7 months.

About 2 in 3 offenders under sentence of death for whom such information was available had a prior felony conviction; about 1 in 9 had a prior homicide conviction. About 2 in 5 condemned prisoners were in some criminal justice status at the time of the capital offense. Half of these were on parole; the rest were in prison, on escape from prison, or on probation, or they had charges pending against them.

The majority of those under sentence of death (1,138) were white (57.4%); 821 were black (41.4%); 16 were American Indian (.8%); and 9, Asian (.5%). Twenty-one of those under a death sentence were female (1.1%). The median age of all inmates under a death sentence was nearly 33 years.

About 62% of those under sentence of death were held by States in the South. Western States held an additional 18%; Midwestern States, 15%; and the Northeastern States of Connecticut, New Jersey, and Pennsylvania, more than 5%. Florida had the largest number of condemned inmates (277), followed by Texas (256), California (200), Georgia (116), and Illinois (108).

Status of death penalty as of 12/31/87 and 1987 executions

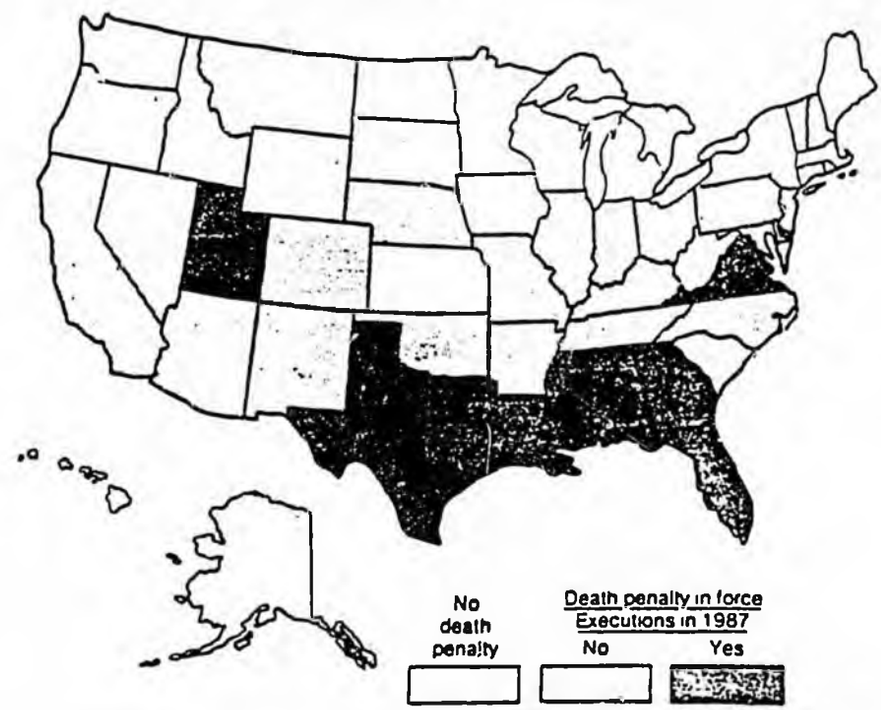


Figure 1

During 1987, 32 State prison systems received prisoners under sentence of death from the courts. Connecticut received its first inmate under sentence of death; the last Connecticut inmate under a death sentence died in prison in August 1973. Florida (44 admissions), Texas (36 admissions), and California (27 admissions) accounted for more than a third of the inmates entering prison under a death sentence during the year.

The 25 executions in 1987 were carried out by 8 States: 8 in Louisiana, 6 in Texas, 5 in Georgia, 2 in Mississippi, and 1 each in Alabama, Florida, Utah,

July 1988

The capital punishment statistical series has now completed 57 years of continuous Federal sponsorship. The series is designed to provide detailed national information on prisoners under death sentences. This year's report contains special appendices on the current status of all those sentenced to death between 1973 and 1987 and on Federal death penalty statutes contained in the United States Code. The Bureau of Justice Statistics gratefully acknowledges the cooperation and participation of officials throughout the States whose generous assistance makes this reporting program possible.

Steven R. Schlesinger
Director

[illegible] BACKGROUND MATERIALS

and Virginia. Thirteen of those executed were white males, and 12 were black males.

From the beginning of 1977 to the end of 1987, a total of 93 executions were carried out by 12 States. Over the same period, 2,743 admissions under sentence of death occurred (for 2,660 individuals), and 1,086 removals occurred as a result of dispositions other than executions (resentencing, retrial, commutation, or death while awaiting execution).

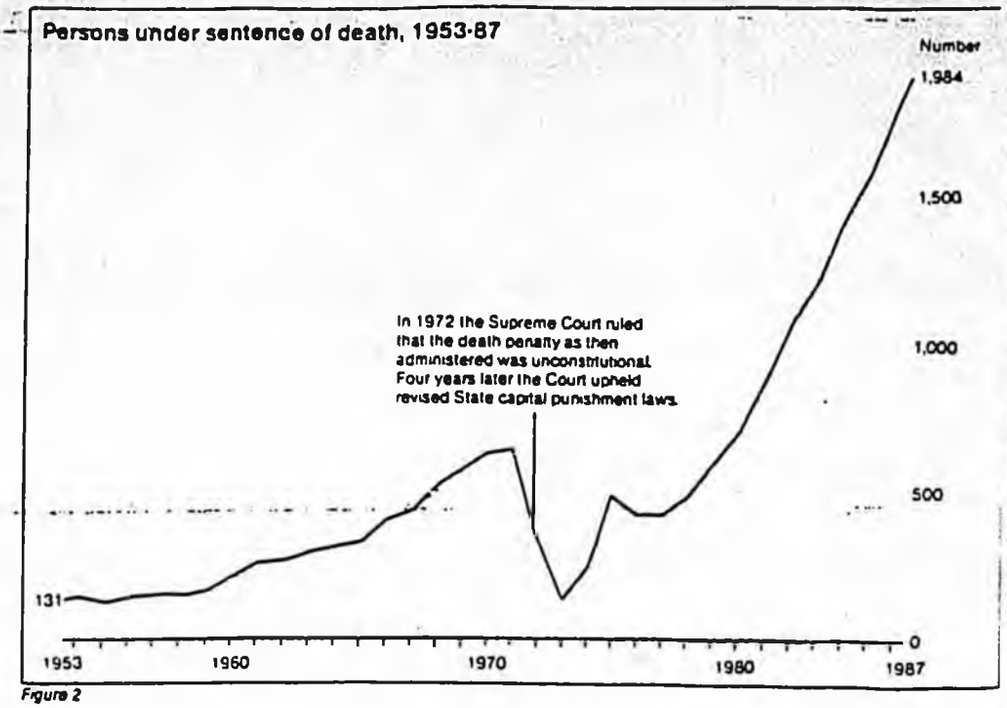


Figure 2

Capital punishment in the courts

On January 27, 1987, the Supreme Court in California v. Brown handed down a decision relating to jury instructions on aggravating and mitigating circumstances during the penalty phase of a capital trial. After finding the defendant guilty of the forcible rape and murder of a 15-year-old, the jury received testimony from the defendant's family, a psychiatrist, and the defendant regarding his usual behavior and psychological problems. The trial court advised the jury to consider the mitigating evidence presented by the defendant but cautioned them to "not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling." The defendant was subsequently sentenced to death.

On appeal to the Supreme Court of California, the death sentence was reversed based upon the conclusion that the trial court's instruction denied the defendant the right to have the jury weigh the "sympathy factor" raised by the testimony during the penalty phase. The High Court, however, concluded that the use of the term "mere sympathy" in the instruction was simply a directive to the jury to focus on the evidence presented in aggravation and mitigation and to ignore extraneous emotional factors, and it violated neither the eighth nor the fourteenth amendment. The decision of the California Supreme Court was reversed, and the case was remanded for further proceedings.

In Tison v. Arizona (decided April 21, 1987) the Supreme Court dealt with the issue of capital sentencing for accomplices to felony murder. In July 1978 three brothers entered the Arizona State Prison armed with a large number of weapons and effected the escape of their father and his cellmate. The automobile in which they were riding broke down, and a passing automobile occupied by two adults and two children was flagged down for assistance. The two prison escapees subsequently murdered its occupants.

Two of the brothers were convicted of four murders each under the accomplice liability and felony-murder statutes of the State. The trial judge found three statutory aggravating circumstances present, including one that defined conduct that created a grave risk of death to others, and he imposed capital sentences for each. The Arizona Supreme Court, in its review, upheld two of the aggravating circumstances and the death sentence; only the "grave risk to others" circumstance was found to be unsupported by the evidence. In a subsequent post-conviction challenge, the Arizona Supreme Court also concluded that the requisite "intent to kill" for accomplices was also satisfied by the defendants' active role in the prison breakout and abduction of the victims.

The U.S. Supreme Court upheld the death sentences, but it rejected the Arizona Supreme Court's interpretation of the "intent to kill" circumstance. It held that "reckless indifference to human life" in felony murder would satisfy eighth amendment concerns. The case was remanded for further proceedings by the State.

The Supreme Court addressed the issue of nonstatutory mitigating circumstances in Hitchcock v. Dugger (decided April 22, 1987). The death sentence was imposed in a Florida case arising from the strangulation murder of a 13-year-old female. In the penalty phase the sentencing judge instructed the advisory jury to consider only mitigating circumstances enumerated in statute and then indicated that his own deliberations were based exclusively on statutorily defined aggravating and mitigating circumstances. The Supreme Court reversed the death sentence, concluding that the sentencer may not refuse to consider any relevant mitigating evidence.

On April 22, 1987, the High Court in McCleskey v. Kemp dealt with the question of whether the capital sentencing process in Georgia was being administered in a racially biased manner in violation of the eighth and fourteenth amendments. The petition used statistical data on capital sentences imposed in Georgia to argue that black defendants who killed white victims have the highest probability of receiving a death sentence. The High Court rejected this claim, concluding that:
(1) there was no evidence of racial discrimination by decisionmakers in the petitioner's case;
(2) there was no evidence that the legislature of Georgia adopted or maintained capital punishment for racially discriminatory purposes; and
(3) there was no merit to the argument that the sentence was disproportionate, arbitrary, or capriciously imposed.

Arizona v. Mauro (decided May 4, 1987) addressed the issue of fifth amendment protection against self-incrimination. The petitioner, convicted of child abuse and the murder of his son and sentenced to death, had been taken into custody by police and was twice warned of his Miranda rights. While in the police station, his wife

requested an opportunity to talk with him. The police agreed to the meeting with the stipulation that a police officer would be present, with a tape recorder, to safeguard against potential violence or an escape attempt and to assure that there was no attempt to exchange statements about the crime. The tape-recorded meeting was subsequently used as evidence to rebut the defendant's claim of insanity at the time of the offense. The Arizona Supreme Court reversed the death sentence, concluding that the police had violated Miranda and impermissibly interrogated the defendant. The High Court, however, held that the actions by the police did not constitute an interrogation and that the defendant's statements had been voluntary.

Gray v. Mississippi (decided May 18, 1987) dealt with the issue of juror selection in a Mississippi kidnaping-murder case. During the voir dire proceeding, the trial judge in eight instances rejected motions by the prosecutor to dismiss for cause jurors who had indicated hesitancy about their ability to impose the death penalty. As a result, the prosecutor utilized peremptory challenges to remove these potential jurors. Subsequently, the judge accepted the prosecutor's motion to remove for cause, after he had exhausted all of his peremptory challenges, a prospective juror who, though initially confused about the death penalty, indicated she could impose it. The trial judge acknowledged that he had made the prosecutor use peremptory challenges to reject potential jurors opposed to the death penalty. The Mississippi Supreme Court ultimately upheld the conviction and death sentence, concluding that, although the juror was not excludable for cause, the result was simply to correct previous errors in not permitting earlier juror challenges for cause. The High Court, however, found that the process was flawed since the composition of the entire jury panel could have been affected by the error, and the case was remanded for further proceedings.

Another issue addressed by the Supreme Court during the year was the use of victim impact statements during the sentencing phase of a capital murder trial. In Booth v. Maryland (reported June 15, 1987), a double robbery-murder case involving elderly victims, a victim impact statement was prepared, in accordance with Maryland law, by the Division of Probation and Parole. The report contained information drawn from interviews with family members of the victims. The defendant's counsel moved to suppress the report, contending that its use violated the eighth amendment because of its inflammatory content. The trial court, however, permitted the victim impact statement to be read to the jury by the prosecutor. The Maryland Court of Appeals ultimately upheld the death sentence that was imposed. The High Court, however, struck down the use of such statements in capital cases, concluding that such statements shifted the focus of sentencing away from the defendant's record and character, depended too heavily on the ability of family members to express their grief, and may result in a "minitrial" on the victim's character.

In Sumner v. Sherman (decided June 22, 1987) the Supreme Court struck down a Nevada statute that imposed a mandatory death sentence for murder committed by an inmate serving a life sentence without possibility of parole. The Court's decision noted that capital sentences could only be imposed after consideration of relevant mitigating circumstances, if any, and that mandatory death sentences for life prisoners violated the eighth and fourteenth amendments.

The double jeopardy clause of the fifth amendment was a central issue in Ricketts v. Adamson (decided June 22, 1987), an Arizona capital murder case arising from the fatal bombing of a reporter. Originally, the defendant pleaded guilty to a plea-bargained charge of second-degree murder after agreeing to testify against other parties involved in the murder, and he received a confinement sentence of 20 years and 2 months. The plea agreement provided that the original first-degree murder charge would be reinstated if the defendant failed to testify against the other parties. At the trial of the other individuals, the respondent did provide the requisite testimony, and they were convicted. However, the Arizona Supreme Court later reversed these convictions and ordered new trials. The respondent subsequently refused to testify at pretrial proceedings against these other participants, contending that his obligation under the plea agreement had been satisfied. The prosecutor subsequently filed an information charging him with first-degree murder. The Arizona Supreme Court, despite a motion to reject the information on double jeopardy grounds, vacated the second-degree murder conviction and reinstated the first-degree murder charges. The respondent was ultimately convicted and sentenced to death, and the death sentence was upheld on appeal to the Arizona Supreme Court. The Court of Appeals, however, concluded that the State had violated his double jeopardy protection and had not waived such rights under the original plea agreement. The Supreme Court reversed the finding of the Court of Appeals, concluding that the respondent had breached his promises to testify and could be prosecuted again since second-degree murder was a lesser included offense of first-degree murder.

Burger v. Kemp (decided June 26, 1987) dealt with the sixth amendment issue of the effectiveness of counsel in a Georgia case. The petitioner was convicted, along with another individual, of the abduction, robbery, sodomy, and murder of a taxi driver and was sentenced to death. Throughout the trial and initial appeal, the petitioner was represented by an appointed counsel whose law partner had been appointed to represent the other individual involved in the murder. At each trial, the defense strategy was to emphasize the coindictee's greater culpability in the crimes. At the sentencing phase, defense counsel did not offer any evidence of mitigating circumstances. With a new attorney, the petitioner sought relief from the death sentence on the grounds of inadequate counsel, claiming a conflict of interest arose when the law partners each represented the two defendants and because no mitigating evidence was offered at sentencing.

The District Court and the Court of Appeals both rejected the defendant's claim of ineffective representation. The Supreme Court in its review concluded that overlapping counsel did not in and of itself violate constitutional guarantees of effective counsel and that the original attorney had adequately investigated the possibility of presenting mitigating evidence.

Capital punishment laws

At yearend 1987 the death penalty was authorized by the statutes of 37 States and by Federal statute (table 1).[1] During 1987 there were no successful challenges to the constitutionality of State death penalty laws, and no State enacted any new legislation authorizing capital punishment.

Statutory changes

Nine States altered their existing death penalty statutes during 1987. Four States, Colorado, Illinois, Maryland, and Montana, revised the enumerated aggravating circumstances to be considered at the sentencing phase of a capital trial. Colorado added felony murder as an aggravating circumstance; Illinois amended the multiple murder circumstance to include acts that would be likely to cause death or great bodily harm as aggravating situations; Maryland expanded the definition of law enforcement officers used in their listing of aggravating conditions; and Montana added the death of a kidnaping victim or a person rescuing a kidnaping victim. Indiana added both an aggravating and a mitigating circumstance to its statutes. Murder of a victim younger than 12 years old was included as an aggravating factor, and an offender younger than 18 at the time of the capital offense was to be considered a mitigating factor.

Four States amended their laws relating to the minimum age at the time of an offense for which a person could be sentenced to death. Indiana and Kentucky raised the age to 16, North Carolina set the minimum age at 17, and Maryland enacted a minimum age of 18. Other amendments during the year included:

- Maryland created the sentencing option of life without possibility of parole for first-degree murder convictions;
- New Hampshire changed the method of execution from hanging to lethal injection; and
- Washington modified procedures for reissuing death warrants after the passage of an execution date.

[1]See Appendix II for a listing of all Federal death penalty statutes currently in existence.

Table 1. Capital offenses, by State, 1987

Alabama. Murder during kidnaping, robbery, rape, sodomy, burglary, sexual assault, or arson; murder of peace officer, correctional officer, or public official; murder while under a life sentence; murder for pecuniary gain or contract murder; multiple murders; aircraft piracy; murder by a defendant with a previous murder conviction; murder of a witness to a crime (13A-5-40).

Arizona. First-degree murder.

Arkansas. Capital murder as defined by Arkansas statute (5-10-101).

California. Treason; aggravated assault by a prisoner serving a life term; first-degree murder with special circumstances; train wrecking.

Colorado. First-degree murder; first-degree kidnaping with death of victim; felony murder.

Connecticut. Murder of a public safety or correctional officer; murder for pecuniary gain; murder in the course of a felony; murder by a defendant with a previous conviction for intentional murder; murder while under a life sentence; murder during a kidnaping; illegal sale of cocaine, methadone, or heroin to a person who dies from using these drugs; murder during first-degree sexual assault; multiple murders.

Delaware. First-degree murder with aggravating circumstances.

Florida. First-degree murder.

Georgia. Murder; kidnaping with bodily injury when the victim dies; aircraft hijacking; treason.

Idaho. First-degree murder; aggravated kidnaping.

Illinois. Murder.

Indiana. Murder.

Kentucky. Aggravated murder; kidnaping when victim is killed.

Louisiana. First-degree murder.

Maryland. First-degree murder, either premeditated or during the commission of a felony.

Mississippi. Capital murder includes murder of a peace officer or correctional officer, murder while under a life sentence, murder by bomb or explosive, contract murder, murder committed during specific felonies (rape, burglary, kidnaping, arson, robbery, sexual battery, unnatural intercourse with a child, nonconsensual unnatural intercourse), and murder of an elected official; capital rape is the forcible rape of a child under 14 years old by a person 18 years or older; aircraft piracy.

Missouri. First-degree murder (565.020 RSM0).

Montana. Deliberate homicide; aggravated kidnaping when victim or rescuer dies; attempted deliberate homicide, aggravated assault, or aggravated kidnaping by a State prison inmate with a prior conviction for deliberate homicide or who has been previously declared a persistent felony offender.

Nebraska. First-degree murder.

Nevada. First-degree murder.

New Hampshire. Contract murder; murder of a law enforcement officer; murder of a kidnaping victim.

New Jersey. Purposeful or knowing murder; contract murder.

New Mexico. First-degree murder (30-2-1A NMSA).

North Carolina. First-degree murder.

Ohio. Assassination; contract murder; murder during escape; murder while in a correctional facility; murder after conviction of a prior purposeful killing or prior attempted murder; murder of a peace officer; murder arising from specified felonies (rape, kidnaping, arson, robbery, burglary); murder of a witness to prevent testimony in a criminal proceeding.

Oklahoma. Murder with malice aforethought; murder arising from specified felonies (forcible rape, robbery with a dangerous weapon, kidnaping, escape from lawful custody, first-degree burglary, arson); murder when the victim is a child who has been injured, tortured, or maimed.

Oregon. Aggravated murder.

Pennsylvania. First-degree murder.

South Carolina. Murder with statutory aggravating circumstances.

South Dakota. First-degree murder; kidnaping with gross permanent physical injury inflicted on the victim; felony murder.

Tennessee. First-degree murder.

Texas. Murder of a public safety officer, fireman, or correctional employee; murder during the commission of specified felonies (kidnaping, burglary, robbery, aggravated rape, arson); murder for remuneration; multiple murders; murder during prison escape; murder by a State prison inmate.

Utah. First-degree murder.

Vermont. Murder of a police officer or correctional officer; kidnaping for ransom.

Virginia. Murder during the commission of specified felonies (abduction, armed robbery, rape); contract murder; murder by a prisoner while in custody; murder of a law enforcement officer; multiple murders; murder of a child under 12 years old during an abduction.

Washington. Aggravated first-degree premeditated murder.

Wyoming. First-degree murder including felony murder.

Method of execution

At yearend 1987 lethal injection (18 States) and electrocution (14 States) were the most common methods of execution authorized (table 2). Seven States authorized lethal gas; two States, hanging; and two States, a firing squad. Six States authorized more than one method—lethal injection and an alternative method—generally at either the election of the condemned prisoner or based upon the date of sentencing.

Some States have stipulated an alternative to lethal injection, anticipating that it may be found unconstitutional. Each of the other four methods, previously challenged on Eighth Amendment grounds as cruel and unusual punishment, has been found to be constitutional. The method of execution for Federal offenders is that of the State in which the execution takes place.

Automatic review

Of the 37 States with capital punishment statutes at yearend 1987, 34 provided for an automatic review of all death sentences. Arkansas, Florida, and Vermont had no specific provisions for automatic review. In most States automatic review is conducted regardless of the defendant's wishes. While most of the 34 States authorize automatic review of both conviction and sentence, Idaho and Indiana require review of the sentence only. Typically, the review is undertaken directly by the State Supreme Court. If either the conviction or sentence is vacated, the case may be remanded to the trial court for additional proceedings or for retrial. It is possible that, as a result of retrial or resentencing, the death sentence may be reimposed.

Minimum age

A total of 26 States specify a minimum age at the time of the offense for which the death penalty may be imposed (table 3). In some States the minimum age is specified in the capital punishment statute; in others it is, in effect, set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. The most frequently specified age is 18 years (11 States). Eleven States and the Federal system report no minimum age.

Table 2. Method of execution, by State, 1987

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

[a]Authorizes two methods of execution.
[b]Mississippi authorizes lethal injection for those convicted after 7/1/84; executions of those convicted prior to that date are to be carried out with lethal gas.
[c]Lethal injection authorized effective 1/1/87.
[d]Lethal injection authorized effective 7/1/88.
[e]Lethal injection authorized effective 7/29/88.

Table 3. Minimum age authorized for capital punishment, yearend 1987

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

[a]Effective 9/1/87 (IC 35-50-2-3(b)).
[b]Effective 7/1/87 (KRS 640.040).
[c]Effective 7/29/87 (GS 14-17) may also be applied to those age 14 and above convicted of murder while incarcerated or escaping from incarceration.
[d]Effective 7/1/87 (Article 27, Section 412(f)).
[e]May be certified as an adult between ages 10 and 17.

Table 4. Prisoners under sentence of death, by region and State, yearend 1986 and 1987

Region and State	Prisoners under sentence 1986	Changes during 1987			Prisoners under sentence 1987
		Received under sentence	Removed from death row (excluding executions)	Executed	
U.S. total	1,800	299	90[a]	25	1,984
Federal[b]	0	0	0	0	0
State	1,800	299	90	25	1,984
Northeast	97	22	10	0	109
Connecticut	0	1	0	0	1
New Hampshire	0	0	0	0	0
New Jersey	23	8	3	0	28
Pennsylvania	74	13	7	0	80
Vermont	0	0	0	0	0
Midwest	269	36	8	0	297
Illinois	101	11	4	0	108
Indiana	40	4	0	0	44
Missouri	43	9	0	0	52
Nebraska	14	0	1	0	13
Ohio	71	12	3	0	80
South Dakota	0	0	0	0	0
South	1,123	186	64	24	1,221
Alabama	84	14	7	1	90
Arkansas	26	4	2	0	28
Delaware	5	1	0	0	6
Florida	254	44	20	1	277
Georgia	110	15	4	5	116
Kentucky	31	3	2	0	32
Louisiana	46	9	5	8	42
Maryland	18	1	2	0	17
Mississippi	44	12	4	2	50
North Carolina	63	16	3	0	76
Oklahoma	72	15	1	0	86
South Carolina	47	1	3	0	45
Tennessee	54	9	1	0	62
Texas	235	36	9	6	256
Virginia	34	6	1	1	38
West	311	55	8	1	357
Arizona	62	12	1	0	73
California	176	27	3	0	200
Colorado	1	2	0	0	3
Idaho	14	0	1	0	13
Montana	5	1	0	0	6
Nevada	35	5	2	0	38
New Mexico	0	2	0	0	2
Oregon	2	3	0	0	5
Utah	7	1	0	1	7
Washington	7	1	0	0	8
Wyoming	2	1	1	0	2

Note: States not listed and the District of Columbia did not have the death penalty as of 12/31/86. Some of the figures shown for yearend 1986 are revised from those shown in Capital Punishment, 1986, NCJ-106483. The revised figures include 25 inmates who were either reported late to the National Prisoner Statistics program or who were not in the custody of State correctional authorities as of 12/31/86 (2 in Ohio, 1 in Delaware, 2 in Tennessee, 1 in Alabama, 7 in Mississippi, 7 in Louisiana, 3 in Arizona, 1 in Georgia, and 1 in Virginia) and exclude 6 inmates relieved of the death sentence on or before 12/31/86 (2 in Georgia and 1 each in Tennessee, Mississippi, Texas, and Wyoming).

[a]Includes four deaths that were suicides (one each in Virginia, Florida, Wyoming, and Nevada); one inmate in Tennessee murdered by another; one inmate in Illinois died of cocaine overdose; and five deaths due to natural causes (one each in Pennsylvania, Georgia, Florida, Texas, and Alabama).

[b]Excludes two males held under Armed Forces jurisdiction with a military death sentence for murder.

Prisoners under sentence of death at yearend 1987

A total of 34 States reported 1,984 persons under sentence of death on December 31, 1987, an increase of 184 or 10.2% over the count at the end of 1986 (table 4). States with the largest number of prisoners under sentence of death were Florida (277), Texas (256), California (200), Georgia (116), and Illinois (108).

Although 37 States (covering 77% of the Nation's adult population) had statutes authorizing the death penalty, 3 of these reported no prisoners under sentence of death at yearend (New Hampshire, South Dakota, and Vermont).

Of the 1,984 persons under sentence of death, more than three-fifths (62%) were in the South, 18% were in Western States, 15% were in the Midwest, and 5% were in the Northeastern States of Connecticut, New Jersey, and Pennsylvania.

Nearly 99% of those under a sentence of death were male, and the majority were white (57.4%) (table 5). Blacks constituted 41.4% of those under death sentences, and another 1.3% were American Indians or Asian Americans. The States reported a total of 117 Hispanics under a death sentence, 6% of the total. The largest numbers of Hispanics were held in States with relatively large Hispanic populations: Texas (35), California (25), Florida (17), Arizona (12), and Illinois (9).

The median age of those under sentence of death was nearly 33 years. About .5% were under age 20, and 2% were 55 or older. The youngest offender under sentence of death was 16 years old (born May 1971); the oldest was 76 years old (born October 1911). About 1 in 10 of the inmates for whom information on education was available had not gone beyond seventh grade, but nearly the same percentage had some college education. The median level of education was almost 11 years. Less than a third of the condemned inmates for whom data on marital status were available were married.

The 21 women under sentence of death at yearend 1987 were held in 13 States; Florida's 5 female inmates were the most of any State (table 6). Since 1977, one woman has been executed.

Entries and removals of persons under sentence of death

During 1987, 32 State prison systems reported receiving prisoners under sentence of death. Florida reported the largest number (44), followed by Texas (36), California (27), and North Carolina (16).

Table 5. Demographic profile of prisoners under sentence of death, 1987

	Yearend 1987	1987 admissions	1987 removals
Total number under sentence of death	1,984	299	115
Sex			
Male	98.9%	98.3%	98.3%
Female	1.1	1.7	1.7
Race			
White	57.4%	63.6%	56.5%
Black	41.4	35.5	40.9
Other[a]	1.3	1.0	2.6
Ethnicity			
Hispanic	6.6%	7.0%	8.7%
Non-Hispanic	93.4	93.0	91.3
Age[b]			
Less than 20 years	.5%	2.0%	.9%
20-24	11.2	25.1	13.0
25-29	25.8	28.1	20.0
30-34	23.0	16.3	21.7
35-39	17.6	13.4	20.9
40-54	19.9	14.1	21.7
55+	2.0	1.0	1.7
Median age	32.7 years	28.1 years	33.0 years
Education			
7th grade or less	10.2%	9.3%	11.7%
8th	10.3	7.4	11.7
9th-11th	36.7	37.8	35.9
12th	33.3	35.9	33.0
Any college	9.5	9.6	7.8
Median education	10.6 years	10.8 years	10.8 years
Marital status			
Married	30.3%	23.0%	22.0%
Divorced/separated	22.3	26.3	18.4
Widowed	2.0	2.2	4.6
Never married	45.4	48.5	55.0

Note: Percentage and median calculations are based on those cases for which data were reported. Ethnicity data were not reported for 216 prisoners at yearend 1987, 41 prisoners admitted in 1987, and 11 prisoners removed in 1987. Education data were not reported for 210 prisoners at yearend 1987, 29 prisoners admitted in 1987, and 12 prisoners removed in 1987. Data on marital status were not reported for 99 prisoners at yearend 1987, 25 prisoners admitted in 1987, and 6 prisoners removed in 1987.

[a]Consists of 16 American Indians and 9 Asians present at the end of 1987, 2 American Indians and 1 Asian admitted during the year, and 2 American Indians and 1 Asian removed during 1987.

[b]The youngest person under sentence of death was a black inmate in Louisiana born in May 1971. The oldest was a white inmate in Kentucky born in October 1911.

Table 6. Number of women on death row, by State, yearend 1972-87

State	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
U.S. total	4	3	3	8	7	6	5	7	9	11	14	13	17	17	18	21
California	3			1	2											
Georgia	1	2	1	1	1	1	1	2	3	4	4	3	2	2	1	1
North Carolina		1	2	3			2	1	1	1	1	1				1
Ohio				2	3	4						2	2	2	1	1
Oklahoma				1				1	1	1	2	2	1	1	1	1
Florida					1	1	1	1	1				1	2	2	5
Alabama							1	1		1	1	2	2	2	2	2
Texas								1	2	2	2		1	2	2	2
Kentucky									1	1						1
Maryland										1	2	1	2	1	1	0
Mississippi											1	1	1	1	2	1
Nevada											1	1	2	2	1	1
New Jersey													1	1	1	1
Arkansas													1			0
Idaho													1			0
Indiana														1	3	3
Tennessee															1	1

Of the 299 prisoners received under sentence of death:

- All were convicted of murder;
- 185 were white males, 106 were black males, 5 were white females, 2 were male American Indians, and 1 was a male Asian; and
- 18 were Hispanic.

Eighteen States reported a total of 79 persons whose sentences of death were vacated or commuted. Florida (18), Texas (8), and Pennsylvania (6) reported the largest numbers of such exits.

Of the 79 persons whose death sentences were vacated or commuted during 1987:

- 46 had their sentences vacated but convictions upheld;
- 28 had both their convictions and sentences vacated; and
- 5 had their sentences commuted, including 4 prisoners under death sentences in Texas.

At yearend, 53 of the 79 persons were serving reduced sentences (50 to life imprisonment), 13 were awaiting new trials, 7 were awaiting resentencing, 3 were subsequently found not guilty after retrial, and 3 had further prosecution dropped.

In addition, 11 persons died while under sentence of death in 1987. Florida, Nevada, Virginia, and Wyoming each reported one death by suicide; Tennessee reported one inmate murdered by another inmate; Illinois reported one death due to an apparent cocaine overdose; and five States each reported one death due to natural causes (Alabama, Florida, Georgia, Pennsylvania, and Texas).

From 1977, the year after the Supreme Court reinstated the death penalty, through 1987, there were a total of 2,743 admissions to State prisons under a sentence of death; 1,088 releases from a death sentence occurred over the same period as a result of appellate court actions, commutations, or death while under sentence; and 93 persons were executed. Among death sentence admissions, 1,590 (58%) were white, 1,117 (40.7%) were black, and 36 (1.3%) were classified as other races. Among those released other than by execution, 620 (57.1%) were white, 455 (41.9%) were black, and 11 (1%) were classified as other races. Of the 93 executed, 57 (61.3%) were white, and 36 (38.7%) were black.

Criminal history of inmates under sentence of death in 1987

Among those under sentence of death at yearend 1987 for whom criminal history information was available, 68% had a history of felony convictions (table 7). Among those for whom information on prior homicide convictions was available, 11% had a previous conviction for that crime.

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

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

Table 7. Criminal history profile of prisoners under sentence of death, by race, 1987

	Number under sentence of death			Percent of those under sentence of death[a]		
	All races[b]	White	Black	All races[b]	White	Black
Prior felony conviction history						
Yes	1,257	693	550	67.5%	64.8%	71.7%
No	606	377	217	32.5	35.2	28.3
Not reported	122	68	54			
Prior homicide conviction history						
Yes	193	98	91	11.2%	10.0%	12.8%
No	1,524	886	619	88.8	90.0	87.2
Not reported	267	154	111			
Legal status at time of capital offense						
Charges pending	99	60	37	5.8%	6.2%	5.3%
Probation	118	79	38	7.0	8.1	5.4
Parole	340	161	177	20.1	16.6	25.2
Prison escapee	36	24	12	2.1	2.5	1.7
Prison inmate	55	33	22	3.2	3.4	3.1
Other status[c]	22	13	8	1.3	1.3	1.1
None	1,024	600	408	60.4	61.9	58.1
Not reported	290	168	119			
Median time elapsed since imposition of death sentence	43 mos.	42 mos.	45 mos.			

[a]Percents are based on those offenders for whom data were reported.
[b]Includes whites, blacks, and persons classified as members of other races.
[c]Includes 4 persons on mandatory release, 2 on bail, 3 on furlough from prison, 1 for whom charges were pending from the U.S. Army, 1 in a local jail, 1 under house arrest, and 10 on work release/work furlough from prison.

Executions

Since 1930, when data on executions were first collected by the Federal Government, 3,952 executions have been conducted under civil authority (table 8).[2] Since the death penalty was reinstated by the Supreme Court in 1976,[3] the States have executed 93 persons:

1977--1	1984--21
1979--2	1985--18
1981--1	1986--18
1982--2	1987--25
1983--5	

A total of 12 States have carried out executions since 1977. During the period, 56 white males, 36 black males, and 1 white female have been executed. The largest number of executions occurred in Texas (26), Florida (17), Louisiana (15), and Georgia (12).

Since 1977 a total of 3,163 offenders have been under a death sentence for varying periods of time (table 9). There were 93 executions (2.9% of those at risk) and 1,086 removals (34.3% of those at risk) during this period. A slightly higher percentage of whites than blacks were executed (3.1% v. 2.7%), but removal rates for the two races were nearly identical (34.2% v. 34.7%).

For those executed since 1977, the average time between sentence imposition and execution was 6 years and 5 months (table 10). For the 25 prisoners executed during 1987, the average time spent under a death sentence was just over 7 years, about the same as those executed during the preceding year. Black prisoners executed during 1987 had spent an average of 8 years awaiting execution; whites, 6 years and 6 months.

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

[3]For the period 1977-87, the FBI reported 224,400 cases of murder and nonnegligent manslaughter and an estimated 217,120 arrests for these crimes. During the same period, 2,743 persons entered prison under sentence of death, and there were 93 executions. In 1987 there were 20,100 reported murders and nonnegligent manslaughters, 19,200 arrests, 299 persons who entered prison under a death sentence, and 25 executions.

Table 8. Number of persons executed, by jurisdiction, in rank order, 1930-87

State	Number executed Since 1930	Since 1977
U.S. total	3,952	93
Georgia	378	12
New York	329	
Texas	323	26
California	292	
North Carolina	266	3
Florida	187	17
Ohio	172	
South Carolina	164	2
Mississippi	157	3
Pennsylvania	152	
Louisiana	148	15
Alabama	138	3
Arkansas	118	
Kentucky	103	
Virginia	98	6
Tennessee	93	
Illinois	90	
New Jersey	74	
Maryland	68	
Missouri	62	
Oklahoma	60	
Washington	47	
Colorado	47	
Indiana	43	2
West Virginia	40	
District of Columbia	40	
Arizona	38	
Federal system	33	
Nevada	31	2
Massachusetts	27	
Connecticut	21	
Oregon	19	
Iowa	18	
Kansas	15	
Utah	15	2
Delaware	12	
New Mexico	8	
Wyoming	7	
Montana	6	
Vermont	4	
Nebraska	4	
Idaho	3	
South Dakota	1	
New Hampshire	1	
Wisconsin	0	
Rhode Island	0	
North Dakota	0	
Minnesota	0	
Michigan	0	
Maine	0	
Hawaii	0	
Alaska	0	

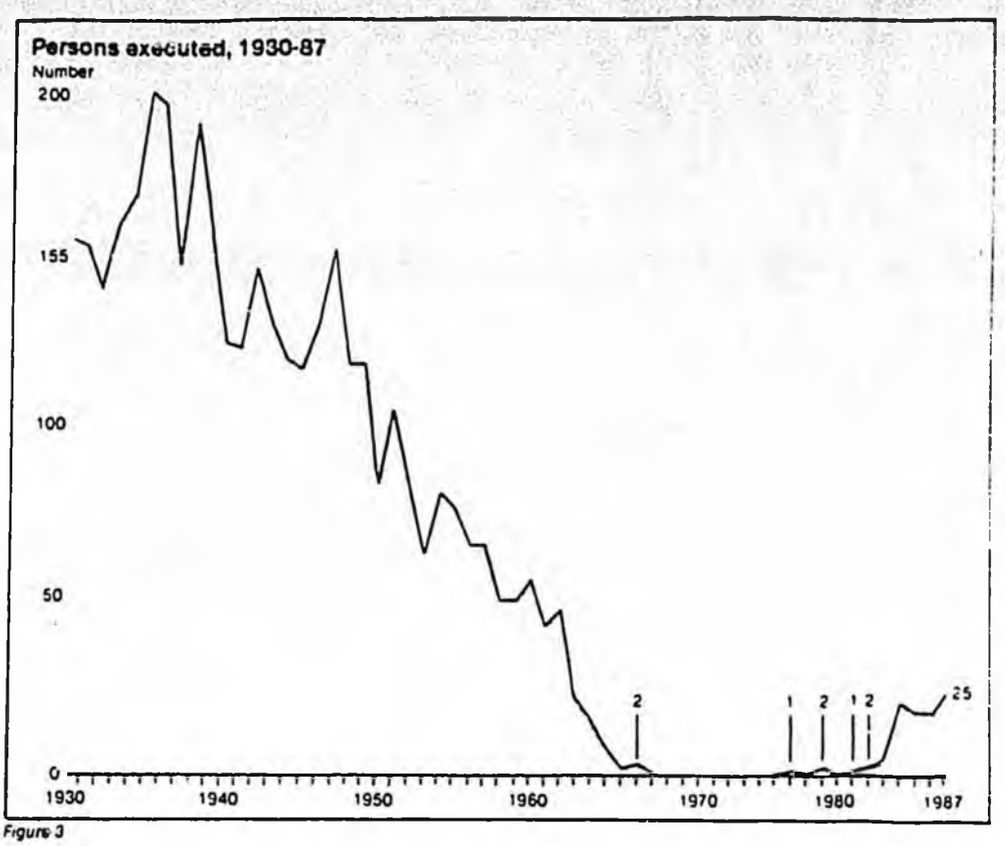


Figure 3

Table 9. Percentage of those under sentence of death who were executed or received other dispositions, by race, 1977-87

Race	Total under sentence of death 1977-87[a]	Prisoners executed Number	Percent of total	Prisoners who received other dispositions[b] Number	Percent of total
All races[c]	3,163	93	2.9%	1,086	34.3%
White	1,815	57	3.1	620	34.2
Black	1,312	36	2.7	455	34.7

[a]Those under sentence of death at the beginning of 1977 (420) plus all new admissions under sentence of death between 1977 and 1987 (2,743).
[b]Other dispositions include persons removed from a sentence of death due to statutes struck down on appeal, sentences/convictions vacated, commutations, or death other than by execution. Of the 1,086 removals, 52 resulted from death during confinement--22 from natural causes, 21 by suicide, 2 during escape attempts, 6 murdered by other inmates, and 1 by drug overdose.
[c]Includes whites, blacks, and persons classified as members of other races.

Table 10. Elapsed time between imposition of death sentence and execution, by race, 1977-87

Year of execution	Number executed All races	White	Black	Average elapsed time from sentence to execution for: All races	White	Black
Total	93	57	36	77 months	70 months	86 months
1977-83	11	9	2	58	59	58
1984	21	13	8	79	76	84
1985	18	11	7	71	65	80
1986	18	11	7	86	77	102
1987	25	13	12	86	78	96

Note: Three cases were resentenced to death after appeal. For these executions, average time was calculated from the original sentencing dates. The range for elapsed time for the 93 executions was 3 months to 160 months.

Appendix I. Current status of inmates under sentence of death, 1973-87

Since 1973 a total of 3,404 individuals have been sentenced to death (appendix table 1). The table shows the status of those received in each year with respect to their death sentence, as of December 31, 1987. For example, of the 189 persons sentenced to death in 1978, 18 have been executed, 3 have died while in confinement, 22 have been relieved of the death sentence due to court actions striking down in whole or in part the statutes under which they were sentenced, 33 have had their convictions overturned on appeal, 49 have had their death sentences overturned on appeal, 8 have had their sentences commuted, and 56 were still under a death sentence at yearend 1987. Of the 1,984 persons under sentence of death on December 31, 1987, 222 or 11.2% were sentenced prior to 1980.

Appendix table 2 shows the distribution of the 1,984 persons under sentence of death by State and by year of sentencing. Florida, Georgia, Texas, and Utah had those inmates who had served the longest period of time under sentence of death among all condemned inmates at the end of 1987. By contrast, Connecticut and New Mexico had no inmates sentenced prior to 1987.

Appendix II. Federal laws providing for the death penalty

Since the Supreme Court's decision in Furman v. Georgia in 1972 striking down the death penalty as then applied, two death penalty statutes have been enacted by the Congress:

- Espionage by a member of the Armed Forces: communication of information to a foreign government relating to nuclear weaponry, military spacecraft or satellites, early warning systems, war plans, communications intelligence or cryptographic information, or any other major weapons or defense strategy (10 U.S.C. §906(a)).

Appendix table 1. Reasons for removal from death row and number of prisoners on death row at yearend 1987, by year of sentencing

Year of sentencing	Number sentenced to death	Number of prisoners removed from death row						Under death sentence on December 31, 1987
		Executed	Died	Appeal courts overturned: Death penalty statute	Appeal courts overturned: Conviction	Appeal courts overturned: Sentence	Sentence commuted	Other or unknown reasons	
Total, 1973-87	3,404	93	58	455	251	458	99	6	1,984
1973	43	2	0	14	9	9	9	0	0
1974	153	7	4	66	12	26	22	0	16
1975	305	5	3	170	23	60	19	6	19
1976	243	8	4	137	21	37	15	0	21
1977	145	11	1	41	24	27	6	0	35
1978	189	18	3	22	33	49	8	0	56
1979	160	5	7	2	24	42	5	0	75
1980	192	10	9	2	30	37	3	0	101
1981	243	10	7	0	30	43	3	0	150
1982	276	7	6	0	18	42	4	0	201
1983	262	5	3	1	11	29	2	0	211
1984	295	4	4	0	13	29	3	0	242
1985	289	0	2	0	5	19	0	0	263
1986	310	0	4	0	0	7	0	0	299
1987	299	1	1	0	0	2	0	0	295

Appendix table 2. Prisoners under sentence of death on December 31, 1987, by the year of their sentence

State	Year of death sentence														Under sentence of death, 12/31/87
	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	
Total sentenced and remaining on death row 12/31/87	16	19	21	35	56	75	101	150	201	211	242	263	299	295	1,984
Florida	6	10	8	5	16	16	17	16	25	22	30	25	37	44	277
Georgia	7	3	3	15	10	4	8	9	7	7	10	7	11	15	116
Texas	2	2	4	7	11	7	15	20	23	31	20	37	41	36	256
Utah	1									1	1	3		1	7
Montana		3								1		1		1	6
Nebraska		1	2		4	1	1	1			2		1		13
Alabama			1		1	1	2	9	19	13	11	12	8	13	90
Arizona			1	1	1	9	9	4	10	6	7	7	6	12	73
Arkansas			1	2		1	1	8	2	1		4	4	4	28
Mississippi			1	3		1	3	7	7	3	1	3	9	12	50
Nevada				1		3	1	3	4	5	6	7	3	5	38
Oklahoma				1	2	3	3	3	4	8	18	13	16	15	86
California					2	10	5	22	35	32	27	16	24	27	200
Indiana					1	1	3	4	3	6	6	10	6	4	44
Kentucky					1		1	2	5	5	2	5	8	3	32
Louisiana					1		2	1	4	3	8	11	3	9	42
Tennessee					5	1	4	5	6	5	7	12	8	9	62
Virginia					1	3	1	2	3	3	8	1	10	6	38
Illinois						5	12	10	6	13	11	15	25	11	108
Maryland						1		4	5		6		1		17
Missouri						2	3	6	6	2	6	9	9	9	52
North Carolina						2	4	4	3	7	10	19	11	16	76
South Carolina						4	3	4	1	8	6	6	12	1	45
Delaware							2		2				1	1	6
Pennsylvania							1	5	9	12	10	13	17	13	80
Idaho								1	5		5	1	1		13
Ohio									3	13	17	18	17	12	80
Washington									2	2		1	2	1	8
Wyoming									2						2
New Jersey										2	6	7	6	7	28
Colorado											1			2	3
Oregon													2	3	5
Connecticut														1	1
New Mexico														2	2

• Death resulting from aircraft hijacking (49 U.S.C. §§1472 and 1473).

At the end of 1987, two males were awaiting execution under a military death sentence for murder. The following capital punishment provisions, which were enacted prior to the Furman decision, remain in the U.S. Code:

• Murder while a member of the Armed Forces (10 U.S.C. §918).

• Destruction of aircraft, motor vehicles, or related facilities resulting in death (18 U.S.C. §§32, 33, and 34).

• Retaliatory murder of a member of the immediate family of law enforcement officials (18 U.S.C. §115(b)(3) [by cross-reference to 18 U.S.C. §1111]).

• Murder of a member of Congress, an important executive official, or a Supreme Court Justice (18 U.S.C. §351 [by cross-reference to U.S.C. §1111]).

• Espionage (18 U.S.C. §794).

• Destruction of government property resulting in death (18 U.S.C. §844(f)).

• First-degree murder (18 U.S.C. §1111).

• Mailing of injurious articles with the intent to kill or resulting in death (18 U.S.C. §1716).

• Assassination or kidnaping resulting in the death of the President or Vice President (18 U.S.C. §1751 [by cross-reference to 18 U.S.C. §1111]).

• Willful wrecking of a train resulting in death (18 U.S.C. §1992).

• Bank robbery--related murder or kidnaping (18 U.S.C. §2113).

• Treason (18 U.S.C. §2381).

Methodological note

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

•U.S. G.P.O. 1988-202-072:80029

1987 U.S. Supreme Court decisions cited

California v. Brown, 107 S. Ct. 837 (1987)
Tison v. Arizona, 107 S. Ct. 1676 (1987)
Hitchcock v. Dugger, 107 S. Ct. 1821 (1987)
McCleskey v. Kemp, 107 S. Ct. 1756 (1987)
Arizona v. Mauro, 107 S. Ct. 1931 (1987)
Gray v. Mississippi, 107 S. Ct. 2045 (1987)
Booth v. Maryland, 107 S. Ct. 2529 (1987)
Sumner v. Sherman, 107 S. Ct. 2716 (1987)
Ricketts v. Adamson, 107 S. Ct. 2680 (1987)
Burger v. Kemp, 107 S. Ct. 3114 (1987)

State notes

Colorado--Amended 16-11-103(6)(g) to include felony murder as an aggravating circumstance. Effective date 4/30/87. Subsequent amendments in 1988 classified escape as a felony for felony murder circumstances, changed the method of execution to lethal injection, and added language permitting sentencing juries to consider nonstatutory aggravating circumstances. These changes became effective on 7/1/88.

Illinois--Amended IRS, Chapter 38, 9-1(b)(3), to refine language defining aggravating factors relating to multiple murders in which the defendant demonstrated either an intent to kill more than one person or engaged in separate acts that would cause death or create a strong probability of death or great bodily harm to the murdered individual or another. The language added was introduced to replace the use of the word "premeditated." Effective date 1/1/88.

Indiana--Amended IC 35-50-2-3(b) to raise the minimum age for which a death sentence may be imposed to 16. Amended IC 35-50-2-9 to add as an aggravating circumstance murder victims under 12 years old and as a mitigating circumstance offenders under 18 years old at the time of the murder. Effective date 9/1/87.

Kentucky--Amended KRS 640.040(1) to prohibit capital punishment for persons under 16 years old at the time of the murder. Effective date 7/1/87.

Maryland--Amended Article 27, Section 412(b), (d), and (e), to include a life sentence without the possibility of parole as a sentencing option for murder. Amended Article 27, Section 413(e)(3), to redefine the term "law enforcement officer" in the enumerated aggravating circumstances to include probation and parole officers, law enforcement officers of jurisdictions outside of Maryland, probationary police officers, and law enforcement officers while privately employed as a security officer or special policeman. Amended Article 27, Section 412(f), to establish 18 years as the minimum age to receive a death sentence. Effective date 7/1/87.

Montana--Amended 46-18-303(7) to include as an aggravating circumstance the death of a kidnaping victim or a person rescuing or attempting to rescue a kidnaping victim. Effective date 10/1/87.

New Hampshire--Amended RSA 630:5 (987 Supp.) to replace hanging with lethal injection as the method of execution. Effective date 1/1/87.

North Carolina--Amended NCGS 14-17 to limit capital sentencing to defendants age 17 or older unless the defendant is convicted of murder while serving time in a correctional facility for a prior murder. The minimum age in such cases would be 14. Effective date 7/29/87.

Washington--Amended RCW 10.95.200 to provide procedures for issuing a new death warrant in the event that a scheduled execution is not carried out. Effective date during 1987 not specified.

Bureau of Justice Statistics Bulletins are written principally by BJS staff. This bulletin was written by Lawrence A. Greenfeld, corrections unit chief. Frank D. Balog edited the bulletin. Marilyn Marbrook, publications unit chief, administered report production, assisted by Christina Roberts, Betty Sherman, Yvonne Shields, and Jeanne Harris. Data were collected and tabulated by Arlene Rasmussen and other staff of the U.S. Bureau of the Census under the supervision of Larry McGinn and Gertrude Odom.

July 1988, NCJ-111939

The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union

P.O. Box 201844
Anchorage, AK 99520-1844

Office Location:
310 K Street
Anchorage, Alaska
(907) 276-2258

Jamie Bollenbach
Executive Director

MAR 6 1989

Date: March 1, 1989

To: Members of the Alaska State Senate
From: Jamie Bollenbach, Executive Director, AkCLU
Re: SB 17

Enclosed is information on the costs, deterrence factor, and legality of capital punishment. For many of the reasons outlined herein, the ACLU opposes SB 17. Please contact myself at the AkCLU office or Paul Grant at 586-2701 if we may be of any service.

The following is a summary of the enclosed material:

1. In every state with the death penalty, the costs to the state to try and execute a prisoner far exceed the costs of lifetime incarceration. In Florida, costs for each executed prisoner ($3.18 million on average per execution since 1982) were six times more than incarceration for life. The Office of Public Advocacy projects costs per execution in Alaska exceeding $2.5 million per prisoner.

The U.S. Supreme Court requires "super due process" in capital cases to ensure that the trial and execution is fair. This greatly increases the costs of investigation, prosecution, and defense (the state increasingly bears the burden of representing the accused in capital cases.) The money for prosecuting capital cases comes directly out of other law enforcement efforts, and seriously hinders prosecution of non-capital cases as a result. Additional costs include construction of death row and execution chambers, and training of special security personnel.

2. The overwhelming evidence is that the death penalty does not reduce criminal homicide rates. Death penalty states as a group do not have lower rates of criminal homicide. Police officers in non-death penalty states do not suffer a higher rate of criminal assault and homicide than in death penalty states. Prisoners and prison personnel in abolition states do not suffer a higher rate of criminal assault and homicide from life-term prisoners than they do in death-penalty states. In neighboring states, the ones with the death penalty do not show a lower rate of homicide than those without it. (See enclosed ACLU publication for citations.)

Criminal justice studies point towards the certainty of punishment rather than the severity of punishment as the real deterrent. The only constitutional system of imposing capital punishment available makes the certainty of punishment very low. Evidence also exists that juries are less likely to convict with a death penalty, further reducing the likelyhood of punishment.

A substantial revision of the system intended to reduce costs or substantially speed up the imposition of death would not meet the test of current constitutional law, and it would greatly increase the risk that the state would mistakenly terminate innocent men, women, and children.

3. Although capital punishment has been judged to be permissible under the federal constitution (because of the availability of extensive due process and appeals,) it is an open question whether the Alaska Constitution allows the state imposition of the penalty of death.

THE MIAMI HERALD
7/10/88/1A,12A

Capital punishment in paralysis

Huge caseload bloats lethargic, costly system in Florida, U.S.

By DAVE VON DREHLE
Herald Staff Writer

On a whim during a burglary, Charles Proffitt murdered Joel Medgebow on July 10, 1973. He plunged a bread knife into his sleeping victim's chest, "just to see what it felt like."

Three years later, using *Proffitt vs. Florida* as its test case, the U.S. Supreme Court upheld Florida's death penalty. Proffitt could be dead in six months, Attorney General Robert Shevin predicted.

Today, 15 years after the murder, Charles Proffitt is alive and well, sewing uniforms for inmates at Florida State Prison. The Florida Supreme Court reduced his sentence to life last year.

The state of Florida spent at least half a million dollars over a decade and a half trying to execute Charles Proffitt. It failed.

THE DEATH PENALTY
A FAILURE OF EXECUTION
First of a series

For Florida, and the 36 other states that impose the death penalty, *Proffitt vs. Florida* is still a test case. And the death penalty fails the test. The death penalty is costly, slow and inefficient.

Apart from any arguments about the morality of capital punishment, there is something terribly wrong with the system.

● Costly: The death penalty costs much more than life imprisonment without parole. It has cost Florida at least $57 million since 1973, according to conservative calculations based on independent studies.

● Slow: 36 inmates on Florida's Death Row have been there more than 10 years. Florida's senior Death Row resident, Howard Douglas, is in his 15th year — and his execution is nowhere in sight.

● Inefficient: Half of all death sentences are overturned on appeal, usually after years of expensive litigation. For every execution in America, courts sentence 13 more people to die.

The statistics speak for themselves: Death Row is going to get bigger, the wait for execution is sure to get longer, and the cost is bound to get higher. Experts are coming to the grim conclusion that little or nothing can be done to make the system work. It is a failure of execution.

Nowhere is this fact more clear than in Florida, a fervently pro-execution state that has always been among the first to arrive at death penalty milestones.

Here — where 296 convicted killers make up the largest Death Row in the nation — judges, prosecutors and politicians are quietly lowering their sights, giving up on swift and sure justice, and learning to live with a bloated system that splutters and wheezes.

"I don't know if we're ever going to catch up," says Carolyn Snurkowski, Florida's chief appellate prosecutor. The best the system can hope for, she says, is to "keep plodding along."

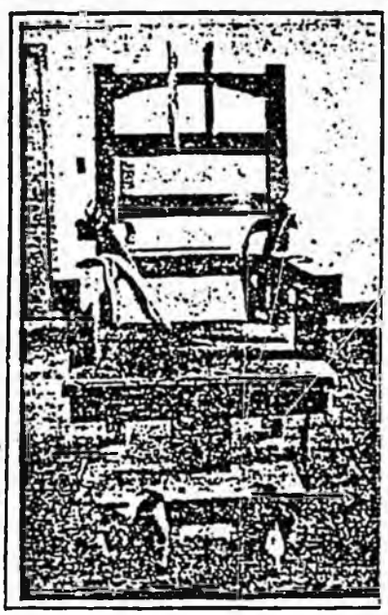
For capital punishment advocates, this is a bitter pill. Just two years ago, former Florida Attorney General Jim Smith pumped up his campaign for governor by promising two executions a month or more. "This delay couldn't go on forever," he said.

Today, the numbers refute such predictions. Even though the public solidly supports the death penalty, Florida has executed but two men in the past two years. Nationwide, the number is just 39.

In the same two years, Florida courts sent 89 people to Death Row. Nationwide: some 600.

"We're not going to clear out Death Row any more than we're going to pay off the national debt," says former Florida Bar Association President James Rinaman of Jacksonville. Rinaman, a death penalty advocate, has labored for more than three years to speed up the system.

A WHOPPING BILL



- Spent by Florida taxpayers on the death penalty since 1973: at least $57,215,210.
- Executions: 18.
- Cost per execution: at least $3,178,623.
- Cost of life in prison (40 years): $515,964.
- The appeal process: at least $36.1 million, just for government-paid lawyers.

Failure clearly visible

The failure of the death penalty is visible from one end of the nation to the other.

● More than 2,100 people live on America's Death Rows. At the current execution rate, it would take 82 years to kill them all. And the Death Row population is likely to double by the turn of the century.

● In Dade County, the public defender is under court order not to take on any more death penalty cases — the caseload is too great. Private attorneys must be appointed — and paid for — by the courts. "The system doesn't have the resources to handle the workload," says Public Defender Bennett Brummer.

● The number of capital cases on appeal in the federal courts will more than triple in the next two years, according to a study prepared for the federal judiciary. Lawyers to handle these appeals will cost the nation's taxpayers $30 million a year, the study concluded.

California, for example, has 234 prisoners on Death Row — the third-largest population in the country. Its last execution was in 1967. Yet the taxpayer-funded budget for defense attorneys there is more than $2 million a year.

● Even Bob Graham, the former Florida governor who signed more death warrants than anyone in the state's history, pronounces the death penalty system a "quagmire."

"And if the definition of justice is a system that administers equal and predictable results, then capital punishment in the United States today falls short," Graham says.

It was not supposed to be this way. Not after millions of dollars and years of effort spent trying to make the death penalty work.

The heyday

The heyday of the death penalty in America came in the 1930s. Hanging judges and biased juries too often used the penalty as little more than a legal lynching.

Proffitt

Bundy

'If the definition of justice is a system that administers equal and predictable results, then capital punishment in the United States today falls short.'

Son. Bob Graham

Gradually, the numbers subsided: there were fewer executions in the '40s and fewer still in the '50s. Legal assaults on the fairness of the death penalty system stopped executions altogether in Florida in 1964. In 1965, a commission to revise New York's penal code found that "whatever aspect of the death penalty one examines, one finds nothing but obstruction, confusion and waste."

Two years later, executions ceased across the country.

In 1972, a narrow and fractured majority of the U.S. Supreme Court concluded the death penalty, as it existed in America, was unconstitutional.

Justice William Brennan wrote that capital punishment depends on "a system in which the punishment of death is invariably and swiftly imposed. Our system, of course, satisfies neither condition. A rational person contemplating a murder is confronted, not with the certainty of a speedy death, but with the slightest possibility that he will be executed in the distant future."

Although Brennan and Justice Thurgood Marshall said the death penalty would always be unconstitutional, the seven other justices encouraged the states to draft new laws that would meet the constitutional test.

'A back-breaker'

Florida obliged within six months. Texas, Georgia, Louisiana and others were close behind. Courts and legislatures in 37 states have tinkered ceaselessly ever since, trying to make the death penalty fair, rational and swift.

But instead of fair, rational and swift, all this tinkering is making the law ever more complicated. And complicated means slow. It means expensive.

"There is no question that it's a back-breaker," says Sandy Weinberg, a former federal prosecutor. Recently, Weinberg helped win freedom for Death Row inmates William Riley Jent and Earnest Lee Miller. "It takes eight years or more of litigation to execute someone, and the process just can't go faster."

"The Supreme Court has said 'death is different,' " says Bob Spangenberg, a Boston-based consultant who has studied legal costs and the death penalty for 24 state and federal agencies. "The court has said everyone must follow extensive procedures to guarantee the process is fair. And that takes a lot of time. In *every* case."

As judges anguish over each case, more and more pile up behind. The backlog is infinite. With 300 new cases every year, the U.S. could execute one person every day, and it would take more than 30 years to empty all the Death Row cells.

No one familiar with the system believes that is possible. Daily executions are unprecedented in American history. The executioner's busiest year was 1935, when there were 199 executions.

That record rate, given the current pace of death sentencing, wouldn't make a dent in America's Death Row. At that rate, Death Row would keep on growing.

Last year there were 25 executions in America, the most in a quarter century. Yet the system is barely plodding along, falling further and further behind.

Even that great motivator of balky government — community outrage and pressure — cannot speed the system. No murderer is more loathed and notorious than Theodore Robert Bundy. In 1978, Bundy slipped into a Tallahassee sorority house and bludgeoned two sleeping women to death, then killed a 12-year-old girl in Lake City.

He was sentenced to die three times in 1979. Nine years later, Bundy is alive and well on Death Row.

For five of those years, his case sat before the Florida Supreme Court. Like all capital cases in Florida, Bundy's sentence went to the state high court for a mandatory review. Court justices insist they weren't dragging their heels. The backlog was just too big.

Florida high court justices plow through 70 mandatory reviews each year, consuming at least a third of their time. On top of that, the justices are hit with 30 to 40 last-minute appeals.

"Let me put it this way: Capital cases are a very small part of the caseload of the Court, but we must spend a very, very, very substantial amount of time on them," says Justice Gerald Kogan. "The workload is far out of proportion with the actual number of cases."

Chief Justice Parker Lee McDonald: "If I could figure out a way to make this better or easier or quicker, I would. But I can't."

Executing Ted Bundy

Bundy's federal appeals couldn't even *start* until the state Supreme Court made its ruling. Once the federal appeals were filed, they immediately bogged down in another backlog.

Last week, the 11th Circuit Court of Appeals in Atlanta turned down a Bundy petition. The court took almost two years to decide. Some think the end is in sight for Ted Bundy. They've been wrong before.

There's nothing unusual about Bundy's case. Indeed, there are 55 death cases in Florida alone that have been in the system longer than Bundy's.

And it's getting worse. A year ago, only 275 of the 2,100 death penalty cases in America — 13 percent — had reached the federal level of appeals. Almost all of them were from Southern states. They consumed about a third of the judges' time in the 11th Circuit Court of Appeals and the Fifth Circuit in New Orleans.

From those 275 cases, the federal caseload will increase to 1,000 by 1990, according to Spangenberg, the Boston analyst. He talks of "a tidal wave" of death penalty cases about to swamp courts that have little or no experience with such appeals.

Specifically, the federal courts in California have but a single death penalty case on their dockets. Soon, the caseload will be 80. After the wave hits California, it will hit Ohio. Then Illinois, Pennsylvania, Arizona.

"What was once a Southern problem is soon going to become a national problem," Spangenberg says.

Across the nation, federal judges are looking toward Florida to size up the future. They see a 300-person Death Row. They see a five-year court backlog. They see Charles Proffitt sewing uniforms and Ted Bundy reading legal briefs.

"The judges are beginning to realize what is happening," says Spangenberg. "And they're asking: 'What the hell are we going to do?' "

THE MIAMI HERALD
7/10/88/12A

Bottom line: Life in prison one-sixth as expensive

By DAVE VON DREHLE
Herald Staff Writer

At first glance, executions appear cheap.

Funeral suit from Jim Tatum's Fashion Showroom in Jacksonville — "We Fit Them All, Big and Tall" — costs $150. Florida's budget for the last meal: $20. Executioner's fee: $150. Undertaker: $525, box included.

But the true cost of an execution is closer to $3.2 million.

To execute a prisoner, the state of Florida spends six times as much money as it would to keep him in prison until he dies of natural causes.

How come? Why does the death penalty cost so much more than life-without-parole?

Government agencies and independent analysts in eight states have scrutinized the ledgers. Said Michael Gradess, who calculated the cost of a proposed death penalty in New York: "People in states that have the death penalty kept telling me, 'I hope you're ready to go bankrupt.' "

Although the numbers vary, all the studies agree that death penalty cases cost more than life-in-prison cases at every level — from pretrial investigation to last-gasp appeals.

To begin with, death penalty cases almost always require a trial. They usually generate a lot of publicity, making prosecutors reluctant to plea bargain. And only a suicidal defendant pleads guilty when facing death.

And death penalty trials take longer. Attorneys have unusual freedom to question potential jurors one by one — a very time-consuming process. Fighting for their clients' lives, defense attorneys file twice as many pretrial motions as in the average nondeath murder trial, a California study found.

Once the defendant is found guilty, the law requires a second trial to decide if the prisoner should live or die.

To show why they should live, defendants often call as witnesses psychiatrists, family members, former teachers, even accomplices in past crimes. The witnesses have to be located, which can take months of expensive investigation.

To show why the defendant should die, the state tries to persuade the jury that he is hopelessly evil, a permanent danger to society. For this, prosecutors rely heavily on high-priced psychiatrists.

The total additional cost for trial and sentencing over a no-execution murder trial: at least $36,000, a Maryland study showed. A similar study in Kansas figured the additional costs at $116,700.

After sentencing, every death verdict must be reviewed by the state Supreme Court. The U.S. Supreme Court requires it. And every defendant is entitled to a state-paid lawyer.

Bob Spangenberg, a consultant for the American Bar Association, surveyed more than 150 capital cases across the country. For defense alone, these mandatory reviews cost an average of $34,740 each, Spangenberg computed.

That's just the beginning. After the mandatory review there are at least six levels of appeals. Spangenberg calculated these costs. Average cost for government-salaried defense lawyers: $137,410.

This is a bargain compared to costs racked up by prestigious volunteer lawyers handling death penalty appeals. Wilmer, Cutler and Pickering, a big-name Washington firm, figures it has already laid out $1.2 million in attorney time and $173,000 in hard cash arguing federal appeals for serial killer Ted Bundy.

There are two sides, of course, to every appeal. The prosecution needs lawyers, too. Repeated studies show that prosecutors match defense attorneys dollar-for-dollar.

In Florida, state-paid prosecutors and defense attorneys received about $3 million last year — to fuel a system that executed only one man, Willie Darden.

James Rinaman, former president of the Florida Bar Association, has studied the process at length, hoping to speed it up. He believes more lawyers are needed. To keep up with the demands of Florida's enormous death-penalty system, Rinaman estimates, taxpayers should be shelling out $12 million a year for lawyers alone.

"It boggles the mind," he says.

Analyst Spangenberg estimates the cost of appellate lawyers will soon top $30 million a year nationwide.

In the past, states kept costs down by relying on volunteer defense lawyers. Now there are too many cases and too few lawyers.

Says Clearwater's Pat Doherty, one of Florida's busiest volunteer capital attorneys: "It isn't good publicity. If you're going to do volunteer work, you're better off representing the Poor Clares."

Then comes the expense of prison. Death Rows cost more to run than ordinary maximum security cell blocks, according to studies in Kansas and Alaska. Florida prison officials say specific calculations are impossible.

Florida officials calculate one cost, however. When the governor signs a death warrant and an inmate's execution is scheduled, the doomed man is moved to a cell near-

er the electric chair. For 30 days, guards keep a round-the-clock watch to make sure the inmate doesn't kill himself.

The cost in overtime for guards each time a warrant is signed is $13,800.

There have been 199 warrants signed in Florida since 1973. Sometimes the state saves money because the guards can watch several doomed men at once.

Merely feeding and housing a Death Row prisoner long enough to execute him costs, on average, $108,000.

To'al it up.

Florida taxpayers have paid more than $57 million for the death penalty since 1973. This number is based on the most conservative figures available. The real cost could easily be twice that or more.

Divide the $57 million by 18 executions. The bottom line: at least $3.2 million per execution. And the cost is growing.

Bob Spangenberg, the bar association consultant: "The costs are going to add and add and add and add. It's going to add up until something gives."

Michael Gradess, who studied the issue for the state of New York: "You're going to see a death penalty that costs a billion dollars nationwide."

THE PRICE OF VENGEANCE

The death penalty costs more than life in prison. Here's how much more. The numbers show the range of estimates.

TRIAL & SENTENCING: $36,000-$116,700

The average death penalty case requires more investigation, more pretrial motions, more expert witnesses and a longer jury selection process. A separate sentencing trial is also required — not required in nondeath cases.

MANDATORY STATE REVIEW: $69,480-$160,000

Every death sentence must be reviewed by the state Supreme Court — not required in nondeath cases.

ADDITIONAL APPEALS: $274,820-$1 million-plus

After conviction is affirmed by the state Supreme Court, at least six levels of appeals remain open.

JAIL COSTS: $37,600-$312,600

Death Row requires extra guards for high security.

EXECUTION COSTS: $845

Florida pays $150 for the executioner, $150 for a death suit, $20 for the last meal and $525 for burial.

SOURCES: Miami Herald research; Florida Department of Corrections; Florida attorney general; Florida Office of Capital Collateral Representative; American Bar Association Post-Conviction Death Penalty Representation Project; Criminal Justice Act Division, Administrative Office of the U.S. Courts; Committee to Study the Death Penalty in Maryland; Kansas Legislative Research Department; Alaska Department of Corrections; *Capital Losses*, a report to the New York Assembly Ways and Means Committee; *The Cost of the Death Penalty*, in the University of California-Davis Law Review

But the idea of an ironclad life sentence instead of death is popular among Americans, according to several recent polls.

When asked simply whether or not they support capital punishment, 70 percent of Americans say yes. But when asked whether they prefer the death penalty over life-without-parole, the answers are evenly split.

And by a narrow majority, Americans *prefer* a life sentence — provided the defendant is made to work and his prison wages go to a fund for survivors of murder victims.

Some individuals, of course, stand by the death penalty as a matter of principle. No failures of execution will ever convince them to abandon it.

Gov. Martinez makes the case: "There must be an ultimate penalty. The death penalty is an expensive instrument — but it's an instrument of justice. And there should not be a cost factor on justice. You can't put a value on it.

"Even just one execution in a year shows that justice is being done, that it can work," says the governor.

For others, though, the time has arrived to put the death penalty on trial.

"It is a public policy question that must be decided," says Bob Spangenberg, a Boston lawyer who has advised 24 state and federal agencies on legal costs and the death penalty.

"The question is: When it gets down to decisions about health, education, law enforcement, highways — is the death penalty worth it?"

Price tag changed minds in Kansas

By DAVE VOTT DREHLE
Herald Staff Writer

Kansas state senators voted for the death penalty when they knew the governor would veto it. But when they got a new governor, pro-death penalty, the senators decided they had better take a hard look at the price tag.

What they saw made them change their minds.

Faced with a sagging farm economy, the conservative senators couldn't stomach the waste and expense of the modern-day American death penalty.

"I voted against it, and some people have tried to say I coddle criminals. Well, I don't coddle criminals," drawls Frank Gaines, a 16-year Senate veteran, one of the last of a dying breed of populist Kansas stump orators.

"It costs a lot more money to have capital punishment, and frankly, I think life in prison is just as tough a penalty," says Gaines. "You just get yourself a confining building and put all them animals in there together. If it was me, I'd rather be put out of my damn misery than have to live like that."

Senators who voted no had nightmares of political disaster. After all, the new governor, Mike Hayden, had made support of the death penalty a major part of his campaign. And voters gave him a solid victory.

But the backlash hasn't come.

"I never received as much mail as I did on that issue — but it was thank-you mail. That's real unusual," says Senate President Ross Doyen, who changed his mind after years of supporting the death penalty. "I think a lot of people say they favor it, but when you pin 'em down on the specifics, they're not so sure."

The most eye-opening specific was the bottom line: $11.5 million for the first year of the death penalty alone, according to the Legislature's researchers.

"And those costs are deceptive," says researcher Mary Galligan. "They stack up over the years."

The Senate killed the death penalty initiative. Doyen, the Senate president, doesn't expect the issue to decide any future elections.

"Some people will be upset with you because you support it, and some will be upset because you don't. But it's no pendulum swinger.

"I think this issue is greatly overplayed."

Execution Does Not Pay

The Washington Post
Sunday, February 28, 1988

Barbarism Aside, the Death Penalty Simply Isn't Cost Efficient

By Jonathan E. Gradess

FIFTEEN years ago the Supreme Court ruled that the death penalty as then applied in the United States was unconstitutional *(Furman v. Georgia)*. One brief sentence in Thurgood Marshall's opinion, overlooked by many, noted that "when all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life."

Today, there are more than 1,900 men, women and children as young as 16 on death row, and American policy makers, political officials and criminal justice experts are beginning to regret skipping so lightly over Justice Marshall's comment.

In 1982, my office conducted a national survey to determine the cost of capital litigation. We examined the nature of capital cases, identified 11 levels of review and defined a minimum of 144 "cost centers" that determine the total price-tag of capital litigation. Based on proposed but never enacted legislation to reinstate the death penalty in New York, and using conservative estimates, we projected the potential costs of litigating a model New York capital case across just the first three levels of review—the trial and penalty phase, the appeal to the New York State Court of Appeals, and subsequent review in the United States Supreme Court. The cost of that limited process: $1.8 million per case. The cost of life imprisonment for 40 years: $602,000.

Since then, many more states have looked at the cost of capital punishment, including Maryland, Alaska, Hawaii, Vermont, Texas, Florida, Kansas, Ohio and New Jersey. Some authorities have estimated that capital cases cost 10 times as much as non-capital cases. A Pennsylvania journalist has estimated the cost of a single capital case at $5 to $7 million. There is no longer any doubt that criminal-justice systems with a death penalty cost inordinately more to maintain and expand than criminal-justice systems without a death penalty.

Before policy can change, however, the American people need to understand why capital cases cost more than non-capital cases, why there is no chance that costs can be reduced, and why we can expect that they will exponentially increase yearly until the death penalty is abolished.

Capital cases are more expensive than non-capital cases essentially for three reasons: they are *practically* different than non-capital cases; they are *legally* different; and they are *reviewed more thoroughly.*

■ *The practical difference.* For more than a century, capital cases have been treated differently from non-capital cases. They take longer. Frequently more than one attorney is appointed for a capital defendant. Because life is at stake, trial judges provide more latitude and appeal judges search more carefully for reversible error. (The reversal rate is about 50 percent for death cases and about 7 percent for non-capital cases.) Because the decision to kill is unpleasant, responsibility in capital cases is often diffused—which makes for longer trials, lengthy delays and frequent reversals.

■ *The legal difference.* Ten years ago, the Supreme Court made it clear that heightened standards of due process must be applied to death penalty cases. Consequently, a new jurisprudence—a "super due process"—has evolved governing the trial and appeal of such cases. The investigation is more extensive, the number of pre-trial proceedings is substantially increased, and jury selection takes longer. After conviction, a separate "penalty phase" is conducted to determine the sentence. Because mandatory death sentences have been ruled unconstitutional, the sentencing jury must consider a defendant's individual characteristics. Preparation for this phase is extensive; in essence, it is a trial for life. The defense commonly tries to talk with as many of the defendant's friends, associates, teachers and co-workers as it can reach, to trace his life history, to visit all of the places he has lived and to vigorously pursue all leads in the search for mitigating evidence.

■ *Longer review.* Any defendant convicted in a state court has the right to initiate judicial review at 11 different levels. However, the Supreme Court's ruling that poor people are entitled to appointed counsel applies to only the first two stages; representation in the remaining nine stages essentially depends on volunteer counsel. Ordinarily, lawyers do not volunteer to represent an indigent robber, burglar or non-capital murderer at those stages, but they routinely do so for death-penalty defendants. While these lawyers are not paid, the final stages of a capital case can last a decade or more and generate enormous litigation costs. Police officers and witnesses are brought in. State attorneys general are called upon to respond. Judges must preside. Court time is used up. The United States Court of Appeals for the 11th Circuit in Atlanta, deep in the heart of the nation's death-penalty belt, complains that more than 30 percent of its docket is tied up with death-penalty cases. And all the while, the prisoner is held in a costly high-security death-row cell year after year.

What, then, is the answer? Short-circuit the process and step up the pace of executions? Most Americans recognize that our sophisticated appellate-review process, though seemingly laborious, is a fundamental part of our legal system and protects our citizens against government error and abuse. Even with 11 levels of review, we still convict and condemn the innocent. A study in the November 1987 Stanford Law Review cites more than 100 examples of innocent people sentenced to death since 1900, of whom 23 were executed.

Nor is it reasonable to expect a significantly quickened pace of execution. Since 1977, when we reintroduced the idea of slaying citizens to stop crime, there have been more than 200,000 homicides in the United States, about 2,000 death sentences but fewer than 100 executions. Not even death-penalty proponents believe the American people would tolerate the wave of executions needed to empty death row and keep it that way.

Since both the Constitution and a permanent death-row population are likely to be with us for some time, the cost of the death penalty is certain to grow at an ever-greater rate. The numbers of capitally-sentenced defendants will continue to increase. As cases are appealed, new issues decided in favor of death-penalty defendants will affect all cases not yet final. As issues increase in scope and complexity, costs will escalate. And these factors will combine with the high costs of death-row construction and security.

The cost of the death penalty is emerging as one of our most serious public policy questions. In Kansas last year, the newly-elected governor promised Kansans a death penalty while simultaneously calling for budget cuts for each state agency. The high cost of capital litigation, the establishment of a death row, maintenance of death-row prisoners, the high costs and inordinate delays of the appellate process were debated not only by politicians but by university professors, governmental research units and by Kansas citizens. Opponents cited racial discrimination in the conduct of capital punishment, its lack of deterrence, its inability to stop crime, its potential for erroneous convictions, its immorality and—not least—its high cost. In the end, massive numbers of citizens declared "no" to the reintroduction of the capital sanction and the death penalty was defeated.

Other Americans will eventually realize, as did the citizens of Kansas, that there is not an endless supply of money for the criminal-justice system. Policy choices need to be made. From a conservative cost-benefit analysis, we must declare the death penalty an inordinate waste of resources that deprives our citizens of adequate police protection and reconciliation systems to make both victims and offenders whole.

As the New Jersey public defender budgets more than $100,000 per capital case and anticipates total defense costs in the millions, as the federal judiciary bemoans the resource drain caused by capital litigation and as California prosecutors declare cases non-capital at the outset to save money, the dollars and cents of the death penalty may in fact be the clarion call that sounds the defeat of this archaic and brutal policy.

Jonathan Gradess is executive director of the New York State Defenders Association.

Death Penalty Costs Are Adding Millions to State Government Expenses Across the Nation

The following information is condensed from testimony by Professor David Gottlieb of the University of Kansas School of Law before the Kansas Legislature on Feb. 21, 1987. The Kansas Legislature decided against reinstating the death penalty in that state shortly thereafter.

While on the surface it might seem reasonable to assume that it is less expensive to execute a person than to imprison him for life, that assumption is wrong. As Supreme Court Justice Thurgood Marshall explained in *Furman v. Georgia* in 1972:

"As for the argument that it is cheaper to execute a capital offender than to imprison him for life, . . . it is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row. Condemned men are not productive members of the prison community, although they could be, and executions are expensive. Appeals are often automatic, and courts admittedly spend more time with death cases.

"At trial, the selection of jurors is likely to become a costly, time-consuming problem in a capital case, and defense counsel will reasonable exhaust every possible means to save his client from execution, no matter how long the trial takes.

"During the period between conviction and execution, there are an inordinate number of collateral attacks on the conviction and attempts to obtain executive clemency, all of which exhaust the time, money and effort of the state....

"When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life."

Every study that has been done since Justice Marshall's writing supports his assertion. Capital cases are very expensive. There are at least four reasons why this is so.

First, capital cases take far more time to litigate. Because the stakes are life and death, guilty pleas are a rarity. Virtually every case is taken to trial. For similar reasons, the defense contests every potential issue. Preparation for trial of a death penalty case is generally far more extensive, with two to five times as many pretrial motions. Jury selection takes longer, since the jury must be qualified not only to rule on the question of guilt, but also to decide on the death penalty. The trial itself takes up to three times as long as an ordinary first degree murder case, with far more extensive use of experts and investigators.

Second, death penalty cases require a second, separate trial on penalty if the jury returns a guilty verdict. There is no equivalent to this procedure in a regular murder case. The jury must sit for days, in some cases weeks, to hear evidence concerning whether the defendant should live or die. A host of expert witnesses may be required for this determination. As a result of this second phase, the time taken for a death penalty trial is further expanded, while a non-capital trial lasting even a week is fairly atypical, a typical death penalty case may last from three to eight weeks.

Third, if the jury imposes a death sentence, a long appeal process will begin. The process includes a direct appeal to the state supreme court, a petition for certiorari to the U.S. Supreme Court, post-conviction applications in state courts, appeals of those applications, post-conviction applications in federal courts, appeals of those applications in a U.S. Circuit Court of Appeals, second and sometimes third appeals to the U.S. Supreme Court, and finally a petition for state clemency. The process can take more than 10 years. The cost may be 10 times the ordinary murder conviction appeal. Obviously, a defense attorney will be obliged to pursue every possible legal means to avoid execution; unlike the normal case, there is no place for an attorney to recommend to his client that he not take further appeals.

Fourth, during the time of these appeals, the defendant is housed on death row. Death row costs money to build and is more expensive to staff than an ordinary prison facility. The defendant is housed in a single cell and is unable to contribute to the prison by working in a prison industry.

Defense Costs at Trial

The Kansas public defenders' office estimated that the trial costs of defense services in capital cases could reach $31,000 per case, more than six times that state's current first degree murder case defense costs. Their estimate was based on the assumption that the defense of a death penalty case would require 800 hours of attorney time for an average bill of $26,000. They estimated expert services would cost $3,000 per trial and investigative services $2,000. They predicted 80 first degree murder cases per year for a total bill for trial-level defense services at $2,480,000.

The Kansas projections were well below actual figures being spent in many other states. In 1983, the New Jersey public defenders' office budgeted $100,000 for each capital case. The Ohio public defenders' office estimates the actual cost of capital cases (trial plus appeal) is $60,000. The Kentucky public defenders' office estimates a typical capital case involves $10,000 to $15,000 in expert and investigative fees over and above those in a normal case. The National College of Criminal Defense estimates the investigation costs alone in a capital case at $10,000 per case. A New York study puts the figure even higher, at $40,000 for investigative costs.

Prosecution Costs

Just as the defense must file more pretrial motions in a capital case, the prosecution must answer them. The prosecutor, as well as the defense

(See Costs, page 4)

Costs (continued from page 3)

attorney, must be present for voir dire of the jury, for the expanded trial, and for the additional sentencing proceeding. Capital cases will take four times as long for prosecutors if they take four times as long for defense attorneys., Moreover, if the defense presents experts and uses investigators, there is no doubt the prosecutor will utilize such resources as well.

In most states, far more money already is spent on prosecution than is spent on defense. States have estimated the disparity between prosecution and defense resources as anywhere from two to one to as high as 10 to one. The most conservative estimate is from a recent study in Maryland, which found that prosecution and defense costs there were virtually identical. Taking the Maryland figure, Kansas estimated prosecution costs in that state would be $2,500,000 per year.

Judicial Costs

There are at least three kinds of judicial costs in a trial: jury costs, security costs and the costs of the judges and court personnel.

The Kansas public defenders' office estimated a substantial increase in juror costs for capital trials. Figuring 80 first degree murder cases per year and three weeks longer per trial than in ordinary cases, they projected additional juror costs of $168,000 per year. If the voir dire panel is 150 instead of 100 persons and voir dire lasts two days instead of one, the additional cost would be $160,000. The total increase in jury costs would be $328,000 per year.

Kansas did not develop figures for increased security costs of capital trails, but projected that such additional costs certainly would occur.

The increase in trial time required increases the judicial resources needed. In states where the judiciary chooses not the ask for new judges, the "costs" are borne at the outset by all those litigants who do not have capital cases. These litigants can expect less time devoted to their cases and increased backlogs. But as backlogs mount, state legislatures eventually are forced to supply additional judges. It costs approximately $115,000 to staff a courtroom full-time. If five additional judges are added in a state because of backlogs created by capital trials, the additional cost to the state would be $575,000 per year.

Appellate Defense Costs

The Kansas public defenders' office estimated appellate defense cost increases (for the projected 80 cases) of $135,000 per year in attorney fees and $120,000 per year in additional transcript fees. Their estimate was based on a projection that of the 80 cases only 16 would actually result in death sentences and that one attorney could handle four death penalty direct appeals a year. The cost for four additional defense attorneys and one secretary was estimated at $135,000.

In other states, the cost of each direct appeal has been estimated as an additional $20,000 in Kentucky and California and up to $50,000 in New Jersey. Moreover, the estimated amount of time reported in other states was up to six months of attorney time for each appeal.

Prosecution Appellate Costs

As with trial-level costs, the increase in prosecution costs for appeals is similar to the increase for the defense. Thus, Kansas estimated an increase of at least $135,000 a year in prosecution costs based on 16 death penalty appeals in any one year.

Post-Conviction Costs

After completion of state direct appeals, a series of collateral appeals follows. Post-conviction application are made in state courts and those applications are appealed; post-conviction applications are made in federal courts and those applications are appealed; final appeals are made to the U.S. Supreme Court and a final petition for state clemency follows. Additional defense and prosecution staff and time are required for these.

The State of Florida, which provides state funding for post conviction appeals, is spending more than $1,000,000 per year for post-conviction defense alone.

Corrections Costs

Finally, a state with a death row is required to spend millions on housing those convicted of capital crimes. A death row capable of housing 100 inmates (Georgia currently has more than 100 inmates on death row) in maximum security confinement is more than $7,5000,000. According to former Kansas Secretary of Corrections Michael Barbara, construction costs for maximum security are greater than for medium security and run from $75,000 to $100,000 per bed. At that rate, a 100-person death row costs from $7,500,000 to $10,000,000. The State of Alaska predicted capital expenses of more than $2,000,000 to construct a 20-person death row facility, a cost of more than $100,000 per bed.

In addition to the costs of construction, a Department of Corrections is forced to incur additional staffing expenses. Studies have concluded that it costs far more to house an inmate in death row confinement than in the prison's general population. The costs reflect the need to house each inmate in an individual cell, to separate the inmate from the general population, to provide separate recreation, and to increase security. According to representatives of the Florida Clearinghouse on Criminal Justice, during the eight to 10 years involved in post-conviction review, an extra $15,000 per inmate probably will be required.

100(35)

THE HOUSTON POST
12/7/86/3B

Death, dollars and the scales of justice

Weighing the costs of capital punishment, life imprisonment

By DAN GROTHAUS
Post Reporter

What does capital punishment cost the state? The state doesn't know. Conventional criminal justice wisdom says it costs more to keep 'em than to kill 'em.

But in reality, it costs the state more to execute an inmate convicted of capital murder than it would cost to convict the same suspect of non-capital murder and lock him up — literally — for life.

Considering the current prison housing shortage, the state could build a new prison holding 2,250 inmates for what it has spent to place 212 inmates on death row since 1980 and keep them there.

Since executions began again in 1982, Texas has executed 19 inmates, more than any other state.

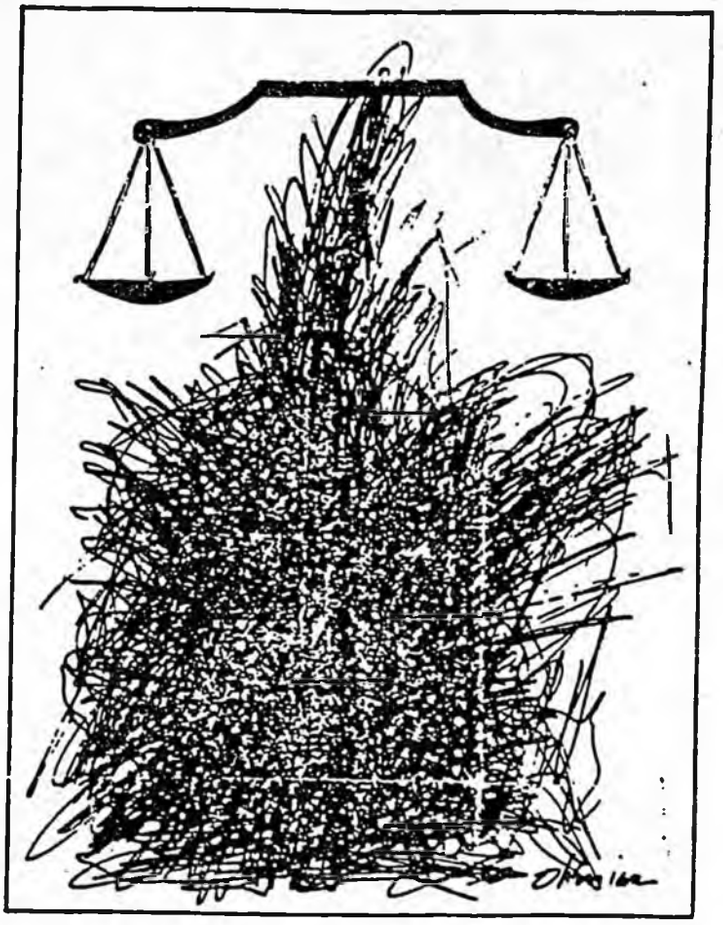
In Harris County alone, the pursuit of death sentences in the 245 capital murder trials held since 1980 represents approximately $86.3 million, or about $1 million per death row inmate sentenced in Harris County. Only 88 death sentences were granted in those 245 capital murder trials. If those cases had been prosecuted for non-capital murder and the 88 death row inmates were instead locked up until age 65, the cost would have been $40,672,370. The difference would be $45.6 million.

However, no one at the state or county level has ever attempted to determine the cost of capital punishment.

Management questions

"You're asking for basic management questions," answered Scott McCown, the Attorney General's law enforcement chief. "And the state gives us no money to provide answers like that. We're just inundated with (appelate) work."

However, the question of capital punishment's cost-effectiveness is gaining attention in other parts of the country. Last year the American Bar Association endorsed a research project that developed a formula to determine the actual cost of capital punishment.



Since 1978, the only three studies that assessed the cost of capital punishment concluded that the death penalty was not cost-effective. "The argument that the death penalty costs less to punish than does life imprisonment is erroneous," concluded a heavily documented article published in 1985 in the University of California-Davis Law Review.

Statewide, since 1980, only 40 percent (212) of the state's capital murder trials (519) have resulted in a death sentence.

Of those death sentences, the Court of Criminal Appeals, since 1972, has reversed 30 percent of all death penalty cases it has reviewed. That court currently has 122 cases pending on apeal.

Using Harris Couty cost figures, the state's pursuit of th death penalty has cost taxpayers $183.2million.

If these same suspects had been prosecuted for non-capitalmurder and placed in prison until their 6th birthday rather than sent to death row it would have cost the state $103.6 millin, or $79.6 million less. The projected costs of building the new prison in Palestine, for 2,250 inmates, is $67 million.

These figures were derived from computerized averages of capital murder trials in Harris County, actual cost figures from the Texas Department of Corrections and estimates of average appellate costs based on more than 30 interviews at the county, state and federal level.

In Harris County, the average capital murder trial costs $305,825. The average appellate process and death row incarceration costs an additional $176,305. The total: $482,130.

Figuring the cost

The cost of capital punishment includes court costs, court-appointed attorneys' fees, average appellate costs at the county, state and federal level, housing costs during the average six years spent on death row awaiting execution and the $36.95 cost of the lethal injection.

The cost of capital punishment was compared to the county court administrator's average cost of a non-capital murder trial (where life is the maximum penalty) and TDC's costs of locking up someone until age 65. The average capital murder suspect in Texas is 27 at the time of conviction.

The average cost of a non-capital murder trial is $22,640. The TDC says incarceration costs $11,388 per inmate per year, or $432,744 for 38 years. The total: $455,384.

Harris County District Attorney John B. Holmes said he was "not surprised" at these cost figures or the results of this comprehensive yet unscientific study.

"But the cost doesn't enter into it when I look at pursuing the death penalty," Holmes said. "That should be a factor for the Legislature to question: Should we have a death penalty, or is it too costly a luxury?"

State Sen. Ray Farabee of Wichita Falls, who serves on the state affairs and criminal justice committees, said he supports the feelings of his constituents, no matter how much it costs the state to execute a convicted killer. "I'm not surprised at those figures (almost $500,000 to gain and affirm a death sentence), but my constituency is overwhelmingly in favor of the death penalty," he said.

Referring to the statewide cost of capital punishment since 1980 compared to the cost of a new prison, he said, "That's an impressive comparison, but it still costs more to keep them in prison than execute them."

"It ought to be a capital offense to use that kind of logic," said Henry Schwarzschild, with the American Civil Liberties Union. "The notion that executing two people will save $30,000 from next year's prison budget is laughable."

Favor executions

The vice chairman of the House committee on law enforcement also feels Texans want capital punishment no matter what the cost. State Rep. Allen Hightower of Huntsville, when told the cost of the state's 21% death sentences since 1980 would more than pay for the new prison being built in Palestine, said, "I think you'll find the people in Texas would still rather pursue the death penalty regardless of the cost."

There are currently 341 inmates awaiting execution on the state's death row, including 81 from Harris County.

TDC's death row population in Huntsville ranks second only to Florida. If Harris County were a state, its death row population would rank sixth in the nation.

Texas ranks first in modern-day executions with 19. Five of those executed inmates were convicted in Harris County.

The 1986 Texas Crime Poll, released Nov. 19 by the Criminal Justice Center at Sam Houston State University, showed that 85 percent of those questioned favored the death penalty. Nearly 75 percent, the survey stated, believe too few criminals have been executed.

Although popular support of the death penalty where capital punishment exists hasn't diminished, there is a small movement around the country to re-evaluate the actual cost of capital punishment.

One study, completed in 1982 by the New York State Defenders Association, was based on hypothetical figures drawn from proposed capital punishment legislation. The executive director of that association said the total costs may vary from state to state but the cost difference between pursuing a death or a life sentence remains the same.

"The cost ratio of 10 to 1 ($500,000 to $50,000) for a capital murder trial versus a non-capital murder trial is what we found in New York and what we would expect to find anywhere else," said Johnathon Grades.

In the most recent study, Margot Garey concluded that the minimum cost of carrying out one execution was $600,000.

"Although the cost of lifelong incarceration surely would be high, the cost of execution with constitutional protections is staggering," said Garey in a lengthy, heavily documented article, published July 1985 in the University of California-Davis Law Review. As a result of these questions being raised, the American Bar Association has decided it is time to provide factual answers to questions on the cost of capital punishment.

Research formula developed

Last year, a committee of prosecutors, defense attorneys and judges developed a research formula to determine the actual expense of seeking the death penalty.

"We did it because no one had ever done it before," said North Carolina Supreme Court's Chief Justice-elect James Exum. The conventional wisdom that an execution was ultimately less expensive than a life sentence has never been tested against an actual study, he said.

Exum hopes to use the formula next year to assess the cost of capital punishment in North Carolina.

The project's director, Richard Van Dulzend of the National Center for S... Courts in Virginia, refused to speculate on what he expects will be "the actual cost of capital punishment."

District Attorney Holmes, who has sent more convicts to death row than any other prosecutor in the state, believes in the death penalty, although he is not a zealous proponent of executions.

Holmes said the death penalty serves as a deterrent, "even if it keeps just one guy from killing an innocent person."

But if there were such a thing as a life sentence without parole, Holmes belives most citizens and juries would prefer assessing life in prison rather than death sentences, "especially if it's not cheaper to kill them ..."

However, Holmes belives there is another factor supporting the death penalty, regardless of the cost: "It comforts people to know that that retribution (the death penalty) is available. If we don't have that option, society may decide to scratch that itch itself, like Bernard Goetz did in the New York subway."

One last factor to be considered is the cost of irreversible error.

Following last Thursday's execution of a convicted killer out of Dallas, Attorney General Jim Mattox said he believes one of the 19 inmates executed since 1982 may have been wrongly sentenced to die. He refused to identify the dead man.

Mattox also told reporters there are "legitimate questions" involving the death sentences of two other unidentified inmates currently on death row.

"I think there are cases that it could be argued the punishment chosen was not the proper one, but I don't think I've seen any glaring abuse," Mattox said.

WALL STREET JOURNAL October 15, 1986

Price of Executions Is Just Too High

By Richard Moran
And Joseph Ellis

When people argue that the death penalty costs too much, they are usually speaking about the human and social costs of the state's decision to take a life. While these costs are undoubtedly great, when we say that the death penalty costs too much we mean quite literally that it is much more expensive than life imprisonment. Here is the reason.

In 1972 the Supreme Court in *Furman v. Georgia* held that "arbitrary" and "capricious" application of the death penalty violated the Eighth Amendment's prohibition against "cruel and unusual punishment." This meant that a defendant had to be prosecuted and convicted in a way that was extraordinarily rigorous and free of any kind of prejudice. Since then the Supreme Court has fashioned what is generally called a "super due process" model for death penalty cases. In a series of subsequent decisions, involving effectiveness of counsel, the right to a fair and impartial jury, as well as "cruel and unusual punishment," the court has held consistently that special substantive and procedural protections are required before a state court can impose the death penalty.

The "super due process" requirement has made the prosecution of death penalty cases enormously expensive. In a recent University of California at Davis law review article, Margot Garey has calculated that it costs a minimum of $500,000 to complete a death penalty trial in California. And between August 1977 (when the current law took effect) and December 1985, only 10% (190 of 1,847 cases) have actually resulted in a death sentence.

Since statistical evidence is notoriously subject to manipulation, there are a number of ways to figure the costs. We think it is fair to say that it costs the citizens of California about $4.5 million ($500,000 x 0.90 failure-rate) to sentence one person to death. Data from New York state suggest that if it adopted the death penalty the cost would be $1,828,100 per capital trial. Assuming even a 0.75 failure-rate, it would cost about $7.3 million to sentence one person to death in New York.

And, of course, not all people sentenced to death will be executed. Many if not most will have their sentences commuted to life imprisonment. Even if we do not include the costs of keeping a man on death row for an average of four years prior to his execution (about $160,000), or the cost to maintain and operate the gas chamber or the electric chair, and if we naively assume that all people condemned to die will be executed (all 55 cases in California have been overturned), it will still cost $4.5 million to execute one felon in California, and $7.3 million in New York.

Nor can these costs be significantly lowered. Since each trial is unique, and most of the costs are incurred in the trial phase—not on appeal—there really is no economy of scale. The $4.5 million and $7.3 million figures do not include appeals that average only $100,000. When a defendant faces a possible death sentence, more time is spent investigating the facts of the case, more pre-trial motions are filed, the trial tends to last much longer, more expert witnesses are called to testify, and there are, of course, many legal objections and appeals. Most of all, there is no cost-saving plea bargaining when the prosecution seeks the death penalty.

Because of the Supreme Court's rulings, there is no way to streamline this elaborate process. Any attempt to do so would deny a defendant the protections guaranteed under the Constitution and increase the possibility of sending innocent people to their death. And the recent decision in the case of Alvin Ford—that a condemned man is entitled to a court hearing on the question of his mental competence before he can be executed—can only further the delays and increase the costs. Like it or not, the Supreme Court has made it abundantly clear that shortcuts to justice are legally unacceptable.

Nationally, the average offender who is sentenced to death is about 30 years old. Let's say he lives to 70—40 more years. At $20,000 a year to keep him in prison that adds up to $800,000. Indeed, if all people charged with capital offenses were actually sentenced to death, then the death penalty would be slightly cheaper in some states. But, in California, for example, only one out of 10 is sentenced to death—so 90% of the cases bear the costs of both a capital trial and life imprisonment.

It isn't necessary to be an accountant to realize that if you substitute life imprisonment for the death penalty, you will save almost $500,000 per trial for first-degree murder in California, and $1.8 million in New York. And since there are about 250 such trials in California per year, the abolition of the death penalty would save the taxpayers about $125 million a year. In New York it has been estimated to be $75 million. Put another way, the death penalty consumes a disproportionate share of our criminal justice dollars.

No one should mistake the above argument as a reduction of a great moral and philosophical issue to a question of accounting. Behind our simple economic argument lies a more haunting moral and legal complexity that has made these costly and cumbersome constitutional protections necessary. The dollars reflect doubts. Not even the most avid supporter of the death penalty wants to execute people capriciously. But the costs incurred in easing our doubts and assuring fairness in capital cases have now reached the point at which they constitute eloquent testimony in their own right. Until scholarly research can prove that the death penalty is more cost effective in deterring murder than life imprisonment, we think that our elected officials might do well to choose the cheaper option.

Mr. Moran is professor of sociology at Mount Holyoke College, where Mr. Ellis is professor of history and dean of faculty.

Executions cost state $57 million

MIAMI (UPI) — Florida taxpayers spent $57.2 million to execute the 18 men who have died in the electric chair since capital punishment was reinstated, more than six times what it would have cost to imprison them for life, The Miami Herald reported Sunday.

The newspaper calculated the cost of keeping a prisoner in jail for life, about 40 years, at $515,964. But Florida spent at least $3.17 million for each execution, largely due to the cost of years and years of appeals.

The report concluded the death penalty is costly, slow, inefficient and failing, noting that 36 Florida Death Row inmates have been there more than 10 years.

"Death Row is going to get bigger, the wait for execution is sure to get longer and the cost is bound to get higher," the newspaper said.

Half of all death sentences are overturned on appeal, usually after years of expensive litigation, the paper said. And for every execution in America, the courts sentence 13 more people to die.

Florida has the nation's largest Death Row, with 295 convicted killers awaiting execution. Although the Florida public solidly supports the death penalty, the state has executed only two men in the past two years. In the same two years, 89 people were sentenced to die.

"I don't know if we're ever going to catch up," said Carolyn Snurkowski, Florida's chief appellate prosecutor.

In Miami, the public defender is under court order not to take on any more death penalty cases be-

Justice Gerald Kogan says the workload on Death Row cases is out of proportion.

Ted Bundy, sentenced to die three times in 1979, is still alive and well on Death Row.

cause the caseload is already too great. That means private attorneys must be appointed and paid for by the courts.

"The system doesn't have the resources to handle the workload," said Public Defender Bennet Brummer.

Critics blame the lengthy appeals process for the backlog.

"The Supreme Court has said, 'death is different,' " said Bob Spangenberg, a Boston consultant who has studied legal costs and the death penalty for 24 state and federal agencies. "The court has said everyone must follow extensive procedures to guarantee the process is fair. And that takes a lot of time. In every case."

Ted Bundy, for example, was sentenced to die three times in 1979, but nine years later is still alive and well on Death Row. His case lingered before the Florida Supreme Court for five years because of the huge backlog.

Florida high court justices plow through 70 mandatory reviews each year, consuming at least a third of their time.

"Capital cases are a very small part of the caseload of the court, but we must spend a very, very, very substantial amount of time on them," said Justice Gerald Kogan. "The workload is far out of proportion with the actual number of cases."

Analysts are predicting the federal court will experience similar frustrations as the cases move through the state appeals processes and into the federal courts.

There are 2,100 people on America's Death Row. A year ago, 275 of their cases had reached the federal level, mostly from southern states.

By 1990, 1,000 cases will reach the federal level, Spangenberg predicted.

"What was once a Southern problem is soon going to become a national problem," he said. "The judges are beginning to realize what is happening. And they're asking, 'What the hell are we going to do?' "

Tampa Tribune
Monday 7/11/88

NY STATE DEFENDERS ASSOCIATION

CONCLUSION

Throughout this paper we have suggested the existence of certain indirect costs or made reference to specific costs we do not calculate.[64] These include court costs, jury sequestration, security costs for local correctional facilities, the cost of hiring special penalty phase counsel, and millions of dollars that will be associated with state and federal post-conviction review.

It should by now be clear that government has failed to look at the actual costs of defending and prosecuting capital cases. It has failed to examine the impact of the death penalty on the state's correctional system. It has no idea what the price tag for capital litigation by the Attorney General's office will be.

While prosecution costs in capital cases will probably bankrupt some counties, local governments, already caught in a quagmire over a jail crisis, have yet to examine the impact of capital case security requirements on local correctional facilities.

All these issues must be confronted without appeal to bloodlust. Bloodlust in the name of the public good is a political lie.

And the public? The public is concerned with security on the streets, in homes, at school, in offices. The public is, at best, overlooked by a government's death-bent myopia and, at worst, disregarded.

Crime and justice need to wear a common yoke. The death penalty permanently disengages them one from the other. There can be no murder in the name of justice.

Capital cases do not need to exist. The expenditures outlined in this paper are not necessary. Millions of dollars directly attributable to a death penalty and capital litigation can be instantly saved and redirected by not reinstituting capital punishment in New York State. This is not a choice ordinarily posed to voters or those others who live petrified and diminished by the fear of crime.

Political rhetoric, however, should not be permitted to obscure the true pain of the families of homicide victims. They need closure. For capital defendants, delay and legal review mean life. For the families of homicide victims, delay and legal review mean pain. For both, the process is agonizing.

While many have voiced concern over victims or perpetrators, few seem to know the true agony of either—the agony that comes from the notoriety of five or six appeals, from two or three reviews by the Supreme Court, from being dragged, alone, through the cruel and unusual punishment of waiting.

For the victim's family, it is the seemingly endless grief, memories of the morgue, recounting the report of death, refeeling aloneness.

The death penalty perpetuates victim pain. It also eats at the innards of the accused. Death row:

> ". . . is set up with one thing in mind: to hold a person until execution. None of the programs of education or rehabilitation available to others in even the strictest of prisons are available to death row inmates. The prison is required only to house, feed and then kill the inmate. This makes life on death row far more depressing and meaningless than life normally is in prison. . . . [D]eath row, . . . a ghastly zoo organized and wholly devoted to carrying out the most sordid act imaginable ***is just barely living. It is instinctive existence where the days are stitched together by a thin thread of hope that either the laws under which the penalty was decreed will be ruled unconstitutional or one's conviction will be reversed for some reason. The effects of years of isolation and deprivation, the lack of human contact, touch, and

[64] See nn. 25, 26, 29, 30, 38, 47, 52, 53, 54, *supra*, and text accompanying them

sexuality builds unrelievable pressures. The constant possibility of execution added to those pressures makes for a grinding, withering life that is all but intolerable—a 'slow coming dark.' "[65]

The debate on the death penalty has become sordid and loud. It has diminished us all. We have come very far down the road from morality. Too far. The distance is shamefully represented by the theme of this paper—cost. Capital litigation and the costs of the death penalty, however, will not go away until the death penalty is abolished.

As can be seen from Table 5 below, some of the costs of the first three stages of capital litigation will total no less than $1,828,100.

TABLE 5
COST OF STATE I
(Trial, Appeal, Supreme Court)

	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge	$517,700	—0—	$300,000	?	?	$817,700
County Charge	—0—	$1,010,400	—0—	?	?	$1,010,400

STATE $817,700
COUNTY $1,010,400
TOTAL $1,828,100

By the time the first 40 New York death cases have been tried to verdict, over $59 million will have been expended. By the time the first 21 New York death cases have reached the United States Supreme Court, New York State and its counties will have expended as much as the Governor, in his February crime message, deemed appropriate for the entire statewide Major Offense Prosecution Program. An amount exceeding the Legislature's fiscal year 1982-83 local criminal justice assistance budget will rapidly be spent to pay for the death penalty in New York.

A recent analysis of the criminal justice system[66] indicates that the cost of the system has increased by 120 percent every five years since the early 1900's, while the rate of inflation has only increased by 40 percent every five years. A capital case, therefore, that necessarily taps resources from all facets of the criminal justice system, can be estimated to increase in cost at a similar rate. If 20 percent of the murder cases in New York (251 convictions in 1980[67] are prosecuted through three stages of litigation as capital offenses at an average cost of $1.5 million, then in current dollars the death penalty will generate costs of approximately $75,000,000. If we assume that the cost will grow in proportion to the cost of the criminal justice system as indicated by the study, then in the year 2000 A.D., the death penalty will cost $1,075,000,000 annually. Perhaps that is what the Temporary Commission on Revision of the Penal Law meant

---

[65] D. MAGEE, SLOW COMING DARK: INTERVIEWS ON DEATH ROW 5, 6 (1980).

[66] Sepler, *The Next Twenty-Five Years Facing the Criminal Justice System: Using Standard Celeration Charting for Systems Analyses*, 6 AM. J. CRIM. LAW 47 (1979).

[67] *Annual Report '80—Crime and Justice*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, at 224.

in 1965 when, regarding the death penalty, it found "nothing but obstruction, confusion and waste."[68]

We have not detailed the costs of an actual execution. They singularly generate inordinate, almost uncontrollable, expense. The state of Georgia, which executes by electrocution, spent more than $250,000 solely for the anticipated, but aborted, execution of Jack Howard Potts in 1980.[69]

Special telephone lines running from the prison to the United States Supreme Court and to the Governor's office are necessary. The cost of extra police personnel for crowd control, helicopter security and the shutdown of federal air space over the prison are but a few items of the irrational cost that will be generated in the rare handful of cases that ever reach the execution stage.

It is our hope that a rational discussion of the costs of the death penalty will lead New York State to a rational conclusion. ■

---

[68] See n. 8, *supra*.

[69] *Atlanta Journal*, Feb. 11, 1982, at 1, col. 1.

Death penalty: executions said more costly than life terms

By STEPHEN MAGAGNINI
McClatchy News Service

SACRAMENTO — If California's death penalty law were abolished tomorrow, taxpayers could save $90 million a year. It now costs the state much more to attempt to execute someone than to lock the person up for life without parole.

If California resumed executions today at its historical rate of six a year, the total costs of having capital punishment — defense and prosecution fees, court costs and incarceration on death row — would come to at least $15 million per execution, according to figures compiled by The Sacramento Bee.

On the other hand, it costs about $930,240 to imprison an inmate for life, based on an average life expectancy of 40 years in prison, according to figures supplied by prison officials.

Eleven years ago, California reenacted the death penalty. Since that time, prosecutors have filed death-penalty charges against more than 2,000 defendants, according to the California Appellate Project, which finds attorneys to handle appeals for death-row clients.

But while Californians clamor for fresh executions, the state's current death-penalty law has so many protections built into it that it's nearly impossible to execute someone who has a good lawyer.

Earlier this year, Texas inmate Robert Streetman was executed six days after he was finally assigned an attorney. "By then it was too late for the attorney to do anything," said University of Texas law professor Scott Howe.

But in California, the state Supreme Court spends $3.6 million a year on experienced death-penalty defense lawyers to make sure accused murderers get a fair shake.

The investment has paid off. There is no evidence that California has executed an innocent person this century, according to a recent Stanford Law Review study.

But a review of thousands of pages of court documents, coupled with dozens of interviews with prosecutors, defense attorneys, law-enforcement experts and court officials, reveals an expensive capital-punishment system clogged at every level.

Gov. George Deukmejian said costs are secondary to the government's need to protect the public from murderers.

"The victim of a murder has lost everything, and his family also suffers a great loss," Deukmejian said. "The costs of crime and the costs of punishing criminals both carry a high price tag."

To help ease the financial burden created by death penalty trials, California spends $10 million a year reimbursing counties for expert witnesses, investigators and other death-penalty defense costs, plus $2 million more to help pay for the overall cost of murder trials in smaller counties.

But despite this infusion of state funds, many financially strapped smaller counties still can't afford to prosecute complicated death-penalty cases, district attorneys said.

Some small counties have only one prosecutor with little or no experience in death-penalty cases; no investigators; a single Superior Court judge, and not enough unbiased people to qualify as potential jurors.

Other criminal cases are delayed for years while death-penalty cases are decided. Ironically, Sierra County has had to cut police services to pick up the tab.

For prosecutors, taking on a death-penalty case is a high-stakes gamble with low odds of success. Only one in 10 capital cases filed in California results in a death verdict, according to the California Appellate Project.

Every death verdict is automatically appealed to the California Supreme Court, which now spends more than half its time reviewing death cases, experts noted. Nearly 200 death cases are currently under review by the high court, which gets about 30 new such cases each year.

The current California Supreme Court, headed by Chief Justice Malcolm Lucas, is deciding death cases at twice the rate of the previous court headed by Rose Bird.

But even at the current court's accelerated pace, it will be impossible to erase the backlog. The Supreme Court, which has more than 400 criminal and civil cases pending, is reviewing ways to speed up its work; one proposal is to hire a pool of lawyers to work exclusively on death-penalty cases for the court.

Only 12 inmates on San Quentin's death row have had their verdicts affirmed by the California Supreme Court. Those cases have kicked around the courts for an average of eight years. They have cost the taxpayers an average of $1.7 million each, according to information compiled by San Quentin information officer Dave Langerman, and the meter is still running.

State officials said the case of Earl Lloyd Jackson, convicted of murdering two elderly Los Angeles women in 1977, has already cost more than $5 million.

"The cost of a death-penalty case could range from $750,000 to — the sky's the limit," said Deputy Attorney General Michael Wellington. His boss, Chief Assistant Attorney General Steve White, estimated that each death-penalty case has cost at least $1 million to prosecute so far at both the trial and appellate levels.

The DAILY NEWS
(USPS 144-500)
(ISSN 0746-6188)

Published daily, except Sundays, by Owens Publications, Inc., 7677 S. Comstock Ave., P.O. Box 561, Whittier, Calif., 90608. Telephone 698-8955.

Adjudicated a newspaper of general circulation Oct. 18, 1888 by Superior Court decree No. 263333.

Second class postage paid at Whittier, Ca

Member: California Newspaper Publi... re Assn., and Audit Bureau of Circulations; national advertising representatives, Creamer, Woodward, O'Mara and Ormsbee, Inc.

SUBSCRIPTIONS

Delivery by Carrier $1.10 per week; Single copy rates, Monday thru Saturday, each copy .25¢; Sunday Tribune-News .75¢. Recent back issues .25¢; over 30 days .35¢.

MAIL RATES
Effective Jan. 1, 1988

Daily with Sunday Tribune News		
In California	$42.90	13 weeks
In U.S. outside California	$39.00	13 weeks
Outside U.S.	$102.70	13 weeks

DELIVERY SERVICE

Your Daily News should arrive by 5:30 p.m. Monday thru Friday and by 8:00 a.m. on Saturday. If you failed to receive the Daily News, kindly call your carrier before 7 p.m., Monday thru Friday or before 11:00 a.m., Saturday. If you can not reach your carrier call The Daily News at 698-0955.

Vol. 87 MARCH 28, 1988 No. 317—P.M.

Charles Campbell
3020 Douglas Highway
Juneau, Alaska 99801

MAR 6 1989

March 6, 1989

Senator Rick Uehling, Co-Chairman
Senate Finance Committee
Alaska State Senate
Juneau, Alaska

Re: CS SB 17 The death penalty

Dear Senator Uehling:

In 1980, while serving as Director of Corrections, I was assigned to do some research on the death penalty question and work on a position paper for Governor Hammond. Although I had been in the criminal justice field for almost thirty years, I had not had occasion to learn much about this matter. The more I looked into to it the more convinced I became that, quite aside from moral and philosophical considerations, the death penalty is a very bad idea. If you will read over the attached letters I have written to members of the Judiciary Committee, together with the position paper sent to you by the Anti-Death Penalty Information Network, you will have a pretty good idea as to our reasons for opposition to this bill.

Please let me offer these additional thoughts, specifically relevant to the concerns of the Finance Committee.

During the course of the several Judiciary Committee hearings conducted by Senator Faiks, no attempt was made to make a case for S.B.17, either by its principal sponsor or by a member of the committee. So far as I know there has been no articulation of a purpose to be served, a need to be met, a problem to be solved or an advantage to be gained by passage of this legislation. Especially at this time in the life of Alaska, I should think that every proposed piece of legislation that has any dollar cost attached needs to be strongly justified. If a reduction in the incidence of homicide is the object of the bill, the Judiciary Committee should have looked at the experience of other jurisdictions in the U.S. and throughout the world, and taken a more objective look at the empirical evidence. Had that occurred the Committee would have learned that no reduction in the incidence of homicide in Alaska could be expected from passage of the bill. Indeed, there are highly respected studies that indicate that the opposite might be the result. The two "expert witnesses" who testified by telephone from the east coast during one of the hearings appear to have been especially recruited in order to tell proponent of the bill what they wanted to hear on the question of deterrence. Both gentlemen expressed atypical views. The overwhelming consensus among criminologists and other social scholars who have studied the question is that the threat of execution is has no more value as a deterrent than life imprisonment.

Although its sponsors may have introduced S.B.17 in the belief that execution would be an efficient, inexpensive way of dealing with convicted 1st degree murderers, I am sure everyone following the hearings conducted by Senator Faiks has been disabused of such notions. The death penalty is enormously expensive, many times more expensive than life imprisonment. With respect to this question the Finance Committee will want to give close attention to the testimony of Laurie Otto of the Department of Law, Brant McGee of the Public Advocacy Office and John Salemi of the Public Defender Agency. Leaving aside the matter of dollar costs, we can be sure that an attempted implementation of the death penalty sanction in Alaska would

result in exceedingly grave costs in terms of protracted bitterness and division among the people of the state.

Incidentally, I am sure that there are members of the Legislature who privately have misgivings about the wisdom of reinstituting the death penalty in Alaska, but are intimidated by the perceived overwhelming support for the death penalty on the part of the citizens of the state. I haven't seen any poll on death penalty attitudes among Alaskans, but a careful look at polls conducted elsewhere around the country provides some surprising insights. In Georgia, for example, one of the most death penalty prone states in the U.S., a recent study done for the Clearinghouse on Georgia Prisons and Jails indicated that while 75% of Georgians approve of the death penalty, 52% would favor abolition of the death penalty if replaced by life imprisonment with no parole eligibility for twenty five years, combined with a program of work with earnings going to compensation of the families of victims. A national survey commissioned by the Justice Department last year indicates that only 36% of respondents polled nationally choose the death penalty when given acceptable options. Another study, conducted last year among voters in Nebraska, has shown that the death penalty question may have far less political significance than has been generally believed. Voters in Nebraska were reminded that their unicameral legislature had voted on abolition of the death penalty during the previous session and were asked how their representatives voted. 95% of the respondents did not know or couldn't recall. Only 23% of them indicated that they would be less likely to vote for their representative as result of a vote to abolish the death penalty.

I am convinced that many of the seventy five or eighty percent of Alaskans who, according to reports, favor the death penalty, favor it because of inaccurate assumptions. I am furthermore confident that the death penalty, despite the appearance of great support throughout the country, is such an indefensible idea as to be destined to go the way of slavery within the next couple of decades.

I know you will give careful consideration to this very serious matter as it becomes before the Finance Committee on Wednesday. If I can be of any help to you don't hesitate to call me at 586 5793.

Sincerely,

C Flamhill

Charles Campbell
3020 Douglas Highway
Juneau, Alaska 99801

January 26, 1989

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 reinstitution 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 incontravertible, 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 possiblity 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 uneveness 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,

Charles Campbell
3020 Douglas Highway
Juneau, Alaska 99801

February 6, 1989

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

Re: Expert testimony on Senate Bill 17

Dear Senator Faiks:

I regret not having been able to attend the Senate Judiciary Committee hearings on Senate Bill 17 last week, during which Professors van den Haag and Layson testified by telephone from the east coast. I have read the Associated Press account of their testimony and talked to people who attended the hearing. I also know something of both Professor Layson and Professor van den Haag. They are advocates of the death penalty, and presumably competent to give informed views on one side of the question. However, you could hardly expect to gain a comprehensive and objective understanding of the death penalty question by relying on them alone as expert witnesses.

My impression is that you have taken a position of unalterable support for getting a death penalty law on the books. Your deep convictions on the matter are to be respected. I have such convictions on the other side of the question. In any case, given the serious implications posed by the prospect of death penalty legislation in Alaska, I urge you to delay moving further with Senate Bill 17 until more information and better education on the issue can be obtained. Any number of experts on the death penalty are available who would be able to give a different perspective on the question than that provided by Professors Layson and van den Haag. I should think the membership of the Senate would want to have a more balanced inquiry into this grave matter than will occur should you rely on them as the only expert witnesses.

Neither of the professors is a criminologist. I stick by the statement in my letter to you of January 16, 1988, that "the whole body of research into this matter (deterrence and the death penalty) over the past twenty years fails to show credible evidence that the death penalty has a deterrent effect." and that "Among criminologists, it is hardly a matter of debate anymore." By no means do I suggest that only criminologists are qualified tc offer expert testimony on the death penalty question, but theirs is the discipline that specializes in doing empirical studies of crime, thus they are able to speak with more authority on the matter of deterrence.

Professor Layson is an economist, and one of the lonely few social scientists who still see value in attempting to study a social phenomenon like major, violent crime using an econometric research design. To his credit he apparently made it clear to the Committee that his findings were "inconclusive." I refer you to the National Academy of Science 1978 Volume entitled Deterrence and Incapacitation- specifically to the paper by Nobel Laureate economist Lawrence Klein. He is only one- perhaps the most distinquished- of the many scholars who warn us about giving credence to studies that use nationally aggregated data and econometric methods in studying subjective social phenomena like murder or other violent crime. The fact remains- the great weight of empirical evidence tells us that no deterrent effect from the death penalty has been shown, or is likely to be shown. Professors Layson and van den Haag are in a small minority of persons claiming expertise who believe in deterrence as a valid justification for the death penalty. Indeed, there are studies that provide disturbing evidence that use of the death penalty is more likely to incite

than deter persons who are predisposed to violent crime.

Professor van den Haag is not a criminologist nor, for that matter, a social scientist. As a law professor, he has training and experience in the criminal justice field, has looked into the death penalty question and has strong opinions about it. Since that description fits me about as well as it does Professor van den Haag, I can hardly do other than respect his right to his opinion, even though I differ from it. One significant difference in us, however, is that I know and love Alaska, and deeply care about the welfare of my fellow Alaskans.

According to the AP news account, Professor van den Haag made a couple of statements that, taken together, struck me as curious, to say the least. One of them was that "if we only deter one murder a year because of the death penalty, as opposed to life imprisonment, I think it is entirely worthwhile." He also conceded that "in [illegible] human institutions we must assume that errors will be made," and [illegible] he insisted that fear that an innocent person might be executed is insufficient reason to refrain from use of the death penalty. If Professor Van den Haag is concerned about the loss of innocent life, I am surprised that he would not recognize the inconsistancy of these two observations. Furthermore, in response to a question about Alaska's constitutional requirement that the state's penal system be based on reformation, Professor Van den Haag is reported to have said "I don't believe it is any easier to reform a living murderer than it is a dead murderer." Could it be that Professor van den Haag, a professor of the law at Fordham University, does not know that murderers have for many years shown lower recidivism rates than all other offender groups?

I recognize the difficulty that sometimes is experienced in getting quoted accurately and in context. Perhaps, if given the chance, Professor van den Haag would be able to provide clarification on these puzzling offerings.

Professor Layson, despite his own views and conclusions about the deterrence question, is reported to have expressed to the Committee his doubts as to the value of the death penalty in Alaska. He cited the inordinate cost of the death penalty, as opposed to life imprisonment, (presumably taking into account the lack of a proven difference in the deterrent value of the two options.) My view is that the monetary costs involved in use of the death penalty, astromomical though they are, would be insignificant by comparison with the cost in disillusionment, discord and protracted controversy among the people of our state. Even those who may, in principle, approve of the death penalty in some circumstances, must realize that in our small, racially diverse, culturally complex population, implementation of a death penalty law would have a devastating effect on the feeling of neighborliness and unity that, in large measure, we have come to enjoy in our state. And again I must ask- where is the problem, that calls for such a drastic non-solution? There are better, more civilized ways of responding to serious crime. We must continue to incapacitate dangerous criminals by confinement, as we have done since 1950, and as have most nations of the western world and all but thirteen states of the U.S. for two decades.

Again I urge you to delay further action on this bill until additional expert testimony can be obtained. I would be happy to suggest the names of knowledgeable people whose testimony would serve to balance the views expessed by Professors Layson and van den Haag.

Sincerely,

cc: Senate Judiciary membership

Charles Campbell
3020 Douglas Highway
Juneau, Alaska 99801

February 20, 1989

Senator Drue Pearce
Alaska State Senate
Juneau, Alaska

Re: Death penalty legislation before the Senate

Dear Senator Pearce:

You have copies of my letters of January 26 and February 6 to Senator Faiks expressing my opposition to reinstitution of the death penalty in Alaska. I write to you on this occasion because of an extremely significant question you posed during the Judiciary Committee hearing last Thursday. In response to the rather devastating testimony that had been heard regarding the extremely high costs of death penalty proceedings, Senator Faiks was proposing that S.B.17 be revised, dropping the requirement that all first degree murder prosecutions be viewed as potential capital cases, giving discretion to the prosecuting attorney. In effect, your question was: What if a particular prosecuting attorney doesn't believe in the death penalty, or has misgivings about it- would this not mean that persons charged with first degree murder in his or her jurisdiction would escape the threat of the death penalty while defendants in other jurisdictions charged with similar crimes would go on trial for their lives?

It is highly significant that you did not get a satisfactory answer to that question. There is no satisfactory answer. Your question goes to the very heart of the matter. It lays bare the inevitable unfairness and capriciousness of the death penalty as a criminal sanction under the U.S. criminal justice system.

You heard Laurie Otto's testimony as to Florida's practice of controlling the number of death penalty trials by having prosecutors pick and choose among the thousands of homicide defendants in that state. As a result of that discretion, the same kind of discretion now being written into S.B.17, there are, alive and well in Florida's prisons, hundreds of offenders whose crimes were more egregious than some of those who have been put to death in that exceedingly death penalty prone state during the past twelve years. The same circumstances pertain, and will always pertain, in every state that relies significantly on selectively executing people. Everything must be favorable if prosecution of a capital case is to succeed. For this reason, selection of cases for death penalty prosecution invariably depends on quality of evidence, availability of witnesses and other such matters that may have little or nothing to do with the offense itself. Resources at hand can be a consideration. If a case is filed at a time when the prosecuting agency has funds and the staff isn't too busy, the death penalty option is more likely to be chosen than at a time when funds are tight and there is a work overload. There is nothing fair about the process and there is no way to make it fair.

Use of the death penalty in our system of justice is intrinsicly unfair in other respects. How did it sit with you, for example, when Brant McGee told us about the requirement of a "death qualified" jury in capital cases- one in which there can be found "no taint of bias against the death penalty"? What this means, of course, is that the fate of a person on trial for his life is decided by a jury more likely to be conviction prone than juries that try non capital cases. And then there is the recent U.S. Supreme Court decision, McCleskey v. Kemp, that acknowledged racial bias in the use of the death penalty in Georgia, but allowed the execution in question to proceed, because racial bias was not proven in that particular case. Thus, the Court conceded that the death penalty convictions of an unspecified number of the men executed in Georgia since 1977 were tainted by

empirically proven racial bias. There have been no suggestions as to how those men might be brought back for new trials. You might want to think about this, keeping in mind the racial and ethnic composition of Alaska's population.

There are other matters that haven't been brought to the attention of the Committee. At present more than twenty two hundred individuals are on death row throughout the United States. Between two and three hundred are being added each year. And yet, an average of only about eight executions have been carried out each year since Gregg v. Georgia in 1977. I don't think Alaska wants to contribute to the unholy growth of this vast, festering snake pit. Death house population growth is a terrible problem for the states that have continued to use the death penalty. It is very much like disease that will become increasingly debilitating.

The prosecutors of Florida have been very dogged about serving up an offender for execution every eight or ten months since John Spenkelink went to the chair in 1979. It has cost the state about 60 million dollars to execute about 20 people. No other state has been quite as aggressive about using its resources for this dubious purpose. Within a short while, a prison the size of Spring Creek will not be large enough to house their condemned prisoners. Meanwhile, the homicide rate in Florida continues to grow. Between them, Texas, Georgia and Louisiana have executed fifty. Virginia has executed seven. No other state in the union has executed more than three. The states that have been successful in executing significant numbers have not seen the slightest trace of a good result. There is no credible evidence that executions, on balance, deter capital crime. The better studies indicate that the opposite might be true. Among social scholars, the two gentlemen who testified by telephone for the Committee from the east coast a couple of weeks ago were thoroughly non-representative. The death penalty cannot be justified on the basis of deterrence.

The State of Alaska would be well advised to stay away from the morass of problems that would beset us should we adopt legislation authorizing the death penalty. In most questions of public policy there are pro and con considerations. Not so with this question. There would be absolutely nothing gained by passage of this legislation- aside from the possible political gains of those legislators supporting it. If ever there was an opportunity for a display of courageous political leadership, we have it here. I am disappointed that Senator Faiks did not act on my recommendation that she call expert witnesses to balance the dubious testimony of Professors Layson and van den Haag, but otherwise she is doing a good job of hearing from all sides and examining the question carefully. The more carefully the question is examined, the clearer it will become that the death penalty idea is a very bad idea- especially for Alaska. It will be difficult for legislators to vote against S.B.17 in the face of polls that suggest that 70% of Alaskans favor the death penalty. My conviction is that support of the death penalty in Alaska, and across the country, is a mile wide and an inch deep. Most people think that it is cheap and has deterrent value, and have no notion as to the terrible problems associated with it. They need help from people like you and the other legislators who are in process now of learning the sober truths about the death penalty. I have great hope that reason and courage will prevail over politics when a final decision is made by the Legislature on the grave question posed by S.B.17.

Sincerely,

Charles Campbell
Former Director of Corrections for Alaska.

"A TIME FOR PEACE"

MAR 3 1989

"...alternatives to violent solutions exist...
if individuals and nations organize themselves properly.
moral force is stronger than physical force."

Coleman Mc Carthy

2-27-89

MAR 7 1989

Dear Senator Pearce

If this bill has moved beyond the Senate Judiciary Committee would you please forward this material to the appropriate people or let me know its status so that I can do so. Thank you.

Charles Young, Convener
A Time for Peace

Call him –
Say we'll make copies available to finance members. D=0.

900118

c/o: POBox ~~128~~, Univ. of Alaska, Fbks. Fairbanks, AK 99775-1620 (907) 474 7304

Reaffirm Opposition to Capital Punishment

SP 74.F

WHEREAS, there is a rising tide in the United States of America to reactivate capital punishment in all states; and

WHEREAS, in the last year there have been several executions of human beings by the penal system as punishment for crimes committed; and

WHEREAS, we are convinced that the rising crime rate is largely an outgrowth of unstable social conditions which stem from an increasingly urbanized and mobile population; from long periods of economic recessions; from a history of unequal opportunities for a large segment of the citizenry and from inadequate diagnosis of criminal behavior; and

WHEREAS, we believe the state cannot teach respect for human life by destroying human life; and

WHEREAS, the Holy Scriptures teach us that human life is both sacred and divine and that we bear the image of the incorruptible God; and

WHEREAS, Jesus Christ taught us love, forgiveness and reconciliation; and

WHEREAS, all Christians are under divine mandate to safeguard life and work for the salvation of all humankind;

Therefore Be It Resolved, that The United Methodist Church reaffirm strongly its position against capital punishment; and

Be It Further Resolved, that the General Board of Church and Society prepare and disseminate materials and work with each annual conference in developing a plan of action to impact capital punishment legislation in their state; and

Be It Finally Resolved, that the 1984 General Conference issue a national press statement which clearly states the church's opposition to capital punishment and its commitment to work for its abolition.

ADOPTED 1984

See related resolution: "Capital Punishment," p. 384.

In spite of a common assumption to the contrary, "an eye for an eye and a tooth for a tooth," does not give justification for the imposing of the penalty of death. Jesus explicitly repudiated the *lex tallionis* (Matthew 5:38-39) and the Talmud denies its literal meaning, and holds that it refers to financial indemnities.

When a woman was brought before Jesus, having committed a crime for which the death penalty was commonly imposed, our Lord so persisted in questioning the moral authority of those who were ready to conduct the execution, that they finally dismissed the charges (John 8:31f).

The Social Principles of The United Methodist Church condemns ". . . torture of persons by governments for any purpose," and asserts that it violates Christian teachings. The church through its Social Principles further declares, "we oppose capital punishment and urge its elimination from all criminal codes."

After a moratorium of a full decade, the use of the death penalty in the United States has resumed. Other Western nations have largely abolished it during the 20th century. But a rapidly rising rate of crime and an even greater increase in the fear of crime has generated support within the American society for the institution of death as the punishment for certain forms of homicide. It is now being asserted, as it was often in the past, that capital punishment would deter criminals and would protect law-abiding citizens.

The United States Supreme Court, in *Gregg V. Georgia,* in permitting use of the death penalty, conceded the lack of evidence that it reduced violent crime, but permitted its use for purpose of sheer retribution.

The United Methodist Church cannot accept retribution or social vengeance as a reason for taking human life. It violates our deepest belief in God as the creator and the redeemer of humankind. In this respect, there can be no assertion that human life can be taken humanely by the state. Indeed, in the long run, the use of the death penalty by the state will increase the acceptance of revenge in our society and will give official sanction to a climate of violence.

The United Methodist Church is deeply concerned about the present high rate of crime in the United States, and about the value of a life taken in murder or homicide. When another life is taken through capital punishment, the life of

February 18, 1989

MAR 3 1989

Senators Faiks, Szymanski, Halford, Pearce and Rodey:

WE THE UNDERSIGNED, IN SUPPORT OF THE POSITION TAKEN BY THE GENERAL CONFERENCE OF THE UNITED METHODIST CHURCH (ATTACHED) DECLARE OUR FIRM OPPOSITION TO THE USE OF THE DEATH PENALTY (CAPITAL PUNISHMENT) IN THE STATE OF ALASKA.

Printed Name	Signature	Address
Susan Holstein	Susan Holstein	P.O. Box 39402, Ninilchik, AK 99639
Robert D. Bowers	Robert D. Bowers	3608 Baranof Ave, Ketchikan, AK 99901
R Kevin Sackel	R Kevin Sackel	4869 Knights Way, Anchorage AK 99508
Russell L. Tidwell		8301 Shelbrook Dr. Anchorage AK 99516
Thomas G. Taylor	Thomas G. Taylor	1309 Gruenac Rd., Fairbanks, AK. 99709
David K Fison	David K Fison	6800 O'Malley Anch. AK 99516
CHARLES YOUNG	Charles Young	1275 SCHMITT DENE FAIRBANKS AK 99712
Anne Weld-Martin	Anne Weld-Martin	6841 Cheryl St Anchorage AK 99518
JIMETTE MCLEAN	Jimette McLean	3421 Bonifacio, Anchorage, AK 99504
Linda Jeanne Myers	Linda Jeanne Myers	1980 Black Bear Dr., Wasilla, AK 99687
Sandra F. Lambert	Sandra F Lambert	5970 North St., Juneau, AK 99801
Dennis B. Holway	Dennis Holway	3402 Woodman Dr. Anchorage, AK 99508
Edmund B. Stanton	Ed Stanton	Box 332, Homer, Alaska 99603
Blythe C Stanton	Blythe C. Stanton	Box 332, Homer, AK 99603
John Paige	John Paige	Box 509 Douglas AK 99824
Ronald R.P. Myers	Ronald R.P. Myers	1980 Black Bear Dr. Wasilla, AK 99687
Carol Ann Sackel	Carol Ann Sackel	4869 Knights Way Anchorage, AK 99508
Beverly Bowers	Beverly Bowers	3608 Baranof Ave Ketchikan 99901
B. H. Still	B. H. Still	2008 Dimond Dr. Anch AK. 99507
Ann Still	Ann Still	2008 Dimond Dr Anchorage AK 9950
Steven Lambert	Steven Lambert	5970 North, Juneau, AK 99801

February 18, 1989

Senators Faiks, Szymanski, Halford, Pearce and Rodey:

WE THE UNDERSIGNED, IN SUPPORT OF THE POSITION TAKEN BY THE GENERAL CONFERENCE OF THE UNITED METHODIST CHURCH (ATTACHED) DECLARE OUR FIRM OPPOSITION TO THE USE OF THE DEATH PENALTY (CAPITAL PUNISHMENT) IN THE STATE OF ALASKA.

Printed Name	Signature	Address
(Ha) H. L. La Saulsa	H. L. La Saulsa	P.O. Box 141733 Anch. AK. 99514
Judith Bittner-Terry	J Bittner-Terry	P.O. Box 620909 Chugiak, AK 99567
Gerry Young	Gerry Young	1275 Summit Drive, Fairbanks, AK 99712
Douglas McCoy		P.O Box 1678 Nome, Ak 99762
John Campbell		P.O. Box 33491 Juneau, AK 99803.
G. DAVID MARKS	G David Marks	P.O. BOX 8515, KETCHIKAN, AK 99901
Sara Marks	Sara Marks	P.O. Box 8515 Ketchikan AK 99901
Betty J. Taylor	Betty J. Taylor	1307 Grenac Rd, Fairbanks, AK 99709
William J. Brooks		P.O. Box 907, Nome, Alaska 99762
Martha H. White	Martha H. White	1655 Sitka #2 Anchorage, AK. 99501
Edna MacCoy	Edna MacCoy	Box 1678 Nome AL 99762
Shirley Brooks	Shirley Brooks	Box 907 Nome, AK 99762

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (Jud)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 3/7/89
Title: "An Act authorizing capital punishment..."
Sponsor: Senate Judiciary
Requestor: Senate Finance

Agency Affected: Administration
Bill: Office of Public Advocacy
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	239.2	248.8	258.8
TRAVEL				35.0	36.4	37.9
CONTRACTUAL				496.2	505.6	525.8
SUPPLIES				4.0	4.2	4.4
EQUIPMENT				18.3	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	782.7	795.0	826.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See Attached

for Philip L. McGee, Jr.

Prepared by: Brant McGee, Public Advocate
Phone: 274-1684
Division: Office of Public Advocacy
Date: 3/7/89

Approved by Commissioner: John Andrews
Date: 3/7/89
Agency: Department of Administration

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

DOA Pub Advocacy - CS (Jud) REVISED 3-7-89

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. CCCD 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	=	32.8
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	350.0
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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: March 3, 1989
Title: "An Act authorizing capital punishment..."
Sponsor: Senate Judiciary
Requestor: Senate Finance

Agency Affected: Department of Law
BRU: Prosecution

Components: Criminal Appeals and Special Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES				383.6	701.2	1,004.0
TRAVEL				138.5	266.5	394.5
CONTRACTUAL				222.4	506.4	724.4
SUPPLIES				27.9	40.8	55.2
EQUIPMENT				47.5	42.0	41.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	819.9	1,556.9	2,219.1
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	819.9	1,556.9	2,219.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: March 3, 1989

Richard L. Pegues /FOR/

Approved by Commissioner: Douglas B. Baily, Attorney Gen.
Date: March 3, 1989
Agency: Department of Law

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

Fiscal Note - Dept. of Law CS (JUD) 3-3-89

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

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.

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 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 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.

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	77.9	73.4	73.4	47.8	44.9	33.1	33.1	383.6
	77.9	73.4	73.4	47.8	44.9	33.1	33.1	383.6
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
Depostions	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	159.5	155.0	155.0	124.5	120.1	52.9	52.9	819.9

Fiscal Analysis CSSB 17 (Jud)
Cost Summary (Second and Third Years Additions - FY 93 and FY 94 - Capital Trials)

Object	Second Year Atty V	Assoc. Atty I	Legal Sec I	TOTAL	Third Year Atty IV	P/A II	Legal Sec I	TOTAL
100-Salaries & Benefits	77.9	47.8	33.1	158.8	73.4	44.9	33.1	151.4
	77.9	47.8	33.1	158.8	73.4	44.9	33.1	151.4
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
Depostions	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	241.1	207.3	52.9	501.3	236.6	203.9	52.9	493.4

Fiscal Analysis CSSB 17 (Jud)
Cost Summary (Second and Third Years Additions - FY 93 and FY 94 - Appellate Review Process)

Object	Second Year Atty V	Assoc. Atty I	Legal Sec I	TOTAL	Third Year Atty IV	P/A II	Legal Sec I	TOTAL
100-Salaries & Benefits	77.9	47.8	33.1	158.8	73.4	44.9	33.1	151.4
	77.9	47.8	33.1	158.8	73.4	44.9	33.1	151.4
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-
Depostions	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	1.5	1.5	5.5
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	5.5	8.0	20.0
TOTAL	141.3	102.5	49.9	293.7	101.8	68.1	49.9	219.8

Fiscal Analysis CSSB 17 (Jud)

Cummulative Implementation Cost by Year

Object	Prosecution Costs				Appellate Review Costs			
	Year 1	Year 2	Year 3	Year 4	Year 1	Year 2	Year 3	Year 4
100 - Personal Services	383.6	542.4	693.8	693.8	-0-	158.8	310.2	310.2
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	819.9	1,263.2	1,731.1	1,705.6	-0-	293.7	488.0	463.5

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (JUD) (a)
PUBLISH DATE: 2/27/89

FISCAL NOTE

REQUEST:

Revision Date: 2/14/89
Title: "An Act authorizing capital punishment..."
Sponsor: Senator Fischer
Requestor: Senate Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	239.2	248.8	258.8
TRAVEL				35.0	36.4	37.9
CONTRACTUAL				546.2	568.0	590.7
SUPPLIES				4.0	4.2	4.4
EQUIPMENT				18.3	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	842.7	857.4	891.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	842.7	857.4	891.8
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	842.7	857.4	891.8

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Brant McGee, Public Advocacy
Phone: 274-1684
Division: Office of Public Advocacy
Date: 2/14/89

Approved by Commissioner: John Andrews
Date: 2/15/89
Agency: Department of Administration

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

DOA - Pub. Advocacy - CS (Jud.)

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 to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

This office's estimate that it will be responsible for three capital cases in FY92 is dependent upon the following two assumptions: (1) a slight numerical increase in the number of first degree murder cases which fall within the OPA statutory mandate, and (2) the Department of Law will request the death penalty in only one-third of all First Degree Murder cases.

The Office of Public Advocacy would assign at least two experienced attorneys to each capital case in accordance with the policy of numerous states in which the death penalty has become law. Each case will necessitate an exhaustive pretrial investigation, contracts with numerous expert witnesses, and extensive litigation of legal issues during the 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 extraordinarly 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. CS SB 17 (JUD)

SB17 continued:

Personal Services

Anchorage

Attorney V Salary & Benefits	=	$ 79.6
Attorney IV Salary & Benefits	=	74.8
Investigator III Salary & Benefits	=	52.0
Legal Secretary I	=	32.8
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 three cases per year at $60,000 per case	180.0
Contract representation for one case per year where OPA has a conflict of interest at $350,000 per case	350.0
Subtotal Contractual	$546.2

Supplies

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

Equipment

Office furniture and equipment for three professional positions at $3,635 each and one legal secretary at $7,369	18.3
TOTAL:	$842.7

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 3/7/89
Title: "An Act authorizing capital punishment..."
Sponsor: Senate Judiciary
Requestor: Senate Finance

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	239.2	248.8	258.8
TRAVEL				35.0	36.4	37.9
CONTRACTUAL				486.2	505.6	525.8
SUPPLIES				4.0	4.2	4.4
EQUIPMENT				18.3	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	782.7	795.0	826.9

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See Attached

for Philip L. McLaughlin, Jr.

Prepared by: Brant McGee, Public Advocate
Phone: 274-1684
Division: Office of Public Advocacy
Date: 3/7/89

Approved by Commissioner: John Andrews
Date: 3/8/89
Agency: Department of Administration

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

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	=	32.8
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		350.0
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

2/20/89 S(Jud), SFC

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 17 CS(Jud)
REQUEST: Publish Date:

Revision Date: 2/16/89
Title: An act related capital punishment
Sponsor: Fischer
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars) OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	. . . .	. . . .	. . . .	87.6	87.6	87.6
Travel	. . . .	. . . .	. . . .	112.5	112.5	112.5
Contractual	. . . .	. . . .	. . . .	166.0	166.0	166.0
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	15.7	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	381.8	366.1	366.1
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	381.8	366.1	366.1
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	381.8	366.1	366.1
POSITIONS:						
Full-time	. . . .	. . . .	. . . .	2.0	2.0	2.0
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached information

Prepared by: Jan Strandberg, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 02/16/89

Approved by: Stephanie Cole, for Arthur H. Snowden, II, Administrative Director Date: 02/16/89
Agency: Alaska Court System

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

RECEIVED
FEB 22 1989
LEGISLATIVE FINANCE

ALASKA COURT SYSTEM

SB 17 - 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

SB 17 - Capital Punishment
Fiscal Impact

Personal Services:	Salary	Benefits	Total
Law Clerk I, Range 13D, Anchorage, PFT - 12 Months	$29,340	$11,730	$41,070
Law Clerk I, Range 13D, Fairbanks, PFT - 12 Months	33,816	12,710	46,526
Total Personal Services			87,596
Travel:			
Jury sequestration - meals and lodging			112,500
Contractual:			
Security guard services for courts outside Anchorage			10,000
Jury fees			96,000
Bailiff 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			$381,795

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS SB 17 (Jud) (b)
PUBLISH DATE: 2/27/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act authorizing capital punishment..."
Sponsor: Senator Fischer, Kelly, Pearce
Requestor: Senate Judiciary and Finance

Agency Affected: Dept. of Administration
BRU: Public Defender Agency
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES				740.8	770.4	801.2
TRAVEL				225.0	234.0	243.4
CONTRACTUAL				450.0	468.0	486.7
SUPPLIES				27.0	28.1	29.2
EQUIPMENT				60.0	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	1502.8	1500.5	1560.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND				1502.8	1500.5	1560.5
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	1502.8	1500.5	1560.5

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John B. Salemi, Acting Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: 2/14/89

Approved by Commissioner: John Andrews
Date: 2/15/89
Agency: Department of Administration

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

DOA - Pub. Defender - CS(Jud.)

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

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

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

1. Motion to modify before trial judge.
2. Appeal of conviction and sentence to Alaska Supreme Court.
3. Writ of certiorari to the United States Supreme Court.
4. Post-conviction relief proceedings in state court.
5. Appeal of post-conviction relief proceedings in the Court of Appeals.
6. Petition for hearing of post-conviction relief proceedings to the Alaska Supreme Court.
7. Petition for Writ of Habeus 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 (Jud)

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

1. Personal Services

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

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

2. Travel and Contractual Fees.

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

3. Equipment and Supplies.

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

BUDGET SUMMARY

Personal Services:			
Guilt and Penalty Team-Anchorage			
Attorney V	79.6		
Attorney IV	74.8		
Investigator III	51.9		
Legal Secretary I	32.8		
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	740.8
Travel:			
Based on 10 Capital cases per year Employee and non-employee (experts)			225.0
Contractual:			
Based on 10 Capital cases per year			
Experts	400.0		
Office space Anchorage, Fairbanks	40.0		
Printing	5.0		
Communications	5.0	TOTAL	450.0
Supplies:			
Office, law library			27.0
Equipment:			
Office furniture and machines			60.0
		TOTAL	1502.8

1/24/89 S (Sub)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 17
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act authorizing capital punishment..."
Sponsor: Senator Fischer, Kelly, Pearce
Requestor: Senate Judiciary and Finance

Agency Affected: Dept. of Administration
BRU: Public Defender Agency
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		740.8	770.4	801.2	833.2	866.5
TRAVEL		225.0	234.0	243.4	253.1	263.2
CONTRACTUAL		450.0	468.0	486.7	506.2	526.4
SUPPLIES		27.0	28.1	29.2	30.4	31.6
EQUIPMENT		60.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	1502.8	1500.5	1560.5	1622.9	1687.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	1502.8	1500.5	1560.5	1622.9	687.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	1502.8	1500.5	1560.5	1622.9	1687.7

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

(See attached)

Prepared by: John B. Salemi, Acting Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: 1/18/89

Approved by Commissioner: John Andrews
Date: 1/20/89
Agency: Department of Administration

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

received
1-24-89

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

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

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

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

1. Personal Services

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

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

2. Travel and Contractual Fees.

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

3. Equipment and Supplies.

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

BUDGET SUMMARY

Personal Services:			
Guilt and Penalty Team-Anchorage			
Attorney V	79.6		
Attorney IV	74.8		
Investigator III	51.9		
Legal Secretary I	32.8		
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	740.8
Travel:			
Based on 10 Capital cases per year Employee and non-employee (experts)			225.0
Contractual:			
Based on 10 Capital cases per year			
Experts	400.0		
Office space Anchorage, Fairbanks	40.0		
Printing	5.0		
Communications	5.0	TOTAL	450.0
Supplies:			
Office, law library			27.0
Equipment:			
Office furniture and machines			60.0
		TOTAL	1502.8

1/24/89 SJUD

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 17
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 1/18/89
Title: "An Act authorizing capital punishment,..."
Sponsor: Fischer
Requestor: Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	239.2	248.8	258.8	269.2	280.0
TRAVEL		35.0	36.4	37.9	39.4	40.1
CONTRACTUAL		546.2	568.0	590.7	614.3	638.9
SUPPLIES		4.0	4.2	4.4	4.6	4.8
EQUIPMENT		18.3	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	842.7	857.4	891.8	927.5	963.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	842.7	857.4	891.8	927.5	963.8
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	842.7	857.4	891.8	927.5	963.8

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Brant McGee, Public Advocate
Phone: 274-1684
Division: Office of Public Advocacy
Date: 1/18/89

Approved by Commissioner: John Andrews
Date: 1/20/89
Agency: Administration

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

received
1-24-89

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

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.

This office's estimate that it will be responsible for three capital cases in FY90 is dependent upon the following two assumptions: (1) a slight numerical increase in the number of first degree murder cases which fall within the OPA statutory mandate, and (2) the Department of Law will request the death penalty in only one-third of all First Degree Murder cases.

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

The New York Defender Association estimated expert witness fees at $60,000 per case. Further, travel costs will be 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. SB 17

SB17 continued:

Personal Services

Anchorage

Attorney V Salary & Benefits	=	$ 79.6
Attorney IV Salary & Benefits	=	74.8
Investigator III Salary & Benefits	=	52.0
Legal Secretary I	=	32.8
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 three cases per year at $60,000 per case	180.0
Contract representation for one case per year where OPA has a conflict of interest at $350,000 per case	350.0
Subtotal Contractual	$546.2

Supplies

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

Equipment

Office furniture and equipment for three professional positions at $3,635 each and one legal secretary at $7,369	18.3
TOTAL:	$842.7

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 17 (e)
PUBLISH DATE: 2/27/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act authorizing capital punishment..."
Sponsor: Sen. Fischer
Requestor: Senate Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES				224.8	331.2	331.2
TRAVEL				37.5	45.0	45.0
CONTRACTUAL				70.7	135.6	135.6
SUPPLIES				16.2	17.4	14.4
EQUIPMENT				26.5	14.5	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	375.7	543.7	526.2
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	375.7	543.7	526.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	4	6	6
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 20, 1989

Richard I. Pegues /FOR/

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Date: January 20, 1989
Agency: Department of Law

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

Fiscal Note-DOLaw

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and it was not outweighed by mitigating factors. Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist to justify the death sentence; whether mitigating factors exist to outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death. In any event, bifurcated trials will be required for capital cases whenever there is a conviction. At the present time there are 10 to 12 first degree murder convictions per year that would require bifurcated trials if the bill is enacted.

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

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

Based on these considerations, at least two full-time attorneys, together with paraprofessional and secretarial support

elements, will be required to handle the additional work made necessary by capital cases and the sentencing trials, during the first year. A third attorney position will be required beginning in the second year to handle appeals work, together with a second legal secretary. Other fiscal note costs include witness travel and subsistence (25.0) that will be required by the provision for sentencing trials. The cost for U.S. Supreme Court and U.S. Circuit Court of Appeals brief printing ($30.0), which is a new required expense, has also been included. The positions required by this bill will be located in the Office of Special Prosecutions and Appeals at Anchorage.

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

Fiscal Analysis SB 17

Cost Summary (First Year - FY 92)

Object	Atty IV	Atty IV	P/A II	Leg Sec I	Total
100 - Salaries & Benefits	73.4	73.4	44.9	33.1	224.8
	73.4	73.4	44.9	33.1	224.8
200 - Travel					
Witness travel and subsistence for sentencing trials	10.0	10.0	5.0	-0-	
Staff travel instate for capital and trails.	5.0	5.0	2.5	-0-	
	15.0	15.0	7.5	-0-	37.5
300					
Communications, copy & document	3.6	3.6	2.4	2.4	
Expert witness for sentencing trials.	20.0	20.0	-0-	-0-	
Office space leases	4.1	4.1	3.3	2.2	
WP Maintenace	-0-	-0-	-0-	1.4	
Westlaw	1.2	1.2	1.2	-0-	
	28.9	28.9	6.9	6.0	70.7
400 - Commodities					
Office consumable	1.8	1.8	1.8	1.2	
Law Library	1.2	1.2	1.2	-0-	
New Position Supplies	1.5	1.5	1.5	1.5	
	4.5	4.5	4.5	2.7	16.2
500 - Equipment					
New position equipment	2.5	2.5	1.5	1.5	
PC/Word Processing	4.0	4.0	4.0	6.5	
	6.5	6.5	5.5	8.0	26.5
TOTAL	128.3	128.3	69.3	49.8	375.7

Fiscal Analysis SB 17

Cost Summary (Second Year - FY 93)

Object	First Year Cost Continued	Second Year Appeals Cost		Total
	Trial & Sentencing Staff	Appeal Atty(IV)	Leg Sec I	
100 - Salaries and Benefits	224.8	73.4	33.0	331.2
	224.8	73.4	33.0	331.2
200 - Travel				
Witness travel and subsistence capital and sentencing trials	37.5			37.5
Out-of-State trials to defend appeals in the U.S. Circuit Court of Appeals and the U.S. Supreme Court		7.5		7.5
	37.5	7.5		45.0
300				
Communications, Copying and document production	12.0	3.6	2.4	18.0
U.S. Supreme Court and U.S. Court of Appeals brief printing		30.0		30.0
Expert Witnesses	40.0	20.0		60.0
Office Space Leases	13.7	4.1	2.2	20.0
WP Maintenace	1.4		1.4	2.8
Westlaw	3.6	1.2		4.8
	70.7	58.9	6.0	135.6
400 - Commodities				
Office Consumable	6.6	1.8	1.2	9.6
Law Library	3.6	1.2		4.8
New Position Supplies	-0-	1.5	1.5	3.0
	10.2	4.5	2.7	17.4
500 - Equipment				
New Position Equipment	-0-	2.5	1.5	4.0
PC/WP	-0-	4.0	6.5	10.5
	-0-	6.5	8.0	14.5
TOTAL	343.2	150.8	49.7	543.7