

HB

162

HFIN

FILE

FISCAL NOTE

BILL NO.

STATE OF ALASKA

1994 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Office of the Governor

Title: Amendment to the Constitution RE:

BRU: Division of Elections

Capital punishment for murder.

Component: General and Primary Elections

Sponsor: Reps. Sanders, Olberg, Bunde, Kott, Vezey & James

Requestor: _____

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|---------------|-------|-------|-------|-------|-------|-------|
| PERSONAL | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 2.2* | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 2.2* | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING:

| | | | | | | |
|-----------------|------|---|---|---|---|---|
| 1002 Federal | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 2.2* | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 2.2* | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

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

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)*This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Joseph B. Swanson, Director
 Division: Division of Elections

Phone: 465-4611

Date: 2/3/94

Approved by Commissioner: Lt. Governor John B. Coghill

Agency: Office of the Lt. Governor

Date: 2/3/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SS HB 162

Revision Date: 03/09/94

Dept. Affected: Alaska Court System

Title: An Act authorizing capital punishment,
classifying murder in the 1st degree as a capital felony

BRU: Trial Courts/Appellate Courts

Sponsor: Sanders

Components: _____

Requestor: _____

COMPONENT SERIAL NO. 768/767

EXPENDITURES/REVENUES (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 224.9 | 224.9 | 224.9 | 224.9 | 224.9 |
| TRAVEL | | 75.6 | 75.6 | 75.6 | 75.6 | 75.6 |
| CONTRACTUAL | | 303.8 | 303.8 | 303.8 | 303.8 | 303.8 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | 55.0 | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS & CLAIMS | | | | | | |
| TOTAL OPERATING | 0.0 | 659.4 | 604.3 | 604.3 | 604.3 | 604.3 |

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

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

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-------|-------|-------|-------|-------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 659.4 | 604.3 | 604.3 | 604.3 | 604.3 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 659.4 | 604.3 | 604.3 | 604.3 | 604.3 |

POSITIONS

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL-TIME | | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| PART-TIME | | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| TEMPORARY | | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Phone: 264-8228
Date: 03/09/94

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 03/09/94

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Alaska Court SystemFiscal AnalysisSS HB 162Personal Services

| | <u>Salary</u> | <u>Benefits</u> | <u>Total</u> |
|---|---------------|-----------------|----------------|
| Pro Tem Judge, Anchorage Trial Courts, fully vested, PPT, 12 months | \$24,150 | \$16,841 | \$40,991 |
| Pro Tem Judge, Fairbanks Trial Courts, fully vested, PPT, 6 months | 12,777 | 8,497 | 21,274 |
| Law Clerk I, Anchorage Trial Courts, range 13D, PFT | 31,824 | 13,062 | 44,886 |
| Law Clerk I, Fairbanks Trial Courts, range 13D, PFT | 36,684 | 14,346 | 51,030 |
| Law Clerk I, Anchorage Appellate Courts, range 15D, PFT | 36,684 | 14,346 | 51,030 |
| Bailiff, Statewide, range 6A, NPP, 9 months | 14,318 | 1,417 | 15,735 |
| | | | <u>224,946</u> |

Total personal services

Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use fully-vested pro tem judges, which are the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for a non-permanent bailiff, which will serve in the designated trial site.

Travel

| | |
|---|---------------|
| Jury sequestration costs - transportation, meals and lodging | <u>75,800</u> |
| 6 Innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day | |

Death penalty cases are often subject to intense media exposure, which may initiate changes in venue. High jury sequestration costs are anticipated due to lengthy deliberations.

Contractual

| | |
|---|----------------|
| Jury fees 6 Innocence/guilt trial @ 66 days each (3 months), 18 jurors @ \$25 a day | 217,800 |
| 4 sentencing trials @ 22 day each (1 month), 18 jurors @\$25 a day | |
| Contractual security guard to staff metal detectors | 10,000 |
| Transcription fees 10 transcripts, 5,000 pages each at \$1.50 page | 75,000 |
| Freight for high security equipment kit | <u>1,000</u> |
| | <u>303,800</u> |

Total contractual services

The Department of Law expects to prosecute 6 capital offences each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.

Equipment

| | |
|---|------------------|
| Standard office equipment and reference materials for law clerks | 5,040 |
| Portable high security equipment kit, consisting of a walk-through metal detector, temporary building card key system and video monitoring system. Will be shipped to trial site. | <u>50,000</u> |
| | <u>55,040</u> |
| | <u>\$659,388</u> |

Total estimated costs

While the Department of Law expects prosecute only six (out of 24 possible) first degree murder cases as capital cases each year, on its face the sponsor substitute for HB 162 eliminates the department's discretion to prosecute any murder case as a non-capital case. If at some time in the future all murder cases are treated as capital cases, the costs associated with this note can be expected to quadruple.

FISCAL NOTE

BILL NO. SSHB 162

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: January 20, 1994
Title: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony..."
Sponsor: Representative Sanders
Requestor: Representative Sanders

Department Affected: Department of Law
BRU: Prosecution
Component: Criminal Appeals and Special Prosecution
COMPONENT SERIAL NO. 0090

EXPENDITURES/REVENUES:

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|-----------------|-------|-------|---------|---------|---------|---------|
| PERSONAL | | 427.5 | 780.1 | 1,119.1 | 1,119.1 | 1,119.1 |
| TRAVEL | | 138.5 | 260.0 | 379.0 | 379.0 | 379.0 |
| CONTRACTUAL | | 224.2 | 547.4 | 804.8 | 804.8 | 804.8 |
| SUPPLIES | | 27.9 | 40.8 | 55.2 | 46.2 | 46.2 |
| EQUIPMENT | | 49.5 | 43.0 | 43.0 | | |
| LAND & | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | 867.6 | 1,671.3 | 2,401.1 | 2,349.1 | 2,349.1 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING:

| | | | | | | |
|-----------------|-----|-------|---------|---------|---------|---------|
| 1002 Federal | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | -0- | 867.6 | 1,671.3 | 2,401.1 | 2,349.1 | 2,349.1 |
| 1005 GF/Program | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
Division: Administrative Services Division Date: January 20, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: January 20, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

ANALYSIS CONTINUATION:

The Sponsor Substitute for HB 162 deletes the legislative findings in former Section 1; deletes former Section 11, relating to the prosecution's discretion whether to seek the death penalty; deletes hanging as a method of execution; and in other ways changes the bill so that it is nearly the same as the Senate's capital punishment bill. Execution by hanging is included in SB 127. The Department of Law's analysis of both bills concluded that the cost to the department would be substantial. The changes in the sponsor substitute do not effect the reasons for that cost, which are the additional work required to obtain a capital offense death sentence, and the work required to uphold a death sentence through a considerable appeals process. The Department of Law's last fiscal note for HB 162, dated December 21, 1993, is therefore incorporated by reference.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Revision Date: _____
 Title: "An Act authorizing capital punishment,
classifying murder..."
 Sponsor: Representative Sanders
 Requestor: House Judiciary

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|------------|--------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | 0 | 277.3 | 456.3 | 541.8 | 718.7 | 804.2 |
| TRAVEL | 0 | 35.0 | 72.1 | 74.3 | 76.5 | 78.8 |
| CONTRACTUAL | 0 | 533.6 | 649.4 | 813.2 | 931.6 | 1064.9 |
| SUPPLIES | 0 | 4.1 | 7.2 | 8.2 | 11.3 | 12.4 |
| EQUIPMENT | 0 | 18.8 | 15.0 | 3.7 | 15.0 | 3.7 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0.0 | 868.8 | 1,200.0 | 1,441.2 | 1,753.1 | 1,964.0 |

| | | | | | | |
|----------------------|---|---|---|---|---|---|
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|---|---|---|---|---|---|

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|------------------------|---|---|---|---|---|---|

FUNDING SOURCE: (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|--------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 0 | 868.8 | 1200.0 | 1441.2 | 1753.1 | 1964.0 |
| 1005 GF/Program Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0.0 | 868.8 | 1,200.0 | 1,441.2 | 1,753.1 | 1,964.0 |

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|----|----|
| FULL-TIME | 0 | 4 | 7 | 8 | 11 | 12 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)
 See Attached.

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

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usery
 Agency: Department of Administration

Date: 1/25/94

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FISCAL NOTE

BILL NO. SSHB 162

STATE OF ALASKA
1994 LEGISLATIVE SESSION

ANALYSIS: (continued)

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

The Department of Law has estimated it would seek the death penalty in approximately six cases annually. Therefore OPA anticipates it would be responsible for two capital cases in FY 96 and two more in each of the following years. Because almost no one in Alaska could afford the cost of defending a capital cases, it is assumed the Public Defender Agency and the OPA would represent all capital defendants.

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

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

It is anticipated that OPA would have to contract for representation of at least one death penalty case per year. Such a case would arise where 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 in 1988. The cost in Alaska would probably be significantly higher.

Death penalty cases will accumulate in the agency each year. It is highly likely that each case that comes into the office will remain its responsibility for at least 8-10 years.

In FY 97, the first year in which actual death penalty trials will probably occur, OPA costs rise because of the addition of an appellate attorney, and support personnel including an associate attorney (nonlawyer) position, a paralegal, and a legal secretary. In FY 98, an additional trial attorney position would be needed to support the initial two-trial positions created in FY 96.

In FY 99, the death penalty defense staff would need to be enlarged by at least one attorney, to supplement the efforts of the appellate lawyer added in FY 97, together with an additional paralegal and legal secretary. In FY 00, the defense would be enlarged by an additional trial attorney position whose workload hopefully would be absorbed by the existing support staff.

OPA assumes that it will have only one or less conflict case per year. For this reason, the accumulating appellate costs are conservatively estimated as an additional \$100.0 per year.

Finally, even though OPA assumes the addition of only two cases per year, the costs associated with the accumulation of cases can be expected to more than double at least every three years. There is little doubt that, within ten years of the adoption of the death penalty in Alaska, OPA costs for the defense of these relatively few cases would surpass its FY 94 budget of \$6,468 for nearly 10,000 cases.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

FISCAL ANALYSIS--FY 96

Personal Services

Anchorage

| | |
|---|-------------|
| Attorney V Salary and Benefits + 3% | \$ 90.9 |
| Attorney IV Salary and Benefits + 3% | 85.5 |
| Associate Attorney II Salary and Benefits + 3% | 62.9 |
| Legal Secretary I Salary and Benefits + 3% | <u>38.0</u> |

Subtotal Personal Services \$277.3

Travel

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

Contractual

| | |
|--|--------------|
| Additional office space for four positions in Anchorage. | 13.4 |
| Expert witness fees based on two cases per year at \$61,800 per case. | 123.6 |
| Contract representation for one case per year where OPA has a conflict of interest at \$385,000 per case + 3%. | <u>396.6</u> |

Subtotal Contractual \$533.6

Supplies

Stationary, library and office supplies for four new positions at \$1,000 per position + 3%. 4.1

Equipment

Office furniture and equipment for three professional positions at \$3,635 each and one legal secretary at \$7,369 + 3%. 18.8

Total FY 96 \$868.8

FISCAL NOTE

**STATE OF ALASKA
1994 LEGISLATIVE SESSION**

BILL NO. SSHB 162

FISCAL ANALYSIS--FY 97

Personal Services

Anchorage

Salary and Benefits for 4 current positions \$ 277.3

Attorney IV

Salary and Benefits + 3% 85.5

Paralegal Assistant II

Salary and Benefits + 3% 53.4

Legal Secretary II

Salary and Benefits + 3% 40.1

Subtotal Personal Services \$ 456.3

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 72.1

Contractual

Office space for four current positions and three new positions. 22.5

Expert witness fees based on two cases per year at \$61,800 per case + 3%. 127.3

Contract representation for one case where OPA has a conflict of interest. 499.6

Subtotal Contractual Services \$ 649.4

Supplies

Stationary, library and office supplies for seven positions. 7.2

Equipment

Office furniture and equipment for two professional positions and one legal secretary. 15.0

Total FY 97 \$1,200.0

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

FISCAL ANALYSIS--FY 97

Personal Services

Anchorage

Salary and Benefits for 4 current positions \$ 277.3

Attorney IV
Salary and Benefits + 3% 85.5

Paralegal Assistant II
Salary and Benefits + 3% 53.4

Legal Secretary II
Salary and Benefits + 3% 40.1

Subtotal Personal Services \$ 456.3

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 72.1

Contractual

Office space for four current positions and three new positions. 22.5

Expert witness fees based on two cases per year at \$61,800 per case + 3%. 127.3

Contract representation for one case where OPA has a conflict of interest. 499.6

Subtotal Contractual Services \$ 649.4

Supplies

Stationary, library and office supplies for seven positions. 7.2

Equipment

Office furniture and equipment for two professional positions and one legal secretary. 15.0

Total FY 97 \$1,200.0

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

FISCAL ANALYSIS--FY 98

Personal Services

Anchorage

Salary and Benefits for 7 current positions \$ 456.3

Attorney IV
Salary and Benefits + 3% 85.5

Subtotal Personal Services \$ 541.8

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 74.3

Contractual

Office space for seven current positions and one new position in Anchorage. 25.2

Expert witness fees based on three cases per year. 185.4

Contract representation for one case where OPA has a conflict of interest
and appeal work on previous cases. 602.6

Subtotal Contractual Services \$ 813.2

Supplies

Stationary, library and office supplies for eight positions. 8.2

Equipment

Office furniture and equipment for one new professional position. 3.7

Total FY 98 \$1,441.2

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

FISCAL ANALYSIS--FY 99

Personal Services

Anchorage

Salary and Benefits for 8 current positions \$ 541.8

Attorney IV
Salary and Benefits + 3% 85.5

Paralegal Assistant II
Salary and Benefits + 3% 53.4

Legal Secretary I
Salary and Benefits + 3% 38.0

Subtotal Personal Services \$ 718.7

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 76.5

Contractual

Office space for eight current position and three new positions. 35.0

Expert witness fees based on three cases per year. 191.0

Contract representation for one case where OPA has a conflict of interest
and appeal work on previous cases. 705.6

Subtotal Contractual Services \$ 931.6

Supplies

Stationary, library and office supplies for eleven positions. 11.3

Equipment

Office furniture and equipment for two new professional positions and
one new clerical position. 15.0

Total FY 99 \$1,753.1

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

FISCAL ANALYSIS--FY 00

Personal Services

Anchorage

Salary and Benefits for 11 current positions \$ 718.7

Attorney IV

Salary and Benefits + 3% 85.5

Subtotal Personal Services \$ 804.2

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 78.8

Contractual

Office space for eleven current positions and one new position. 38.4

Expert witness fees based on three cases per year. 196.7

Contract representation for one case where OPA has a conflict of interest
and appeal work on previous cases. 829.8

Subtotal Contractual Services \$1,064.9

Supplies

Stationary, library and office supplies for twelve positions. 12.4

Equipment

Office furniture and equipment for one new professional position. 3.7

Total FY 00 \$1,964.0

| | | | | | |
|--------------------------------|--------------------|---|----------------------|------------------------|-------------|
| Position Title Attorney V | | No. of Positions 1 | Range / Step 25/A | Barg. Unit PX | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 67.3 | Justification This position would be the lead attorney of the death penalty team consisting of an additional lawyer, an associate attorney and a legal secretary. The position is required to supplement the current attorney staff which falls short of LEAA national caseload standards. This position would be responsible for supervising the attorney and associate attorney, the preparation of all pretrial and trial motions, and the filing of appeals in State and federal court. The requirement of extensive court hearings and a lengthy trial in each case will necessitate that this position be assigned exclusively to death penalty cases. | | | |
| Benefits | 23.6 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 90.9 | | | | 90.9 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | 90.9 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 90.9 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

8/leg94/13/hb162p8.kp

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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Revised Date: _____

| | | | | |
|---|--------------------|---------------------------|----------------------|------------------------|
| Position Title Attorney IV | | No. of Positions 1 | Range / Step 24/A | Barg. Unit PX |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 |
| TYPE OF EXPENDITURE | | AMOUNT | | |
| Salary | 62.8 | | | |
| Benefits | 22.7 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 85.5 | 85.5 | | |
| Travel | | | | |
| Contractual | | | | |
| Commodities | | | | |
| Equipment | | | | |
| Other | | | | |
| Total Cost | | 85.5 | | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts | 1002 | | | |
| G.F. Match | 1003 | | | |
| General Fund | 1004 | 85.5 | | |
| I-A Receipts | 1007 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |
| Justification This position will act as co-counsel to the Attorney V position in all death penalty cases. As part of the death penalty team, this position will prepare motions, interview witnesses, write appellate briefs and assist the lead attorney in conducting the guilt and penalty phases of all death penalty cases. Two attorneys are required for each case in order to share the enormous workload and to assure effective representation of the accused. | | | | |

8/leg94/13/hb162p9.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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 Revised Date: _____

| | | | | |
|---|--------------------|--|----------------------|------------------------|
| Position Title Associate Attorney II | | No. of Positions 1 | Range / Step 19/A | Barg. Unit PX |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 |
| TYPE OF EXPENDITURE | | AMOUNT | | |
| Salary | 45.0 | Justification This position will perform all investigative duties in death penalty cases. Extensive experience in all areas of criminal investigation will be required to assure that defendants facing execution receive a thorough and effective investigation. This position will interview witnesses, examine the crime scene and all physical evidence, arrange transportation, serve subpoenas, follow-up and review the prosecution investigation and coordinate witness testimony. The Office of Public Advocacy contracts out investigation work. It is anticipated that this position will work full-time on death penalty cases. | | |
| Benefits | 17.9 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 62.9 | | | |
| Travel | | | | |
| Contractual | | | | |
| Commodities | | | | |
| Equipment | | | | |
| Other | | | | |
| Total Cost | 62.9 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts | 1002 | | | |
| G.F. Match | 1003 | | | |
| General Fund | 1004 | 62.9 | | |
| I-A Receipts | 1007 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

8/leg94/13/hb162p10.kp

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

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|-------------------------------------|--------------------|---|----------------------|------------------------|-------------|
| Position Title Legal Secretary I | | No. of Positions 1 | Range / Step 10/A | Barg. Unit G | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 25.5 | Justification The Anchorage office of Office of Public Advocacy (OPA) is presently staffed with three legal secretaries who provide clerical support to 12 professional positions. The addition of two attorneys and one associate attorney will increase the Anchorage clerical workload dramatically. The complex issues involved in death penalty cases and the length of each case through sentencing and appeal necessitates the addition of a legal secretary to handle the increased workload. | | | |
| Benefits | 12.5 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 38.0 | | | | 38.0 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | 38.0 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 38.0 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

8/leg94/13/hb162p11.kp

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

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|--------------------------------------|--------------------|--|----------------------|------------------------|-------------|
| Position Title Attorney IV | | No. of Positions 1 | Range / Step 24/A | Barg. Unit PX | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 62.8 | Justification This position will act as appellate attorney exclusively for death penalty appeals. As part of the death penalty team, this position will review all transcripts, testimony and evidence presented during trial and sentencing. This attorney will be responsible for formulating and researching appeal points, briefing and arguing appeals on death penalty cases in both State and federal courts. | | | |
| Benefits | 22.7 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 85.5 | | | | 85.5 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | 85.5 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 85.5 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

8/leg94/13/hb162p12.kp

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

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| | | | | | |
|--|--------------------|---------------------------|---|------------------------|------|
| Position Title Paralegal Assistant II | | No. of Positions 1 | Range / Step 16/A | Barg. Unit G | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | | 37.5 | Justification This paralegal assistant position will be assigned exclusively to the death penalty team. This position will be responsible for assisting the appellate attorney in research, writing and coordinating death penalty appeals in both State and federal courts. | | |
| Benefits | | 15.9 | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | | 53.4 | | | 53.4 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | | 53.4 | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | | 53.4 | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

8/leg94/13/hb162p13.kp

Request For New Position

AGENCY ADMINISTRATION
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|--------------------------------------|--------------------|--|----------------------|------------------------|------|
| Position Title Legal Secretary II | | No. of Positions 1 | Range / Step 11/A | Barg. Unit G | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 27.2 | Justification The addition of an appeal attorney and paralegal assistant to the death penalty team necessitates the addition of a legal secretary. This Legal Secretary II position will directly supervise the Legal Secretary I in addition to providing clerical support to the five professional positions working on death penalty cases. | | | |
| Benefits | 12.9 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 40.1 | | | | 40.1 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | 40.1 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 40.1 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

8/leg94/13/hb162p14.kp

Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

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|---|--------------------|---------------------------|----------------------|------------------------|
| Position Title Attorney IV | | No. of Positions 1 | Range / Step 24/A | Barg. Unit PX |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 |
| TYPE OF EXPENDITURE | | AMOUNT | | |
| Salary | | 62.8 | | |
| Benefits | | 22.7 | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 85.5 | 85.5 | |
| Travel | | | | |
| Contractual | | | | |
| Commodities | | | | |
| Equipment | | | | |
| Other | | | | |
| Total Cost | | | 85.5 | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts | 1002 | | | |
| G.F. Match | 1003 | | | |
| General Fund | 1004 | | 85.5 | |
| I-A Receipts | 1007 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |
| Justification The accumulation of pending trials for death penalty cases and new cases filed necessitates the addition of another trial lawyer to the death penalty team. This position will act as co-counsel to the other two attorneys assigned death penalty cases. This position will prepare motions, interview witnesses, and assist the lead attorney in conducting the guilt and penalty phases of death penalty cases. | | | | |

8/leg94/13/hb162p15.kp

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

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|--------------------------------|--------------------|--|----------------------|------------------------|-------------|
| Position Title Attorney IV | | No. of Positions 1 | Range / Step 24/A | Barg. Unit PX | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 62.8 | Justification The accumulation of pending appeals and new appeals filed in death penalty cases necessitates the addition of another lawyer to handle appeals exclusively in death penalty cases. This position will be responsible for reviewing all trial and sentencing transcripts, formulating appeal points, research, writing and arguing appeals on death penalty cases in both State and federal courts. | | | |
| Benefits | 22.7 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 85.5 | | | | 85.5 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | 85.5 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 85.5 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

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Request For New Position

AGENCY ADMINISTRATION

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COMPONENT OFFICE OF PUBLIC ADVOCACY

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|--|--------------------|---------------------------|----------------------|------------------------|
| Position Title Paralegal Assistant II | | No. of Positions 1 | Range / Step 16/A | Barg. Unit G |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 |
| TYPE OF EXPENDITURE | | AMOUNT | | |
| Salary | | 37.5 | | |
| Benefits | | 15.9 | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 53.4 | 53.4 | |
| Travel | | | | |
| Contractual | | | | |
| Commodities | | | | |
| Equipment | | | | |
| Other | | | | |
| Total Cost | | | 53.4 | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts | 1002 | | | |
| G.F. Match | 1003 | | | |
| General Fund | 1004 | | 53.4 | |
| I-A Receipts | 1007 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |
| Justification The addition of a trial attorney in FY 98 and an appeal attorney in FY 99 necessitates the addition of another paralegal assistant position. This position would be responsible for assisting both the trial attorneys and appeal attorneys in research and writing legal motions and briefs in death penalty cases. In addition, this position may also handle witness coordination for death penalty trials and sentencing. | | | | |

8/leg94/13/hb162p17.kp

Request For New Position

AGENCY ADMINISTRATION
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|--------------------------------------|--------------------|---|----------------------|------------------------|-------------|
| Position Title Legal Secretary I | | No. of Positions 1 | Range / Step 10/A | Barg. Unit G | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 25.5 | Justification The addition of a trial attorney in FY 98 and an appeal attorney and paralegal assistant in FY 99 necessitates the addition of another legal secretary to handle the clerical workload of these professional positions. The death penalty team now consists of eight professional positions working exclusively on death penalty cases. The complex nature of these cases and length through the appeal process in both State and federal court warrants the addition of another clerical position. | | | |
| Benefits | 12.5 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 38.0 | | | | 38.0 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | | | | |
| FUNDING SOURCE FOR TOTAL COST | | 38.0 | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 38.0 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

8/leg94/13/hb162p18.kp

Request For New Position

AGENCY ADMINISTRATION
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COMPONENT OFFICE OF PUBLIC ADVOCACY

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|-------------------------------|--------------------|--|----------------------|------------------------|------|
| Position Title Attorney IV | | No. of Positions 1 | Range / Step 24/A | Barg. Unit PX | |
| Time Status PFT | Staff Months 12 | Location EBA-Anchorage | | Election District 8 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 62.8 | Justification The accumulation of pending trials for death penalty cases and new cases filed necessitates the addition of another trial lawyer to the death penalty team. This position will act as co-counsel to the other two attorneys assigned death penalty cases. This position will prepare motions, interview witnesses, and assist the lead attorney in conducting the guilt and penalty phases of death penalty cases. | | | |
| Benefits | 22.7 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 85.5 | | | | 85.5 |
| Travel | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Equipment | | | | | |
| Other | | | | | |
| Total Cost | | 85.5 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 85.5 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

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Request For New Position

AGENCY ADMINISTRATION
BRU OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Revision Date: _____

Department Affected: Administration

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

BRU: Public Defender Agency

Sponsor: Sanders

Component: Public Defender Agency

Requestor: House Judiciary

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|----------|--------------|----------------|----------------|----------------|----------------|
| PERSONAL SERVICES | 0 | 654.1 | 916.7 | 1314.8 | 1314.8 | 1314.8 |
| TRAVEL | 0 | 50.0 | 70.0 | 80.0 | 90.0 | 90.0 |
| CONTRACTUAL | 0 | 170.0 | 328.5 | 499.1 | 599.1 | 599.1 |
| SUPPLIES | 0 | 25.0 | 40.0 | 48.0 | 56.0 | 56.0 |
| EQUIPMENT | 0 | 30.0 | 15.0 | 15.0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 929.1 | 1,370.2 | 1,956.9 | 2,059.9 | 2,059.9 |

| | | | | | | |
|----------------------|---|---|---|---|---|---|
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|---|---|---|---|---|---|

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|------------------------|---|---|---|---|---|---|

FUNDING SOURCE:

(Thousands of Dollars)

| | | | | | | |
|--------------------------|----------|--------------|---------------|---------------|---------------|---------------|
| 1002 Federal Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 0 | 929.1 | 1370.2 | 1956.9 | 2059.9 | 2059.9 |
| 1005 GF/Program Receipts | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 929.1 | 1370.2 | 1956.9 | 2059.9 | 2059.9 |

Estimate of any current year (FY 94) cost: \$ -0-

POSITIONS:

| | | | | | | |
|-----------|---|------|------|------|------|------|
| FULL-TIME | 0 | 10.0 | 14.0 | 20.0 | 20.0 | 20.0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)

See attached.

* Using FY 95 salary schedule with no increases factored in.

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

Phone: 264-4400
 Date: _____

Approved by Commissioner: Nancy Bear Usera, Commissioner
 Agency: Department of Administration

Date: 1/25/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

ANALYSIS: (continued)

Introduction

This bill authorizes capital punishment for the crime of Murder in the First Degree if certain attendant aggravating factors are found to exist and are established by competent evidence. Prosecution is given discretion whether to seek the death penalty in a given case.

The capital caseload of the Public Defender Agency will be a direct function of the number of murder cases prosecuted in the state combined with prosecutorial decisions to seek the death penalty. As such the Public Defender Agency's fiscal analysis is premised on projections made by the Department of Law in its fiscal analysis of SSHB 162. In 1993 the Department of Law indicated it had 15 murder cases where the death penalty could have been sought. Because the number of murders can vary significantly from year to year predicting actual number of cases is difficult. It is not difficult, however, to predict fiscal impact for this agency in that once the death penalty becomes law the concept of "super due process", established by the U.S. Supreme Court, necessitates that highly capable lawyers and support staff be in place to handle any and all cases of this nature.

Fiscal Impact

Passage of this death penalty legislation will have an undeniably significant impact on the entire criminal justice system, including but not limited to the courts, corrections, prosecution, public counsel services and other related entities. Death penalty cases require greater due process safeguards than do non-capital cases. This is obviously a consequence of the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. It must be understood that the criminal justice system is an imperfect process based on the combination of law and human judgment. Some percentage of error is built into this system. In non-death cases the system stands ready to correct those mistakes when and where they become known. An execution following a death penalty case can never be corrected. It is for these reasons so much care must be taken to defend individuals accused in capital cases. Providing "super due process" translates into adequate attorney resources, support resources, expert and consultation monies, funds for appealing death penalty convictions and other attendant expenses. A commonly accepted estimate for expert witness fees alone in a death penalty case is \$60,000. It is not unusual for a death penalty case to remain in the court system, litigated by the parties, for a period of up to ten years. This is a result of the extensive appellate work which is routinely done in each death penalty case following conviction. Following are the procedures which are typically followed by defense counsel after a trial and sentencing:

1. Motion to modify/reconsider before state trial judge;
2. Mandatory 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 unsuccessful post-conviction relief proceedings to the Court of Appeals;
6. Petition for hearing of post-conviction relief proceeding denial to the Alaska Supreme Court;
7. Petition for writ of habeas corpus in Federal District Court;
8. Appeal to the United States Court of Appeals if writ unsuccessful;
9. Rehearing in the United States Court of Appeals;
10. Writ of certiorari to the United States Court of Appeals;
11. Request for clemency/commutation to Executive Branch of government;
12. Emergency stays to the United States Supreme Court prior to execution.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Breakdown of Fiscal Impact

1. Personal Services. Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, many states require by statute that a minimum of two defense attorneys take up representation of the accused in death penalty matters. Both the state District Attorney and the Office of Public Advocacy contemplate such a policy for their respective agencies. The Public Defender will follow this prudent course, whether established by statute or internal policy. Assuming that the Public Defender Agency handles between four and six capital cases per year, death penalty teams will be established in its two largest offices; Anchorage and Fairbanks. A trial team in each of these offices will be established the first year. The second year an appellate team will be placed in Anchorage. (Please note that unlike the Department of Law, the Public Defender Agency has no equivalent to the Office of Special Prosecutions and Appeals). The appellate team will not be needed until the second year following enactment of the death penalty because it is not expected that an appeal would be 'ripe' until that time. Obviously adequate support staff, to include paralegals, investigators and secretaries, will be necessary.

2. Travel and Contractual. Travel expenses will be necessarily high in that a team approach is being taken by this agency. These teams will have to travel to locations where the crime occurred and trial is being held. Travel expenses are higher in Alaska because of the geography of the state, the lack of surface roads and the high cost of air travel.

Contractual expenditures for expert witnesses will be significant. As the Department of Law points out in their 1993 fiscal note 'recent costs studies of capital trials in other states indicate that expert witnesses for both the trial and sentencing proceedings cost about \$60,000, on the average'. This estimate is consistent with the research by the Public Defender Agency on this issue. In addition there will be expert witness costs for the appellate work done following trial, conviction and sentence to death. These costs can be as high as the expert witness fees incurred during trial.

3. Supplies and Equipment. These expenses naturally accrue when additional staff are required. Estimates which follow are conservative projections without consideration of inflationary factors.

Conclusion

Due to the accrual of cases from year to year once implementation of the death penalty occurs, expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion which will be exercised by the prosecution in seeking the death penalty. There is the real likelihood that additional staff will have to be added to this agency beyond the third year of implementation of the capital crime law.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Fiscal Impact--FY 96

Personal Services (100 Line) *

Anchorage

Attorney V
Salary & Benefits \$ 90.8

Attorney IV
Salary & Benefits \$ 83.1

Paralegal Assistant II
Salary & Benefits \$ 51.8

Investigator II
Salary & Benefits \$ 51.8

Legal Secretary I
Salary & Benefits \$ 36.9

Fairbanks

Attorney V
Salary & Benefits \$100.2

Attorney IV
Salary & Benefits \$ 94.0

Paralegal Assistant II
Salary & Benefits \$ 53.7

Investigator II
Salary & Benefits \$ 53.7

Legal Secretary I
Salary & Benefits \$ 38.1

SUBTOTAL \$654.1

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc.

SUBTOTAL \$ 50.0

* Using FY 95 salary schedule with no increases factored in.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Contractual (300 Line)

| | | |
|---|---------------|----------|
| Expert witness fees based on two cases for FY 95 at 60.0 per case | \$120.0 | |
| Additional office space for death penalty staff in Anchorage and Fairbanks P.D. offices | \$ 21.0 | |
| Communications | \$ 10.0 | |
| Printing | \$ 4.0 | |
| Depositions | \$ 10.0 | |
| Westlaw | <u>\$ 5.0</u> | |
| | SUBTOTAL | \$ 170.0 |

Supplies (400 Line)

| | | |
|-----------------------|----------------|---------|
| Office consumables | \$ 5.0 | |
| Law library | \$ 10.0 | |
| New position supplies | <u>\$ 10.0</u> | |
| | SUBTOTAL | \$ 25.0 |

Equipment (500 Line)

| | | |
|---|-------------|----------------|
| Office furniture and equipment, pc/word processing, etc. (one time) | | <u>\$ 30.0</u> |
| | TOTAL FY 96 | \$ 929.1 |

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Fiscal Impact--FY 97

(These costs are in addition to FY 96 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage

Appellate Team

Attorney V
Salary & Benefits \$ 90.8

Attorney IV
Salary & Benefits \$ 83.1

Paralegal Assistant II
Salary & Benefits \$ 51.8

Legal Secretary I
Salary & Benefits \$ 36.9

SUBTOTAL \$262.6

Travel (200 Line)

Staff travel, expert travel and per diem. \$ 20.0

Contractual (300 Line)

Expert witness fees based on two
cases for FY 96 \$120.0

Office space for Anchorage
appellate team (See above) \$ 10.0

Communications \$ 10.0

Depositions \$ 5.0

Document production \$ 5.0

Westlaw \$ 8.0

SUBTOTAL \$ 158.5

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Supplies (400 Line)

| | | |
|-----------------------|----------------|------------------|
| Office consumables | \$ 3.0 | |
| Law library | \$ 2.0 | |
| New position supplies | <u>\$ 10.0</u> | |
| | | SUBTOTAL \$ 15.0 |

Equipment (500 Line)

| | | |
|--------------------------------------|----------------|----------|
| New position equipment (one time) | | \$ 15.0 |
| | SUBTOTAL FY 97 | \$ 471.1 |

| | |
|------------------------|-----------------|
| FY 96 CONTINUING COSTS | <u>\$ 899.1</u> |
|------------------------|-----------------|

| | |
|--------------------------|----------|
| TOTAL FY 97 EXPENDITURES | \$1370.2 |
|--------------------------|----------|

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Fiscal Impact--FY 98

(These costs are in addition to FY 96-97 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage

Attorney V (Additional death penalty trial attorney)
Salary & Benefits \$ 90.8

Legal Secretary I
Salary & Benefits \$ 36.9

Fairbanks

Attorney V (Additional death penalty trial attorney)
Salary & Benefits \$100.2

Attorney IV (Additional lawyer for death penalty appellate work)
Salary & Benefits \$ 94.0

Legal Secretary I (Trial support)
Salary & Benefits \$ 38.1

Legal Secretary I (Appellate support)
Salary & Benefits \$ 38.1

SUBTOTAL \$398.1

Travel (200 Line)

Staff travel, expert travel and per diem. \$ 10.0

Contractual (300 Line)

Expert witness fees based on trial and
appellate cases for FY 97 \$120.0

Additional office space for new staff \$ 17.6

Communications \$ 10.0

Depositions \$ 10.0

Document production \$ 5.0

Westlaw \$ 8.0

SUBTOTAL \$ 170.6

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SSHB 162

Supplies (400 Line)

| | | |
|-----------------------|---------------|--------|
| Office consumables | \$ 3.0 | |
| New position supplies | <u>\$ 5.0</u> | |
| | SUBTOTAL | \$ 8.0 |

Equipment (500 Line)

| | | |
|--------------------------------------|----------------|----------------|
| New position equipment (one time) | \$ 15.0 | <u>\$ 15.0</u> |
| | SUBTOTAL FY 98 | \$ 601.7 |

| | | |
|--|--------------------------|-----------------|
| | FY 97 CONTINUING COSTS | <u>\$1355.2</u> |
| | TOTAL FY 98 EXPENDITURES | \$1956.9 |

Fiscal Impact--FY 99

(These costs are in addition to FY 96-97-98 costs which will be carried over from year to year.)

| | |
|-------------------------------------|-----|
| <u>Personal Services (100 Line)</u> | -0- |
|-------------------------------------|-----|

Travel (200 Line)

| | |
|--|---------|
| Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. | \$ 10.0 |
|--|---------|

Contractual (300 Line)

| | |
|---|---------|
| Expert witness fees, office space, communications, Westlaw, etc | \$100.0 |
|---|---------|

Supplies (400 Line)

| | | |
|---------------------|----------------|----------|
| Office, law library | <u>\$ 8.0</u> | |
| | SUBTOTAL FY 99 | \$ 118.0 |

| | | |
|--|--------------------------|-----------------|
| | FY 98 CONTINUING COSTS | <u>\$1941.9</u> |
| | TOTAL FY 99 EXPENDITURES | \$2059.9 |

| | | | | |
|-------------------------------|----------------------|---|----------------------|-----------------------------|
| Position Title Attorney V | | No. of Positions 2 | Range / Step 25/A | Barg. Unit PX |
| Time Status PFT | Staff Months 24.0 | Location EBA - JBA | | Election District 7 - 20 |
| TYPE OF EXPENDITURE | | AMOUNT | | |
| Salary | 142,512 | Justification Two death penalty teams will be established, one at Anchorage and the other at Fairbanks. Each will be headed by an Attorney V with broad experience in trying major felony cases. Both guilt and penalty phases of capital cases will be handled by these teams which will also defend cases from other parts of the state. The teams will consist of an Attorney V, an Attorney IV, a Paralegal Assistant II, an Investigator II, and a Legal Secretary. Extensive travel will be required of the entire team along with major expenditures for expert witnesses. Capital trials are generally quite lengthy and the courts usually attempt to try the cases in the same area in which the alleged crime took place. Massive resources are required of all components of the justice system in order to hold a major trial in a remote village. FY 96 | | |
| Benefits | 48,453 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 190,965 | | | |
| Travel | 20,000 | | | |
| Contractual | 85,000 | | | |
| Commodities | 5,000 | | | |
| Equipment | 6,000 | | | |
| Other | | | | |
| Total Cost | 306,965 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts | 1002 | | | |
| G.F. Match | 1003 | | | |
| General Fund | 1004 | 306,965 | | |
| I-A Receipts | 1007 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

8/leg94/17/hb162np.kp/1

Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 95

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| | | | | |
|-------------------------------|----------------------|-----------------------|----------------------|---|
| Position Title Attorney IV | | No. of Positions 2 | Range / Step 24/A | Barg. Unit PX |
| Time Status PFT | Staff Months 24.0 | Location EBA - JBA | | Election District 7 - 20 |
| TYPE OF EXPENDITURE | | AMOUNT | | Justification Two death penalty teams will be established, one at Anchorage and the other at Fairbanks. Each will be headed by an Attorney V with broad experience in trying major felony cases. Both guilt and penalty phases of capital cases will be handled by these teams which will also defend cases from other parts of the state. The teams will consist of an Attorney V, an Attorney IV, a Paralegal Assistant II, an Investigator II, and a Legal Secretary. Extensive travel will be required of the entire team along with major expenditures for expert witnesses. Capital trials are generally quite lengthy and the courts usually attempt to try the cases in the same area in which the alleged crime took place. Massive resources are required of all components of the justice system in order to hold a major trial in a remote village. FY 96 |
| Salary | 131,100 | | | |
| Benefits | 46,002 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 177,102 | 177,102 | | |
| Travel | | 15,000 | | |
| Contractual | | 85,000 | | |
| Commodities | | 5,000 | | |
| Equipment | | 6,000 | | |
| Other | | | | |
| Total Cost | | 288,102 | | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts | 1002 | | | |
| G.F. Match | 1003 | | | |
| General Fund | 1004 | 288,102 | | |
| I-A Receipts | 1007 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

8/leg94/17/hb162np.kp/2

Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 95

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| | | | | |
|--|----------------------|-----------------------|---|-----------------------------|
| Position Title Paralegal Assistant II | | No. of Positions 2 | Range / Step 16/A | Barg. Unit GGU |
| Time Status PFT | Staff Months 24.0 | Location EBA - JBA | | Election District 7 - 20 |
| TYPE OF EXPENDITURE | | AMOUNT | Justification Two death penalty teams will be established, one at Anchorage and the other at Fairbanks. Each will be headed by an Attorney V with broad experience in trying major felony cases. Both guilt and penalty phases of capital cases will be handled by these teams which will also defend cases from other parts of the state. The teams will consist of an Attorney V, an Attorney IV, a Paralegal Assistant II, an Investigator II, and a Legal Secretary. Extensive travel will be required of the entire team along with major expenditures for expert witnesses. Capital trials are generally quite lengthy and the courts usually attempt to try the cases in the same area in which the alleged crime took place. Massive resources are required of all components of the justice system in order to hold a major trial in a remote village. FY 96 | |
| Salary | 74,340 | | | |
| Benefits | 31,185 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 105,525 | 105,525 | | |
| Travel | | 7,500 | | |
| Contractual | | 0 | | |
| Commodities | | 5,000 | | |
| Equipment | | 6,000 | | |
| Other | | | | |
| Total Cost | | 124,025 | | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts | 1002 | | | |
| G.F. Match | 1003 | | | |
| General Fund | 1004 | 124,025 | | |
| I-A Receipts | 1007 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

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Request For New Position

AGENCY ADMINISTRATION
BRU Public Defender Agency
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| | | | | | |
|-----------------------------------|----------------------|---|----------------------|-----------------------------|----------------|
| Position Title Investigator II | | No. of Positions 2 | Range / Step 16/A | Barg. Unit GGU | |
| Time Status PFT | Staff Months 24.0 | Location EBA - JBA | | Election District 7 - 20 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 74,340 | Justification Two death penalty teams will be established, one at Anchorage and the other at Fairbanks. Each will be headed by an Attorney V with broad experience in trying major felony cases. Both guilt and penalty phases of capital cases will be handled by these teams which will also defend cases from other parts of the state. The teams will consist of an Attorney V, an Attorney IV, a Paralegal Assistant II, an Investigator II, and a Legal Secretary. Extensive travel will be required of the entire team along with major expenditures for expert witnesses. Capital trials are generally quite lengthy and the courts usually attempt to try the cases in the same area in which the alleged crime took place. Massive resources are required of all components of the justice system in order to hold a major trial in a remote village. FY 96 | | | |
| Benefits | 31,185 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 105,525 | | | | 105,525 |
| Travel | | | | | 7,500 |
| Contractual | | | | | 0 |
| Commodities | | | | | 5,000 |
| Equipment | | | | | 6,000 |
| Other | | | | | |
| Total Cost | | 124,025 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 124,025 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

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Request For New Position

AGENCY ADMINISTRATION
BRU Public Defender Agency
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| | | | | |
|-------------------------------------|----------------------|-----------------------|---|-----------------------------|
| Position Title Legal Secretary I | | No. of Positions 2 | Range / Step 10/A | Barg. Unit CGU |
| Time Status PFT | Staff Months 24.0 | Location EBA - JBA | | Election District 7 - 20 |
| TYPE OF EXPENDITURE | | AMOUNT | Justification Two death penalty teams will be established, one at Anchorage and the other at Fairbanks. Each will be headed by an Attorney V with broad experience in trying major felony cases. Both guilt and penalty phases of capital cases will be handled by these teams which will also defend cases from other parts of the state. The teams will consist of an Attorney V, an Attorney IV, a Paralegal Assistant II, an Investigator II, and a Legal Secretary. Extensive travel will be required of the entire team along with major expenditures for expert witnesses. Capital trials are generally quite lengthy and the courts usually attempt to try the cases in the same area in which the alleged crime took place. Massive resources are required of all components of the justice system in order to hold a major trial in a remote village. FY 96 | |
| Salary | 50,508 | | | |
| Benefits | 24,500 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 75,008 | 75,008 | | |
| Travel | | 0 | | |
| Contractual | | 0 | | |
| Commodities | | 5,000 | | |
| Equipment | | 6,000 | | |
| Other | | | | |
| Total Cost | | 86,008 | | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts 1002 | | | | |
| G.F. Match 1003 | | | | |
| General Fund 1004 | | 86,008 | | |
| I-A Receipts 1007 | | | | |
| CIP Receipts 1061 | | | | |
| Other | | | | |

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Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 95

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| | | | | |
|--------------------------------|----------------------|---|----------------------|------------------------|
| Position Title Attorney V | | No. of Positions 1 | Range / Step 25/A | Barg. Unit PX |
| Time Status PFT | Staff Months 12.0 | Location Anchorage | | Election District 7 |
| TYPE OF EXPENDITURE | | AMOUNT | | |
| Salary | 67,368 | Justification Under this bill death penalty teams will be established at Anchorage and Fairbanks in FY 97 to handle both the guilt and penalty phases of capital cases. By FY 97 it is anticipated that enough cases will have reached the next step to justify an appellate team in Anchorage which will cover the entire state. The team leader will be an Attorney V, assisted by an Attorney IV, a Paralegal Assistant II and a Legal Secretary I. Again, expert witnesses will be utilized and some travel will also be required as concerns staff, expert consultants and training. FY 97 | | |
| Benefits | 23,445 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 90,813 | | | |
| Travel | 10,000 | | | |
| Contractual | 80,000 | | | |
| Commodities | 4,000 | | | |
| Equipment | 3,500 | | | |
| Other | | | | |
| Total Cost | 188,313 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | |
| Federal Receipts 1002 | | | | |
| G.F. Match 1003 | | | | |
| General Fund 1004 | 188,313 | | | |
| I-A Receipts 1007 | | | | |
| CIP Receipts 1061 | | | | |
| Other | | | | |

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Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

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| | | | | | | | |
|-------------------------------|----------------------|---|----------------------|------------------------|---------|--|--|
| Position Title Attorney IV | | No. of Positions 1 | Range / Step 24/A | Barg. Unit PX | | | |
| Time Status PFT | Staff Months 12.0 | Location Anchorage | | Election District 7 | | | |
| TYPE OF EXPENDITURE | | AMOUNT | | | | | |
| Salary | 61,008 | Justification Under this bill death penalty teams will be established at Anchorage and Fairbanks in FY 96 to handle both the guilt and penalty phases of capital cases. By FY 97 it is anticipated that enough cases will have reached the next step to justify an appellate team in Anchorage which will cover the entire state. The team leader will be an Attorney V, assisted by an Attorney IV, a Paralegal Assistant II and a Legal Secretary I. Again, expert witnesses will be utilized and some travel will also be required as concerns staff, expert consultants and training. FY 97 | | | | | |
| Benefits | 22,051 | | | | | | |
| Premium Pay | | | | | | | |
| Other | | | | | | | |
| Total Personal Services | 83,059 | | | | 83,059 | | |
| Travel | | | | | 10,000 | | |
| Contractual | | | | | 78,500 | | |
| Commodities | | | | | 4,000 | | |
| Equipment | | | | | 3,500 | | |
| Other | | | | | | | |
| Total Cost | | | | | 179,059 | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | | | |
| Federal Receipts | 1002 | | | | | | |
| G.F. Match | 1003 | | | | | | |
| General Fund | 1004 | 179,059 | | | | | |
| I-A Receipts | 1007 | | | | | | |
| CIP Receipts | 1061 | | | | | | |
| Other | | | | | | | |

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Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

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| | | | | | |
|--|----------------------|---|----------------------|------------------------|--------|
| Position Title Paralegal Assistant II | | No. of Positions 1 | Range / Step 16/A | Barg. Unit GGU | |
| Time Status PFT | Staff Months 12.0 | Location Anchorage | | Election District 7 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 36,444 | Justification Under this bill death penalty teams will be established at Anchorage and Fairbanks in FY 96 to handle both the guilt and penalty phases of capital cases. By FY 97 it is anticipated that enough cases will have reached the next step to justify an appellate team in Anchorage which will cover the entire state. The team leader will be an Attorney V, assisted by an Attorney IV, a Paralegal Assistant II and a Legal Secretary I. Again, expert witnesses will be utilized and some travel will also be required as concerns staff, expert consultants and training. FY 97 | | | |
| Benefits | 15,389 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 51,833 | | | | 51,833 |
| Travel | | | | | 0 |
| Contractual | | | | | 0 |
| Commodities | | | | | 3,500 |
| Equipment | | | | | 4,000 |
| Other | | | | | |
| Total Cost | | 59,333 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 59,333 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

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Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

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| | | | | | | | |
|-------------------------------------|----------------------|---|----------------------|------------------------|--------|--|--|
| Position Title Legal Secretary I | | No. of Positions 1 | Range / Step 10/A | Barg. Unit GGU | | | |
| Time Status PFT | Staff Months 12.0 | Location Anchorage | | Election District 7 | | | |
| TYPE OF EXPENDITURE | | AMOUNT | | | | | |
| Salary | 24,756 | Justification Under this bill death penalty teams will be established at Anchorage and Fairbanks in FY 96 to handle both the guilt and penalty phases of capital cases. By FY 97 it is anticipated that enough cases will have reached the next step to justify an appellate team in Anchorage which will cover the entire state. The team leader will be an Attorney V, assisted by an Attorney IV, a Paralegal Assistant II and a Legal Secretary I. Again, expert witnesses will be utilized and some travel will also be required as concerns staff, expert consultants and training. FY 97 | | | | | |
| Benefits | 12,110 | | | | | | |
| Premium Pay | | | | | | | |
| Other | | | | | | | |
| Total Personal Services | 36,866 | | | | 36,866 | | |
| Travel | | | | | 0 | | |
| Contractual | | | | | 0 | | |
| Commodities | | | | | 3,500 | | |
| Equipment | | | | | 4,000 | | |
| Other | | | | | | | |
| Total Cost | | | | | 43,366 | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | | | |
| Federal Receipts | 1002 | | | | | | |
| G.F. Match | 1003 | | | | | | |
| General Fund | 1004 | 43,366 | | | | | |
| I-A Receipts | 1007 | | | | | | |
| CIP Receipts | 1061 | | | | | | |
| Other | | | | | | | |

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Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
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| | | | | | |
|-------------------------------|----------------------|---------|--|-----------------------------|------------------|
| Position Title Attorney, V | | | No. of Positions 2 | Range / Step 25/A | Barg. Unit PX |
| Time Status PFT | Staff Months 24.0 | | Location EBA - JBA | Election District 7 - 20 | |
| TYPE OF EXPENDITURE | | AMOUNT | Justification It is anticipated that the caseload under this death penalty bill will have grown by FY 98 so that additional lawyers for the guilt and penalty teams will have to be added in both Anchorage and Fairbanks along with another appellate attorney and legal secretaries. FY 98 | | |
| Salary | 142,512 | | | | |
| Benefits | 48,453 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 190,965 | 190,965 | | | |
| Travel | | 5,000 | | | |
| Contractual | | 85,300 | | | |
| Commodities | | 3,000 | | | |
| Equipment | | 3,000 | | | |
| Other | | | | | |
| Total Cost | | 286,965 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts 1002 | | | | | |
| G.F. Match 1003 | | | | | |
| General Fund 1004 | | 286,965 | | | |
| I-A Receipts 1007 | | | | | |
| CIP Receipts 1061 | | | | | |
| Other | | | | | |

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Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

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| | | | | | |
|-------------------------------|----------------------|--|----------------------|-------------------------|--------|
| Position Title Attorney IV | | No. of Positions 1 | Range / Step 24/A | Barg. Unit PX | |
| Time Status PFT | Staff Months 12.0 | Location Fairbanks | | Election District 20 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 70,092 | Justification It is anticipated that the caseload under this death penalty bill will have grown by FY 98 so that additional lawyers for the guilt and penalty teams will have to be added in both Anchorage and Fairbanks along with another appellate attorney and legal secretaries. FY 98 | | | |
| Benefits | 23,951 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 94,043 | | | | 94,043 |
| Travel | | | | | 5,000 |
| Contractual | | | | | 85,300 |
| Commodities | | | | | 3,000 |
| Equipment | | | | | 3,000 |
| Other | | | | | |
| Total Cost | | 190,343 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 190,343 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

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Request For New Position

AGENCY ADMINISTRATION
BRU Public Defender Agency
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| | | | | | |
|-------------------------------------|----------------------|---|----------------------|-----------------------------|---------|
| Position Title Legal Secretary I | | No. of Positions 3 | Range / Step 10/A | Barg. Unit GGU | |
| Time Status PFT | Staff Months 36.0 | Location EBA - JBA | | Election District 7 - 20 | |
| TYPE OF EXPENDITURE | | AMOUNT | | | |
| Salary | 76,260 | Justification It is anticipated that the caseload under this death penalty bill will have grown by FY 98 so that additional lawyers for the guilt and penalty teams will have to be added in both Anchorage and Fairbanks along with another appellate attorney and legal secretaries, one in Anchorage and two in Fairbanks. FY 98 | | | |
| Benefits | 36,890 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | 113,150 | | | | 113,150 |
| Travel | | | | | 0 |
| Contractual | | | | | 0 |
| Commodities | | | | | 2,000 |
| Equipment | | | | | 9,000 |
| Other | | | | | |
| Total Cost | | 124,150 | | | |
| FUNDING SOURCE FOR TOTAL COST | | | | | |
| Federal Receipts | 1002 | | | | |
| G.F. Match | 1003 | | | | |
| General Fund | 1004 | 124,150 | | | |
| I-A Receipts | 1007 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

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Request For New Position

AGENCY ADMINISTRATION
BRU Public Defender Agency
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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SS HB 162

Revision Date: 1/25/94 Dept. Affected: Corrections
 Title: An Act authorizing capital punishment BRU: Administration and Support
 Sponsor: Representative Sanders Component: Office of the Commissioner
 Requestor: House Judiciary COMPONENT SERIAL NO. 694

Expenditures/Revenues

(Thousands of Dollars)

| | FY 95 | FY 96 | FY 97 | FY 88 | FY 99 | FY 00 |
|-------------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING EXPENDITURES | | | | | | |
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 50.0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 50.0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|-----------------------------|---|---|---|---|---|---|
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
|-----------------------------|---|---|---|---|---|---|

| | | | | | | |
|-------------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|-------------------------------|---|---|---|---|---|---|

FUND SOURCE

(Thousands of Dollars)

| | FY 95 | FY 96 | FY 97 | FY 88 | FY 99 | FY 00 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 50.0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 50.0 | 0 | 0 | 0 | 0 | 0 |

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Diane Schenker
 Division: Office of the Commissioner
 Approved by Commissioner: J. Frank Frewitt, Jr.
 Agency: Department of Corrections

Phone: 786-2141/465-4643
 Date: 1/25/94
 Date: 1/25/94

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HE 162

The bill would provide for the death penalty for certain Murder I convictions. The bill would require the commissioner to establish procedures for carrying out executions.

Assumptions

1. Offenders who would be sentenced to death under this bill would be incarcerated for life (99 years or more) under current law.
2. Based on estimates from the Department of Law, it is assumed that approximately four prisoners per year would be sentenced to death, and that execution would be delayed for 10 years due to appeals. Therefore, ten years after the first death sentences were given, the population of prisoners sentenced to death would reach 40. After the tenth year, executions would begin and the population would remain fairly static, at 40, as four additional prisoners are sentenced to death and four prisoners sentenced earlier are executed each year. The first death sentences would be expected to occur in FY96 and the first executions would be expected to occur in FY06.
3. The department's correctional facilities are currently filled to over emergency capacity. There is no space available to incarcerate four additional life-sentenced murderers, nor four additional death-sentenced prisoners in the system. It is assumed that additional maximum security housing will be needed, in the near future, to accommodate incoming murderers, regardless of this bill, and therefore the cost of constructing and operating the additional space is not attributed to this bill in the fiscal note. It is assumed that the Spring Creek facility would be expanded to handle this additional population.
4. The department does not have a position available to develop new procedures for executions. This will entail revision of numerous policies and procedures related to classification and some revision of the data management system. It is assumed that these one-time duties will be completed by contract.
5. It is assumed that the execution would be carried out by a contract agent. The Spring Creek facility is equipped with an infirmary area where the lethal injection could be administered. The State of Washington has provided information that Physicians Assistants are available to perform the execution by this method for approximately \$200 plus travel, room, and board.
6. The average age of Alaskan male inmates sentenced for Murder in the First Degree is 31 years. According to the Statistical Abstract of the United States (Department of Commerce), the average life expectancy of the American male by the year 2000 is expected to be 73.5 years. Without the death penalty, it is assumed that each First Degree Murderer sentenced to 99 years would be incarcerated for 42.5 years. Subtracting the ten years that a prisoner

sentenced to death would be incarcerated pending appeals, a prisoner sentenced to 99 years would be incarcerated for 32.5 years longer than a death-sentenced prisoner.

7. The cost of incarceration at Spring Creek is \$106 per day, or \$38,690 per year.
8. The cost of constructing a maximum security prison bed in Alaska is approximately \$160,000 per bed.
9. It is assumed that prisoners sentenced to death would be housed in both single and double cells, according to individual cases and behaviors. The following states were contacted to determine what type of special housing is generally used for prisoners sentenced to death:

| STATE | DEATH ROW HOUSING STATUS |
|--------------|--|
| California | Single cells only |
| Washington | Some single, some double, some in open population |
| Pennsylvania | 145 eligible for general population housing and work assignments at a maximum security facility; 1 segregated in single cell. Status depends upon whether death warrant has been signed by Governor and proximity to execution date. |
| Texas | Some single and some double cells |
| Idaho | Single cells only due to statutory requirement |
| Illinois | All in single cells currently but planning to double cell later this year |
| Nevada | Single cells only |
| Florida | Single cells only |

Operating Expenses, Current Year through FY00

The department estimates a cost of \$50,000 for a contractor to research and write any necessary regulations, policies, and procedures to comply with the bill. The work would begin in FY95.

Operating Expenses Effective After FY00

Each execution would entail the following expenses:

| | |
|----------------------|---------|
| Executioner's fee: | \$ 200 |
| Travel, room, board: | \$1,000 |
| Supplies: | \$ 300 |
| Total | \$1,500 |

Additional security during the 12-hour shift of each execution would require five officers on overtime status to strengthen perimeter and institutional security. Overtime expenses are estimated at \$1,500 per execution.

The total operating expenses for each execution would be \$3,000, or \$12,000 per year beginning in FY06.

Capital Savings/Cost Avoidance After FY00

Assuming a 40-bed unit were constructed to accommodate the next 40 offenders sentenced to either death, under this bill, or to 99 years, under current law, the unit would be filled in ten years. Without passage of this bill, additional 40-bed units would have to be constructed every ten years to accommodate the next 40 offenders sentenced to life terms. This would continue until approximately FY39, when those offenders sentenced to life imprisonment in FY95 would be expected to reach the ends of their expected lifespans.

| | |
|--------------|--|
| FY06: | 40 beds X \$160,000 per bed = \$ 6,400,000 |
| FY16: | 40 beds X \$160,000 per bed = \$ 6,400,000 |
| FY26: | 40 beds X \$160,000 per bed = \$ 6,400,000 |
| FY36: | 40 beds X \$160,000 per bed = \$ 6,400,000 |
| TOTAL | = \$ 25,600,000 CAPITAL EXPENSE AVOIDANCE |

Operating Savings/Cost Avoidance After FY00

For each prisoner sentenced to death instead of 99 years, the department would avoid operating costs of incarcerating the prisoner for 32.5 years:

$\$38,690 \times 32.5 = \$ 1,257,425$ cost savings per prisoner

Fiscal Note/DOC
SSHB 162
Revised January 25, 1994
Page 5 of 5

Execution of the first 40 offenders would result in eventual cost savings over their otherwise-expected lifetimes of:

40 X \$1,257,425 = \$50,297,000 TOTAL COST AVOIDANCE FOR 40 PRISONERS

Alternatively, total cost avoidance for the five year period between FY06 and FY10 could be estimated as follows:

| | | |
|--------------|---------------------|--|
| FY06 | \$6,400,000 | capital expenses for 40 maximum beds |
| | \$ 154,760 | for 4 additional prisoner-years (operating expenses) |
| FY07 | \$ 309,520 | for 8 additional prisoner-years |
| FY08 | \$ 464,280 | for 12 additional prisoner-years |
| FY09 | \$ 619,040 | for 16 additional prisoner-years |
| FY10 | \$ 773,800 | for 20 additional prisoner-years |
| TOTAL | \$ 8,721,400 | CAPITAL/OPERATING COST AVOIDANCE, FY06-10 |

Impact on Local Governments

Assuming Spring Creek Correctional Center would be the site of execution, the City of Seward would experience a large influx of media, death penalty opponents and supporters, and other interested parties on the occasion of each execution.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 8
Bill Version: SSHB 162
(H) Publish Date: 3/4/94

Revision Date: _____ Dept. Affected: Public Safety
Title: "An act authorizing capital punishment
classifying murder one as a capital felony " BRU: Alaska State Troopers
Sponsor: Representative Sanders Component: Detachments
Requestor: House Judiciary COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| REVENUE FUND SOURCE: | | | | | | |

FUNDING: (Thousands of Dollars)

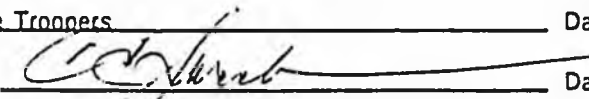
| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of current year (FY 94) impact: \$ 0.00 _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 12/13/93
Approved by Commissioner:  Date: 01/05/94
Agency: Richard L. Burton, Dept. of Public Safety

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303 K STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
Administrative Director

Alaska Court System

(907) 264-0547
FAX (907) 276-6985

November 12, 1993

The Honorable Robin L. Taylor, Chair
Senate Judiciary Committee
The Honorable Brian Porter, Chair
House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Taylor and Representative Porter:

Thank you for your invitation to present the views of the supreme court on Senate Bill 127 and House Bill 162, relating to capital punishment.

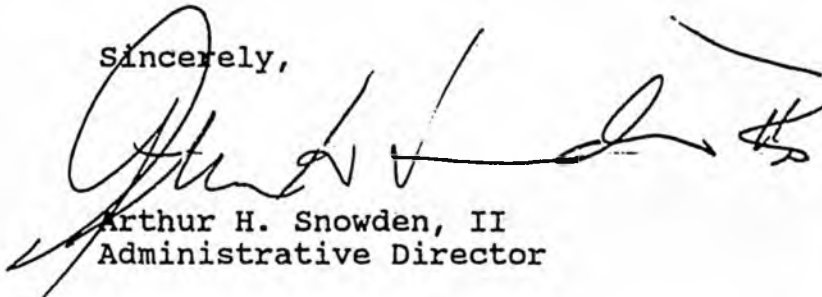
I brought your request to the attention of the supreme court. Because our constitution leaves matters of public policy such as this to the judgment of the legislature, the court believes that it would not be proper for it to express an opinion regarding the enactment of capital punishment legislation. This is in keeping with the court's general policy of neither supporting nor opposing legislation which does not directly affect the internal operation of the judicial branch; comments are normally limited to a bill's impact on the court system's budget and workload.

The court system has previously submitted fiscal notes for both SB 27 and HB 162. These represent our best estimate of the impact these bills will have, based upon the number of capital cases which the Department of Law expects to try. We would be happy to address any questions or comments you may have concerning these notes. We will also advise you if our review of the legislation reveals any

The Honorable Robin L. Taylor
The Honorable Brian Porter
November 12, 1993
Page 2

purely technical changes which might be made to reduce the court system's workload.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur H. Snowden, II". The signature is fluid and cursive, with a large initial "A" and a long horizontal stroke extending to the right. There are some additional scribbles at the end of the signature.

Arthur H. Snowden, II
Administrative Director

cc: The Honorable Jerry Sanders

COOK INLET REGION, INC.

March 11, 1994

Eileen MacLean, Co-Chairperson
House Finance Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative MacLean:

I am writing to you as President of Cook Inlet Region, Inc. (CIRI). The intent of this letter is to convey CIRI's adamant opposition to reinstatement of the death penalty in Alaska.

As you may be aware, I also serve as Chairman of the Board of the Alaska Native Justice Center, Inc. (ANJCI). The ANJCI is a strong advocate for Alaska Natives' civil rights and fair and equitable treatment in civil and criminal justice systems. The death penalty is foremost on the list of criminal justice issues confronting Alaska as a state and Native people as a minority, ethnic group. I have spent considerable time individually and with colleagues researching and discussing the various pros and cons of reinstating a death penalty law in Alaska. Quite honestly, there appears to be no pros to the issue unless revenge is a characteristic we opt to cultivate in our society.

CIRI's first and foremost reason for opposing reinstatement of the death penalty is that it is racially biased. There is no lack of evidence of racial bias in the administration of the death penalty in other jurisdictions. There is no reason to believe that Alaska's justice system is capable of avoiding racial bias in the administration of the death penalty. I will remind you that early in Alaska's history there existed a death penalty law. Under that law, 75 percent of all persons executed were minorities with a disproportionate number being Alaska Natives.

The flames of racial bias in the justice system are fanned by the lack of knowledge Alaska Natives have of the justice system, combined with the inability of economically disadvantaged members of an ethnic minority to acquire adequate legal counsel in the trial process. Economically disadvantaged people who must depend on court appointed counsel during the trial process are more likely to receive the death penalty and be executed than are economically advantaged defendants who can afford more capable counsel.

Representative MacLean

March 11, 1994

Page 2

Another reason CIRI opposes reinstatement of the death penalty in Alaska relates to cost. The U.S. Supreme Court established stringent guidelines that result in the prosecution of capital cases being extremely expensive. The process is layered with appeals that require several years to finalize. States that administer the death penalty have recorded the cost of bringing a defendant to execution at over \$2 million.

Extensive costs necessary to administer the death penalty would likely create a severe drain on resources traditionally applied to other elements of law enforcement, including crime prevention programs. Thus it is reasonable to assume, given the state's anticipated revenue shortfalls for the coming years, that death penalty administrative costs will adversely impact non-capital cases and law enforcement capabilities in general.

I believe that other arguments against the death penalty are valid. For example, administration of the death penalty takes years and does not allow the families of victims closure to their grief; the death penalty is cruel and unusual punishment; the death penalty does not serve as a deterrent to violent behavior; the death penalty is irreversible thus providing no opportunity to correct mistakes made by the system.

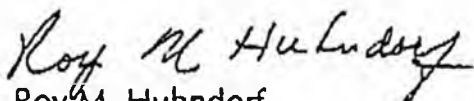
It is beyond me as to why supposedly civilized people would want to embrace the death penalty as a solution to punishing individuals convicted of a capital crime. I suspect, since all other arguments fall short of reason, it is simply revenge.

Alaska currently has the judicial machinery, the laws and the tendency to put individuals convicted of capital crime in prison for most, and often all, of their remaining life. That seems to me to be the answer. Above all, it allows the opportunity to correct a mistake, if one is made. The death penalty is irreversible.

Thank you for the opportunity to comment on this extremely important issue. I respectfully request that members of your committee receive these comments.

Sincerely,

COOK INLET REGION, INC.



Roy M. Huhndorf
President

RMH/pk/02/050

Adopted by JUDICIARY

8-LS0414E.4
Luckhaupt
3/1/94

AMENDMENT #2

OFFERED IN THE HOUSE

BY THE HOUSE JUDICIARY COMMITTEE

TO: SSHB 162

Page 1, line 3:

Delete "authorizing an advisory vote on instituting capital punishment;"

Page 10, line 27, through page 11, line 4:

Delete all material.

Renumber the following bill section accordingly.

Page 11, line 5:

Delete "Except for sec. 13 of this Act, this"

Insert "This"

I3C06 * Copy requested by LHSCBOK .

KROGSENG, BOB

SEARCH - QUERY
00301 HB ADJ 162

HJUD94013113 DOCUMENT= 4 OF 5

CHAMBER = H
SOURCE = HJUD
DATE = 940131
YEAR = 94
TIME = 1315

DOCUMENT TEXT

HOUSE JUDICIARY STANDING COMMITTEE
January 31, 1994
1:15 p.m.

MEMBERS PRESENT

Rep. Brian Porter, Chairman
Rep. Jeannette James, Vice-Chair
Rep. Pete Kotu
Rep. Gail Phillips (arrived at 1:35 p.m.)
Rep. Joe Green
Rep. Cliff Davidson
Rep. Jim Nordlund
MEMBERS ABSENT

None

COMMITTEE CALENDAR

HB 162: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies; authorizing an advisory vote on instituting capital punishment; and providing for an effective date."

FAILED TO MOVE OUT OF COMMITTEE BY A VOTE OF 4-3

HB 49: "An Act relating to facsimile absentee ballot application and facsimile absentee voting."

CSHB 49(JUD) PASSED OUT OF COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS AND A FISCAL NOTE

HB 315: "An Act relating to the unauthorized use of or unauthorized interference with transmission and delivery of subscription cable services; and amending the definition of the offense of theft of services and the penalties for its violation."

CSHB 315(JUD) PASSED OUT OF COMMITTEE WITH NO

OBJECTIONS

HB 313: "An Act relating to suspended imposition of criminal sentences and to the period in which suspension of the imposition of sentence for conviction of the crime of disorderly conduct may be authorized."

CSHB 313(JUD) PASSED OUT OF COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS

WITNESS REGISTER

REP. JERRY SANDERS
Alaska State Legislature
Capitol, Room 13
Juneau, Alaska 99801-1182
Phone: 465-4945
POSITION STATEMENT: Prime Sponsor of HB 162.

JERRY LAUKPAUT
Legal Services
Legislative Affairs Agency
130 Seward Street
Juneau, Alaska 99801
Phone: 465-2450
POSITION STATEMENT: Drafter of HB 162 and Rep. Nordlund's amendment.

TOM ANDERSON
Legislative Aide
Rep. Terry Martin
Alaska State Legislature
Capital Building, Room 411
Phone: 465-3783
POSITION STATEMENT: Testified on behalf of Rep. Martin, Prime Sponsor of HB 49.

JOHN GAGUINE
Assistant Attorney General
Department of Law
P.O. Box 110300
Juneau, Alaska 99811
Phone: 465-2127
POSITION STATEMENT: Available to answer questions on HB 49.

ERIC MUSSER
Legislative Aide
Rep. Brian Porter
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99811
Phone: 465-4930
POSITION STATEMENT: Testified on behalf of Rep. Porter, Prime Sponsor of HB 315.

REP. PETE KOTT
Alaska State Legislature
Capitol Building, Room 409

Juneau, Alaska 99811
Phone: 465-3743
POSITION STATEMENT: Prime Sponsor of HB 313.

MARGO KNUTH
Criminal Division
Department of Law
P.O. Box 110300
Juneau, Alaska 99811
Phone: 465-3428
POSITION STATEMENT: Answered questions regarding HB 315.

PREVIOUS ACTION

BILL: HB 162
SHORT TITLE: CAPITAL PUNISHMENT FOR MURDER
BILL VERSION: SSHB 162
SPONSOR(S): REPRESENTATIVE(S) SANDERS, Olberg, Bunde, Kott,
Vezey, James

| JRN-DATE | JRN-PG | | ACTION |
|----------|--------|-----|--|
| 02/18/93 | 380 | (H) | READ THE FIRST TIME/REFERRAL(S) |
| 02/18/93 | 380 | (H) | JUDICIARY, FINANCE |
| 02/22/93 | 421 | (H) | COSPONSOR(S): BUNDE |
| 02/24/93 | 445 | (H) | COSPONSOR(S): KOTT |
| 03/01/93 | 495 | (H) | COSPONSOR(S): VEZEY |
| 03/02/93 | 510 | (H) | COSPONSOR(S): JAMES |
| 11/16/93 | | (H) | MINUTE (JUD) |
| 11/16/93 | | (S) | MINUTE (JUD) |
| 01/19/94 | 2109 | (H) | SPONSOR SUBSTITUTE INTRODUCED-REFERRALS |
| 01/19/94 | 2109 | (H) | JUDICIARY, FINANCE |
| 01/26/94 | | (H) | JUD AT 01:15 PM CAPITOL 120 |
| 01/26/94 | | (H) | MINUTE (JUD) |
| 01/28/94 | | (H) | JUD AT 01:15 PM CAPITOL 120 |

BILL: HB 49
SHORT TITLE: ABSENTEE BALLOTING BY FAX
BILL VERSION:
SPONSOR(S): REPRESENTATIVE(S) MARTIN, Brice

| JRN-DATE | JRN-PG | | ACTION |
|----------|--------|-----|-----------------------------------|
| 01/13/93 | 52 | (H) | READ THE FIRST TIME/REFERRAL(S) |
| 01/13/93 | 53 | (H) | STATE AFFAIRS, JUDICIARY, FINANCE |
| 01/20/93 | 117 | (H) | COSPONSOR(S): BRICE |
| 01/28/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 01/28/93 | | (H) | MINUTE (STA) |
| 01/30/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 01/30/93 | | (H) | MINUTE (STA) |
| 02/09/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 02/11/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 02/11/93 | | (H) | MINUTE (STA) |
| 02/13/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 02/18/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 02/18/93 | | (H) | MINUTE (STA) |
| 03/02/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 03/02/93 | | (H) | MINUTE (STA) |
| 03/04/93 | | (H) | STA AT 08:00 AM CAPITOL 102 |
| 03/04/93 | | (H) | MINUTE (STA) |

| | | | |
|----------|-----|-----|--|
| 03/05/93 | 541 | (H) | STA RPT CS(STA) NEW TITLE LDP LDNP 5NR |
| 03/05/93 | 541 | (H) | DP: VEZEY |
| 03/05/93 | 541 | (H) | DNP: ULMER |
| 03/05/93 | 541 | (H) | NR: B.DAVIS,OLBERG, G.DAVIS, SANDERS,KOTT |
| 03/05/93 | 541 | (H) | -FISCAL NOTE (GOV) 3/5/93 |
| 04/21/93 | | (H) | JUD AT 01:00 PM CAPITOL 120 |
| 01/19/94 | | (H) | JUD AT 01:15 PM CAPITOL 120 |
| 01/19/94 | | (H) | MINUTE(JUD) |
| 01/21/94 | | (H) | MINUTE(JUD) |
| 01/31/94 | | (H) | JUD AT 01:15 PM CAPITOL 120 |

BILL: HB 315

SHORT TITLE: THEFT OF SUBSCRIPTION TV SERVICES

SPONSOR(S): REPRESENTATIVE(S) PORTER, Green, Toohey

| JRN-DATE | JRN-PG | | ACTION |
|----------|--------|-----|---------------------------------|
| 01/03/94 | 2009 | (H) | PREFILE RELEASED |
| 01/10/94 | 2009 | (H) | READ THE FIRST TIME/REFERRAL(S) |
| 01/10/94 | 2009 | (H) | JUDICIARY, FINANCE |
| 01/24/94 | 2139 | (H) | COSPONSOR(S): GREEN, TOOHEY |
| 01/24/94 | | (H) | JUD AT 01:15 PM CAPITOL 120 |
| 01/24/94 | | (H) | MINUTE(JUD) |
| 01/31/94 | | (H) | JUD AT 01:15 PM CAPITOL 120 |

BILL: HB 313

SHORT TITLE: SUSPENDED SENTENCES:DISORDERLY CONDUCT

SPONSOR(S): REPRESENTATIVE(S) KOTT

| JRN-DATE | JRN-PG | | ACTION |
|----------|--------|-----|---------------------------------|
| 01/03/94 | 2009 | (H) | PREFILE RELEASED |
| 01/10/94 | 2009 | (H) | READ THE FIRST TIME/REFERRAL(S) |
| 01/10/94 | 2009 | (H) | JUDICIARY, FINANCE |
| 01/31/94 | | (H) | JUD AT 01:15 PM CAPITOL 120 |

ACTION NARRATIVE

TAPE 94-13, SIDE A
Number 000

The House Judiciary Standing Committee was called to order at 1:30 p.m. on January 31, 1994. A quorum was present. Chairman Porter announced that the first order of business was H3 162, and that the prime sponsor, Rep. Jerry Sanders, was on teleconference from Anchorage.

HB 162 - CAPITAL PUNISHMENT FOR MURDER

Number 025

REP. PORTER said that the public hearing on HB 162 had been concluded after a hearing in Anchorage during the interim and two teleconferences in Juneau, and requested amendments.

Number 046

REP. NORDLUND said he had an amendment that would basically

strip the entire bill and substitute life without parole in lieu of the death penalty, and moved the amendment.

Number 090

REP. KOTT objected for the purpose of discussion.

Number 114

JERRY LAUKPAUT, Legal Services, Legislative Affairs Agency, drafter of HB 162, the Sponsor Substitute, and the Nordlund amendment (E3), explained the amendment to the committee. Mr. Laukpaut explained that Rep. Nordlund had him take the basic aggravating factors in the bill and change the penalty from death to life without possibility of parole.

Number 183

The committee discussed the amendment, including the possibility of furlough, good time, escape, threat to correctional officials, and whether it was constitutional. The committee also discussed if there would be a need for additional facilities to house life-time offenders.

Number 741

REP. PORTER called for a roll call vote on the amendment:

| | | | |
|---------------|-----|---------------|-----|
| Rep. Kott | no | Rep. Nordlund | yes |
| Rep. Phillips | no | Rep. Davidson | yes |
| Rep. Green | yes | Rep. James | no |
| Rep. Porter | no | | |

THE MOTION TO AMEND FAILED.

Number 750

REP. PORTER said the committee had in front of it HB 162 as originally presented. He reminded the committee of the concern of Jack Chenoweth of the Attorney General's Office, which is the crime of first degree murder, with a range of sentence from 20 years to 99 years. Rep. Porter indicated there is a concern that this range would give rise to an equal protection constitutional challenge, and there is no doubt that should HB 162 become law, everything in it would be challenged in some form, but this is something the committee might want to consider.

Number 766

REP. JAMES indicated she would feel a lot more comfortable with HB 162 if the committee had an overall view of the bill, and even though she supports in concept capital punishment, she would like to also have the possibility of mandatory incarceration without parole. Rep. James suggested a working group to look at the whole range of sentencing options and come up with something for the committee to look at.

Number 782

REP. PORTER said that if there were, for example, 100 challenges to this bill, he was sure that 99 of them would meet the challenge, albeit years from now after hundreds of thousands of dollars have been spent, but they would meet the challenge, from his understanding of the U.S. Supreme Court's position on capital punishment and the cases they have decided and guidelines they have written. He added that he thought HB 162 meets all the requirements with the one exception of possibility of sentencing disparity, and he thought it was worth thinking about.

Number 796

REP. PHILLIPS told the committee she had a lot of thoughts on this bill and was not anywhere near ready to pass the bill out. She said she thought the testimony was stacked with attorneys and did not reflect current public opinion favoring the death penalty.

Number 808

REP. PORTER responded that the committee had three public hearings, one in Anchorage with the Joint Judiciary Committees, and to his knowledge the companion bill was not moving in the Senate, so this was just the first of potentially three or four committee hearings on the legislation. Rep. Porter said he was being told by those who favor it to move it out of committee, and he was being told by those who don't want it to sit on it. He added that he didn't particularly want it, but he didn't particularly want to sit on it either.

Number 820

REP. PHILLIPS reiterated that she felt very uncomfortable that the committee hadn't done its work on the legislation, and that the committee hadn't taken enough public testimony. Rep. Phillips added that she felt the testimony had been totally slanted, and that she knows there's another side out there.

Number 830

The committee discussed Rep. Phillips' concerns, with a number of members indicating they shared her concerns.

TAPE 94-13, SIDE B

Number 012

REP. PORTER said it was his intention to vote HB 162 up or down.

Number 018

REP. JAMES supported Rep. Porter's intention to vote to move the bill out of committee, and suggested it would probably die in House Finance because of the cost, and that it was time to let another committee deal with it.

Number 020

REP. PORTER asked if the committee's comments about not hearing enough public testimony was an indication that members didn't believe that public support for HB 162 was as vehement as thought.

Discussion on Rep. Porter's comments and Rep. Phillips' concerns ensued.

Number 091

REP. PORTER told the committee he felt holding chairmanship of the Judiciary Committee had two roles: one, the general public policy, "represent my district" kind of role that each legislator shares; and second, he would not let the committee pass a bill that he had any concern about being constitutionally flawed. Rep. Porter said that is the committee's professional requirement, and added that his vote to move HB 162 out of committee was going to be a reflection of the professional requirement of this committee, making it a lawful piece of legislature should it pass. He added, however, that he did not support the bill and would not vote for it if it came to the floor of the House, but if a piece of legislation came across reflecting Rep. Nordlund's amendment, he would probably support it.

Number 130

REP. KOTT pointed out that this latest round of testimony dealt with a different bill in that the committee was no longer dealing with court rules, so it could pass with a simple majority. He said the committee should have perhaps dug into that a little deeper, but if Rep. Porter was satisfied with the constitutionality of the bill, then he would go along with the recommendation to move HB 162 out, and would in fact support HB 162, having had a mandate of almost 82 percent of his constituents supporting it.

Number 161

REP. NORDLUND offered another amendment stripping Section 13 out of the bill, which was the section pertaining to putting the issue on the ballot for a public vote. He moved Amendment No. 2. 4

Number 188

Discussion ensued on Amendment No. 2.

Number 256

REP. PORTER called for a vote on Amendment No. 2: 4

| | | | |
|---------------|-------|---------------|-------|
| Rep. Phillips | yes | Rep. Davidson | yes 1 |
| Rep. Green | yes | Rep. Kott | no 3 |
| Rep. Nordlund | yes | Rep. James | no 1 |
| Rep. Porter | yes 4 | | |

AMENDMENT NO. 2 PASSED AND HB 162 WAS BEFORE THE COMMITTEE. 5

Number 264

A discussion on HB 162 ensued.

Number 633

REP. JAMES MADE A MOTION TO MOVE HB 162 OUT OF COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS.

REP. PORTER called for a roll call vote:

| | | | |
|---------------|------|---------------|-----|
| Rep. Davidson | no | Rep. Green | no |
| Rep. Kott | yes | Rep. Nordlund | no |
| Rep. Phillips | no | Rep. James | yes |
| Rep. Phillips | yes. | | |

THE MOTION TO MOVE HB 162 OUT OF COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS FAILED.

Number 651

REP. PORTER said the next order of business was HB 49.

CSHB 49(JUD) - "An Act relating to absentee voting, to electronic transmission of absentee ballot applications, and to delivery of ballots to absentee ballot applicants by electronic transmission."

Number 660

TOM ANDERSON, Legislative Aide to Rep. Terry Martin, Prime Sponsor of HB 49, testified that he followed up on the question relating to postmarks and also of how HB 49 would affect municipal clerks. Mr. Anderson said Rep. Martin had no problem with changing the wording of the bill to say that an application requesting delivery of an absentee ballot to the applicant must be addressed to the Division of Elections and received in not less than seven days. On the second question, Mr. Anderson referred to a letter from Patty Ann Polly, the Juneau City Clerk, and asked the committee to note that HB 49 only addressed Section 15 of the Statutes, not Section 29, which had to do with municipal elections, so it wouldn't really affect city elections.

Number 703

JOHN GAGUINE, Governmental Affairs Section, Attorney General's Office, testified that they saw no problem with secrecy and the right to privacy. Mr. Gaguine said he was confident that the Division of Elections could come up with procedures to deal with the issue of secrecy. He added that the state was not forcing anyone to vote this way; it was a matter of choice.

REP. PORTER asked Mr. Gaguine if he was saying you can waive the right to secrecy.

Number 733

MR. GAGUINE said no, you cannot waive your right to secrecy.

Number 738

REP. PORTER commented that the Division of Elections could not guarantee secrecy.

Number 743

MR. GAGUINE concurred.

Number 764

REP. PORTER said he would entertain a motion to amend page 3, line 19, change the first two words "and postmarked" to "and received."

AMENDMENT NO. 1 WAS MOVED WITHOUT OBJECTION.

Number 770

REP. GREEN moved the amended bill out of committee with individual recommendations, with a fiscal note.

HEARING NO OBJECTIONS, CSHB 49 (JUD) WAS MOVED OUT OF COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS AND A FISCAL NOTE.

HB 315 - THEFT OF SUBSCRIPTION TV SERVICES

Number 790

REP. PORTER brought the next bill before the committee, HB 315.

ERIC MUSSER, Legislative Aide to Rep. Brian Porter, described a draft committee substitute, which simply makes more clear the intent of the legislation. He said during the previous hearing two questions were raised, and on page 3, line 13, of the original bill the question came up to just what "inductively" meant. Mr. Musser also said a question came up as to whether there was a redundancy between the language on page 3, line 13 and line 19.

MR. MUSSER said the committee substitute restructures the language to eliminate any redundancy, and included a definition of an unauthorized device.

Number 840

REP. PHILLIPS MOVED the JUDICIARY SUBSTITUTE for HB 315. Hearing no objection, it was so moved.

CSHB 315 (JUD) MOVED OUT OF COMMITTEE.

TAPE 94-14, SIDE A
Number 000

CSHB 313 (JUD) - "An Act relating to suspended imposition of

criminal sentences and to the imposition of sentence when a suspended imposition of sentence is revoked."

REP. PORTER said the next order of business was HB 313.

Number 010

REP. PETE KOTT, Prime Sponsor of HB 313, presented the committee with a committee substitute and testified that the legislation's original intent extended to judges the opportunity to impose the suspended imposition of sentencing to 90 days, but as it currently stands, you can only suspend imposition of sentence up to the amount of time a person would actually be serving. The Committee Substitute (CS) allows for probation to go up to one year.

Number 127

REP. PORTER said he intends to support the bill because it provides some options not currently available to the system, and the only correction he would make is changing 5th degree to 3rd degree on weapons misconduct.

Number 130

MARGO KNUTH, Criminal Division, Department of Law, explained to the committee that there is now a 5th degree weapons offense and it is a misdemeanor offense and it starts off with higher offenses than the state used to have.

Number 160

REP. NORDLUND asked if HB 315 would allow for an SIS to go beyond what an original sentence was.

Number 173

REP. KOTT replied yes; under a Class B misdemeanor an individual would get 90 days in jail, so this allows a judge to extend that period of probation up to one year, and it is up to judicial discretion.

Number 192

REP. PORTER said it has been pointed out that Anchorage and other urban communities that have problems with criminal behavior is really a result of an inebriate problem, and this would allow a court to sentence an SIS for a lengthy period of treatment as opposed to just disorderly conduct, which often is a drinking problem.

Number 199

REP. GREEN asked if the additional extension of probation (inaudible).

Number 192

REP. PORTER replied that the judge will issue a suspended imposition of sentence for a certain length of time, and HB 313 allows that time to go up in the judge's opinion if there is a reason for it.

Number 252

MS. KNUTH said because it will be applied to new offenses that are committed as long as it is a reasonable time period, and the legislature can set whatever time period it wants, and what is happening is the original sentencing is still there, but it stays at risk for a longer time period.

MS. KNUTH continued, saying judges have asked for this amendment because right now they are not granting SIS's for these minor offenses because they don't feel they can trust a person to know if it's taken in 10 or 90 days, so they will impose the sentence which gives them a much longer time period and in effect they feel that they have been harsher than they should be. She said judges would like to be able to grant an SIS, which is a liberal and useful thing to do, but only if there is enough security build into it.

Number 324

REP. PHILLIPS MOVED CSHB 313(JUD). Hearing no objection, it was so moved.

CSHB 313(JUD) WAS MOVED OUT OF COMMITTEE WITH INDIVIDUAL RECOMMENDATIONS.

ADJOURNMENT

Chairman Porter adjourned the meeting at 3:30 p.m.

I0607 * End of document.

ALASKA STATE LEGISLATURE

3111 C STREET
ANCHORAGE, ALASKA 99503
(907) 561-2039
FAX: (907) 561-1691

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3875
FAX: 907-465-2294



MINORITY WHIP
CHAIR
CHILDREN'S CAUCUS
HEALTH, EDUCATION
& SOCIAL SERVICES
STATE AFFAIRS
ECONOMIC TASK
FORCE

REPRESENTATIVE BETTYE DAVIS
DISTRICT 21

MEMORANDUM

TO: REP. BRIAN PORTER, CHAIR
HOUSE JUDICIARY COMMITTEE

FR: REP. BETTYE DAVIS *BD*

DT: JANUARY 31, 1994

RE: HB 162 - DEATH PENALTY LEGISLATION
DETERRENCE INFORMATION

Attached is the information regarding deterrence which I referred to during my testimony before House Judiciary . I hope you will find this information useful during your deliberations on HB 162.



deeply destructive of the common decency of the community; the benefits are illusory.

Two conclusions buttress our entire case: *Capital punishment does not deter crime, and the death penalty is uncivilized in theory and unfair and inequitable in practice.*

Deterrence

The argument most often cited in support of capital punishment is that the threat of executions deters capital crimes more effectively than imprisonment. This claim is plausible, but the facts do not support it. The death penalty fails as a deterrent for several reasons.

(1) Any punishment can be an effective deterrent only if it is consistently and promptly employed. Capital punishment cannot be administered to meet these conditions.

Only a small proportion of first-degree murderers is sentenced to death, and even fewer are executed. Although death sentences since 1980 have increased in number to about 250 per year,¹ this is still only 1 per cent of all homicides known to the police.² Of all those convicted on a charge of criminal homicide, only 2 percent-- about 1 in 50 -- are eventually sentenced to death.³

The possibility of increasing the number of convicted murderers sentenced to death and executed by enacting *mandatory* death penalty laws was ruled unconstitutional in 1976 (*Woodson v. North Carolina*, 428 U.S. 280).

Considerable delay in carrying out the death sentence is unavoidable, given the procedural safeguards required by the courts in capital cases. Starting with empaneling the trial jury, murder trials take far longer when the death penalty is involved. Post-conviction appeals in death-penalty cases are far more frequent as well. All these factors increase the time and cost of administering criminal justice.

1 See U.S. Dept. Justice, *Capital Punishment*, annually, 1980 et seq.

2 See *Uniform Crime Reports*, annually 1980 et seq.

3 See *Uniform Crime Reports*.

The sobering lesson is that we can reduce such delay and costs only by abandoning the procedural safeguards and constitutional rights of suspects, defendants, and convicts, with the attendant high risk of convicting the wrong person and executing the innocent.

(2) Persons who commit murder and other crimes of personal violence either premeditate them or they do not. If the crime is premeditated, the criminal ordinarily concentrates on escaping detection, arrest, and conviction. The threat of even the severest punishment will not deter those who expect to escape detection and arrest. If the crime is not premeditated, then it is impossible to imagine how the threat of any punishment could deter it. Most capital crimes are committed during moments of great emotional stress or under the influence of drugs or alcohol, when logical thinking has been suspended. Impulsive or expressive violence is inflicted by persons heedless of the consequences to themselves as well as to others.

Gangland killings, air piracy, drive-by shootings, and kidnapping for ransom are among the graver felonies that continue to be committed because some individuals think they are too clever to get caught. Political terrorism is usually committed in the name of an ideology that honors its martyrs; trying to cope with it by threatening death for terrorists is futile. Such threats leave untouched the underlying causes and ignore the many political and diplomatic sanctions (such as treaties against asylum for international terrorists) that could appreciably lower the incidence of terrorism.

The attempt to reduce murders in the illegal drug trade by the threat of severe punishment ignores this fact: Anyone trafficking in illegal drugs is already betting his life in violent competition with other dealers. It is irrational to think that the death penalty--a remote threat at best--will deter murders committed in drug turf wars or by street-level dealers.

(3) If, however, severe punishment can deter crime, then long-term imprisonment is severe enough to cause any rational person not to commit violent crimes. The vast preponderance of the evidence shows that *the death penalty is no more effective than imprisonment in deterring murder* and that it may even be an incitement to criminal violence in certain cases.

(a) Death-penalty states as a group do not have lower rates of criminal homicide than non-death penalty states. During the 1980s, death-penalty states averaged an annual rate of 7.5 criminal homicides per 100,000 of population; abolition states averaged a rate of 7.4.⁴

(b) Use of the death penalty in a given state may increase the subsequent rate of criminal homicide in that state. In New York, for example, between 1907 and 1964, 692 executions were carried out. On the average, over this 57-year period, one or more executions in a given month added a net increase of two homicides to the total committed in the next month.⁵

(c) In neighboring states--one with the death penalty and the others without it--the one with the death penalty does not show a consistently lower rate of criminal homicide. For example, between 1972 and 1990, the homicide rate in Michigan (which has no death penalty) was generally as low as or lower than the neighboring state of Indiana, which restored the death penalty in 1973 and since then has sentenced 70 persons to death and carried out 2 executions.⁶

(d) Police officers on duty do not suffer a higher rate of criminal assault and homicide in states that have abolished the death penalty than they do in death-penalty states. Between 1973 and 1984, for example, lethal assaults against police were not significantly more or less frequent in abolition states

4 *Uniform Crime Reports*, annually, 1980-1989.

5 Bowers and Pierce, "Deterrence or Brutalization," in *Crime & Delinquency* (1980).

6 U.S. Dept. Justice, *Capital Punishment, 1972-1990*; *Uniform Crime Reports*, annually, 1972-1990; and NAACP Legal Defense and Educational Fund, "Death Row, USA," Spring 1992.

than in death-penalty states. There is "no support for the view that the death penalty provides a more effective deterrent to police homicides than alternative sanctions. Not for a single year was evidence found that police are safer in jurisdictions that provide for capital punishment."⁷

(e) Prisoners and prison personnel do not suffer a higher rate of criminal assault and homicide from life-term prisoners in abolition states than they do in death-penalty states.⁸ Between 1984 and 1989, seventeen prison staff were murdered by prisoners in ten states; of these murders, 88 percent (15 of 17) occurred in death penalty jurisdictions -- just as about 88 percent of all the prisoners in those ten states were in death penalty jurisdictions.⁹ Evidently, the threat of the death penalty "does not even exert an incremental deterrent effect over the threat of a lesser punishment in the abolitionist state."¹⁰

Actual experience establishes these conclusions beyond a reasonable doubt. No comparable body of evidence contradicts them.

Three investigations since *Furman*, using methods pioneered by economists, reported findings in the opposite direction.¹¹ Subsequently, several qualified investigators have independently examined these claims, and all have rejected them.¹² The National Academy of Sciences, in its thorough report on the effects of criminal sanctions on crime rates, con-

⁷ Bailey and Peterson, in *Criminology* (1987), p. 22.

⁸ *Sourcebook of Criminal Justice Statistics*, 1990.

⁹ Bureau of Justice Statistics, *Prisons and Prisoners in the United States* (1992), p. 1.

¹⁰ Wolfson, in Bedau, ed., *The Death Penalty in America*, 3rd ed. (1982), p. 167.

¹¹ Ehrlich, in *American Economic Review* (1974); Phillips, in *American Journal of Sociology* (1980); and Layson, in *Southern Economic Journal* (1985).

¹² Lempert, in *Crime & Delinquency* (1983); Peterson and Bailey, in Chambliss, ed., *Criminal Law in Action*, 2nd ed. (1984); Bowers, in Hasse and Inciardi, eds., *Challenging Capital Punishment* (1988); Peterson and Bailey, in *Social Forces* (1988); and Fox and Radelet, in *Loyola of Los Angeles Law Review* (1989).

cluded: "It seems unthinkable to us to base decisions on the use of the death penalty" on such "fragile" and "uncertain" results. "We see too many plausible explanations for [these] findings ... other than the theory that capital punishment deters murder."¹³

Furthermore, cases have been clinically documented where the death penalty actually incited the capital crimes it was supposed to deter. These include instances of the so-called suicide-by-execution syndrome--persons who wanted but feared to take their own life and committed murder so that society would kill them.¹⁴

It must, of course, be conceded that inflicting the death penalty guarantees that the condemned person will commit no further crimes. This is an incapacitative, not a deterrent, effect of executions. Furthermore, it is too high a price to pay when studies show that very few convicted murderers ever commit another crime of violence.¹⁵ A recent study examined the prison and post-release records of 533 prisoners on death row in 1972 whose sentences were reduced to life by the Supreme Court's ruling in *Furman*. The research showed that 6 had committed another murder. But the same study showed that in 4 other cases, an innocent man had been sentenced to death.¹⁶

Recidivism among murderers does occasionally happen. But it happens less frequently than most people believe; the media rarely distinguish between a paroled murderer who murders again and other murderers who have a previous criminal record but not for homicide.

There is no way to predict which convicted murderers will kill again. Repeat murders could be prevented only by executing *all* those convicted of criminal homicide. Such a policy is too inhumane and brutal to be taken seriously. Society would never tolerate dozens of executions daily, yet nothing less would suffice. Equally effective but far less inhumane is a policy of life imprisonment without the possibility of parole.

13 Blumstein, Cohen, and Nagin, eds., *Deterrence and Incapacitation* (1975), p. 358.

14 West, Solomon, and Diamond, in Bedau and Pierce, eds., *Capital Punishment in the United States* (1976).

15 Bedau, "Recidivism, Parole, and Deterrence," in Bedau, ed., *Death Penalty in America*, 3rd ed.

16 Marquart and Sorensen, in *Loyola of Los Angeles Law Review* (1989).

DEATH PENALTY INFORMATION CENTER

FBI Uniform Crime Reports: Murder Rates per 100,000 population

| | 1992 | 1991 | |
|--------------------|------------|------------|--|
| 1. South Dakota | 0.6 | 1.7 | |
| 2. Iowa* | 1.6 | 2.0 | |
| 3. New Hampshire | 1.6 | 3.6 | |
| 4. Maine* | 1.7 | 1.2 | |
| 5. North Dakota* | 1.9 | 1.1 | |
| 6. Vermont* | 2.1 | 2.1 | |
| 7. Montana | 2.9 | 2.6 | |
| 8. Utah | 3.0 | 2.9 | |
| 9. Minnesota* | 3.3 | 3.0 | |
| 10. Idaho | 3.5 | 1.8 | |
| 11. Rhode Island* | 3.6 | 3.7 | |
| 12. Hawaii* | 3.6 | 4.0 | |
| 13. Massachusetts* | 3.6 | 4.2 | |
| 14. Wyoming | 3.6 | 3.3 | |
| 15. Nebraska | 4.2 | 3.3 | |
| 16. Wisconsin* | 4.4 | 4.8 | |
| 17. Delaware | 4.6 | 5.4 | |
| 18. Oregon | 4.7 | 4.6 | |
| 19. Washington | 5.0 | 4.2 | |
| 20. New Jersey | 5.1 | 5.2 | |
| 21. Connecticut | 5.1 | 5.7 | |
| 22. Kentucky | 5.8 | 6.8 | |
| 23. Kansas* | 6.0 | 6.1 | |
| 24. Colorado | 6.2 | 5.9 | |
| 25. Pennsylvania | 6.2 | 6.3 | |
| 26. West Virginia* | 6.3 | 6.2 | |
| 27. Oklahoma | 6.5 | 7.2 | |
| 28. Ohio | 6.6 | 7.2 | |
| 29. Alaska* | 7.5 | 7.4 | |
| 30. Arizona | 8.1 | 7.8 | |
| 31. Indiana | 8.2 | 7.5 | |
| 32. Virginia | 8.8 | 9.3 | |
| 33. New Mexico | 8.9 | 10.5 | |
| 34. Florida | 9.0 | 9.4 | |
| 35. Michigan* | 9.9 | 10.8 | |
| 36. Tennessee | 10.4 | 11.0 | |
| 37. South Carolina | 10.4 | 11.3 | |
| 38. Missouri | 10.5 | 10.5 | |
| 39. North Carolina | 10.6 | 11.4 | |
| 40. Arkansas | 10.8 | 11.1 | |
| 41. Nevada | 10.9 | 11.8 | |
| 42. Alabama | 11.0 | 11.5 | |
| 43. Georgia | 11.0 | 12.8 | |
| 44. Illinois | 11.4 | 11.8 | |
| 45. Maryland | 12.1 | 11.7 | |
| 46. Mississippi | 12.2 | 12.8 | |
| 47. California | 12.7 | 12.7 | |
| 48. Texas | 12.7 | 15.3 | |
| 49. New York* | 13.2 | 14.2 | |
| 50. Louisiana | 17.4 | 16.9 | |
| NATIONAL | 9.3 | 9.8 | |

* States without the death penalty

Average murder rate among states
without the death penalty 4.9

Average murder rate among states
with the death penalty 7.8

11/16/93

**Remarks by Edward McNally
District Attorney
(Prepared Text)
Joint Hearings on Capital Punishment of
the Senate Judiciary Committee and the House Judiciary Committee
Legislative Information Office
Anchorage, Alaska
November 16, 1993**

Mr. Chairman, Senator Taylor, Senate President Halford, and all the members of the House and Senate Judiciary Committee, as well as the members of the public, my colleagues from the practice of criminal law, and especially those here today who are survivors of murder, or other victims of crime:

We appreciate very much an opportunity to participate in this dialogue today. I know that many of you have been champions in this battle and other efforts for many years.

I am here today on behalf of Governor Hickel, who asked me to convey his support for your efforts. Governor Hickel is prepared to sign legislation to ensure that cop killers, and others who are guilty of vicious and heinous murders in Alaska will face the full range of constitutionally approved penalties.

I also bring with me the personal thanks of the Attorney General, who regrets that he was unable to participate in person. Like so many of you, both Governor Hickel and Attorney General Cole have made the battle against violent crime a top priority.

Like the majority of the Alaskan people, the Administration believes that there are circumstances where justice requires at least the opportunity to impose the death penalty. And today I would like today to pose some questions. Some questions which those of you who support capital punishment may want to pose to colleagues who do not. Questions which, those who are here to articulate their opposition to the death penalty, may want to address in the course of their testimony.

The Death Penalty is Already in Effect in Alaska

From the earliest days of our country, the death penalty has been part of the criminal justice system. Indeed, federal law in effect in Alaska authorizes the imposition of capital punishment for several types of homicide and other offenses. The death penalty is in effect in Alaska today. And as we sit here, there is an Alaskan who is currently facing a capital punishment prosecution. His name is R.D. Cheely.

President Clinton is working to add approximately 47 new categories of capital

punishment to the federal laws that will be in effect in the State of Alaska. And this raises a whole additional question for the Senate and the House to consider. It's a question of federalism. And the question is this: How far do we want to go toward enforcing our own laws?

Throughout the history of constitutional government in America and in Alaska, police powers and the criminal justice system have stood out as among the most important powers reserved for this Nation's sovereign states. And there aren't very many areas where the people of Alaska would say that the federal government has done a better job of doing things in Alaska, than has been done when handled by Alaskans themselves.

I mentioned R.D. Cheely, a prison inmate already convicted of one murder, who is now accused of the intentional murder of a second innocent Alaskan by sending a bomb through the federal mails. And I should note that the woman who lost her husband and who herself was terribly injured by that mail bomb, Mrs. Michelle Kerr, is here today.

And so the question is this: This is an Alaska case. It is alleged to have been committed in Alaska, by an Alaskan, against an Alaskan. But where is this trial going to take place? Most of you probably know -- it is going to be in Portland, Oregon, nearly two thousand miles away. One of the lead prosecutors is on assignment from Washington, D.C.

The question is not: Will there be a death penalty in Alaska? Through federal law, there already is.

Rather, the question is this: Do we want it decided by Alaska laws, by Alaska judges, by Alaska juries -- which is to say -- by the Alaska people? The people that you and I and others here in this room serve? Or do we leave it to the federal government? We rail against federal control of so many other areas of our lives. Do we really want to leave questions of life and death exclusively up to the Feds?

In contrast, look at how two of our sister states handled what is probably the most notorious mail bombing case in recent years. It was the series of mail bombings which resulted in the murders of a Georgia federal judge and an Alabama civil rights worker. And that case has recently regained a little bit of notice because the new director of the FBI, Louis Freeh, tried the case himself. The defendant in that case was first convicted in federal court. But after he was convicted, each of those two sovereign states moved to bring the defendant back. Back to Georgia, where they expected to place him on trial for having killed a Georgia judge. And back to Alabama, where he would face the death penalty -- even though he is already in prison for the rest of his life (on the federal conviction for using the mails to kill that same Alabama civil rights worker).

And so the question is this: Do we in Alaska want to retain the same rights as Georgia, Alabama, and a total of 38 other sovereign U.S. states?

Protecting Alaska's Troopers and Police

In examining this question, I would like to focus especially on the question the Governor has focused on, and that is cop killers.

You know, it used to be unthinkable to shoot a cop in Alaska. If you were surrounded by the troopers or police, you threw down your gun, put up your hands, and you took your chances with the fairest, most decent, most due process-oriented criminal justice system yet invented.

No longer. Today police are sometimes the first ones shot. They are targeted by criminals armed with a staggering array of weapons.

Yesterday, in this same room, some of you were present when Sgt. Mike Grimes, Chief of Homicide at the Anchorage Police Department, showed you some of the explosive firearms that are being used on the streets of this town.

Permit me to tell you about another Alaska cop by the name of Officer Anthony Jones. Tony Jones was one of only two African-American officers on the Dillingham police force. He had a wife and young children.

Late one night two years ago, a man just under the age of 18, broke into a sporting goods store in downtown Dillingham. He took out a variety of long guns and set them up all in a row, "Alamo" style. He loaded the weapons one-by-one. Then he triggered the alarm, knowing it would bring the police. And he waited.

Tony Jones was off duty. But he heard the report, and he was the nearest to the store. No doubt Officer Jones thought he was investigating a false alarm, or, at worst, a simple breaking and entering. He could not have known what was waiting. And as he passed the window and entered the sights of this young man's gun, he was killed with a single shot to the head.

After Tony was shot, and with his body still sprawled in the gravel, an Alaska state trooper was brushed back by another shot, and we almost had two cops dead.

An 18 hour stand off ensued. A CERT team was airlifted in by the Alaska State Troopers. I sent a senior homicide prosecutor out on the plane with them. Ultimately, the defendant fired hundreds of rounds at the troopers and police who were in formation around the building. None of the shots were successful. That is, none of the shots succeeded in actually killing any additional police.

I have since been to the shooting scene. And I encourage you to go to Dillingham to look at the site. It's astonishing. The CERT team set up in a pair of nearby buildings which faced the sporting goods store from across the alley. Each window, where the police were

waiting in surveillance, is surrounded by a target-like pattern of scores and scores of bullet holes. It's still that way to this day.

This case was resolved in a way that was difficult, challenging, and ultimately inadequate. The killer was a juvenile. Most of you are only too familiar with the problems of Alaska's juvenile justice system. He agreed to plead guilty to First Degree Murder, and to waive into Superior Court, saving years of litigation on the part of the State, and he was given a 65 year cap.

I opposed this resolution, but was ultimately overruled. Like me, many police feel that justice was shortchanged in that case. Nevertheless, those in favor of the resolution cited inadequate juvenile and other laws in Alaska. That's why Alaska's police deserve the same protections as those on the books in 38 other states. Maybe the next criminal who gets an Alaska cop in his sights will think twice.

Alaska Deserves the Full Array of Constitutional Penalties

In this state, we rarely ever see a guilty plea to First Degree Murder. That is not true in 38 other states where they have capital punishment. There are killers in this state who should plead guilty to First Degree murder. They confess to the police. It's on video tape. They've waived Miranda. The gun is there. There are eye witnesses to the crime. And yet, under current Alaska law, there is simply no incentive to plead guilty to murder and to accept responsibility for their crime. There is nothing the State can offer, nothing we can do. And so they don't plead. We have a trial. And guess what? That trial is very expensive. The process is very traumatic to victims and survivors. And in many cases, in which the evidence is overwhelming, the trial can become little more than a prolonged sentencing proceeding.

Look at Doug Gustafson, the co-defendant in the mail bombing case. He now stands convicted of his second Alaska murder. He plead guilty to an astonishing charge in federal court. He plead guilty to life in prison without parole. In making that plea, he knew he would die in prison. He will never see freedom again. And he did that in exchange for two things:

One, a deal was made for leniency for his sister, who was also involved. That's something we can all understand. But more importantly, he also got the promise that, unlike R.D. Cheely, he would not face an aggressive federal prosecution for the death penalty.

Give Alaska that tool as well.

Why shouldn't the State of Alaska -- why shouldn't your prosecutor at the courthouse down the street -- have the same constitutionally-approved penalties as the federal prosecutors who negotiate cases a few blocks in the other direction? We need the full array of penalties on the books. And that is one of the areas on which I would invite death penalty opponents to respond, either today, or at other opportunities.

waiting in surveillance, is surrounded by a target-like pattern of scores and scores of bullet holes. It's still that way to this day.

This case was resolved in a way that was difficult, challenging, and ultimately inadequate. The killer was a juvenile. Most of you are only too familiar with the problems of Alaska's juvenile justice system. He agreed to plead guilty to First Degree Murder, and to waive into Superior Court, saving years of litigation on the part of the State, and he was given a 65 year cap.

I opposed this resolution, but was ultimately overruled. Like me, many police feel that justice was shortchanged in that case. Nevertheless, those in favor of the resolution cited inadequate juvenile and other laws in Alaska. That's why Alaska's police deserve the same protections as those on the books in 38 other states. Maybe the next criminal who gets an Alaska cop in his sights will think twice.

Alaska Deserves the Full Array of Constitutional Penalties

In this state, we rarely ever see a guilty plea to First Degree Murder. That is not true in 38 other states where they have capital punishment. There are killers in this state who should plead guilty to First Degree murder. They confess to the police. It's on video tape. They've waived Miranda. The gun is there. There are eye witnesses to the crime. And yet, under current Alaska law, there is simply no incentive to plead guilty to murder and to accept responsibility for their crime. There is nothing the State can offer, nothing we can do. And so they don't plead. We have a trial. And guess what? That trial is very expensive. The process is very traumatic to victims and survivors. And in many cases, in which the evidence is overwhelming, the trial can become little more than a prolonged sentencing proceeding.

Look at Doug Gustafson, the co-defendant in the mail bombing case. He now stands convicted of his second Alaska murder. He plead guilty to an astonishing charge in federal court. He plead guilty to life in prison without parole. In making that plea, he knew he would die in prison. He will never see freedom again. And he did that in exchange for two things:

One, a deal was made for leniency for his sister, who was also involved. That's something we can all understand. But more importantly, he also got the promise that, unlike R.D. Cheely, he would not face an aggressive federal prosecution for the death penalty.

Give Alaska that tool as well.

Why shouldn't the State of Alaska -- why shouldn't your prosecutors, at the courthouse down the street -- have the same constitutionally-approved penalties as the federal prosecutors who negotiate cases a few blocks in the other direction? We need the full array of penalties on the books. And that is one of the areas on which I would invite death penalty opponents to respond, either today, or at other opportunities.

The Cost to Alaska of Not Having a Death Penalty

When we talk about fiscal notes, which is much of the focus in this debate, I urge you to consider the cost of not having a death penalty. Look at the example I just described. Please look at the cost of all the cases that go to trial that probably shouldn't, and which could be disposed of short of trial.

Look at the cost of not having a death penalty. And again, let's focus on cop killers. 30,000 police men and women have been killed in the line of duty since this country was founded. Twenty-six of those killed were here in Alaska. Add to that list the wounded and the disabled. Add to that list the families of these officers, who are so often forgotten. Tony Jones left a wife and young children in Dillingham. And look at the terrible toll in loneliness and loss.

The expensive and explosive lesson in Alaska in recent years is that, for the bad guys, the rules of the game have changed dramatically. Alaska's troopers and Alaska's cops deserve all the protection the laws you pass can offer. And criminals need to understand a simple fact. They need to know that in the state of Alaska, if you shoot a cop, you will be severely punished, and quite possibly with your life. Criminals need to know that.

Let me again address the fiscal notes. We will address this in more detail a little later, with Assistant Attorney General Dean Guaneli, who is on the line from Juneau. I understand that the fiscal notes and the related budgetary considerations are important, responsible, and fundamental elements of what you do in your work. But I would also offer two observations.

First, the truth is, nobody knows what the fiscal notes on this legislation will ultimately be. Nobody really knows. And given the future variables, there is no way of knowing. Senator Donley asked the previous speaker a question about the Alaska Supreme Court. The variables of which judges in which courts make which decisions, are impossible for any of us to fully foresee.

The second observation is that we in law enforcement -- officials such as myself, running the largest prosecution office in the state -- make resource determinations every single day. And no matter what laws you add or take off the books, there is no substitute for responsible good judgment and common sense.

The Anchorage DA's office screens over 1,400 felony cases a year. But we can't take 1,400 cases to trial. There aren't enough judges. There aren't enough courtrooms. There aren't enough prosecutors, defense attorneys or jurors to try that many cases. So we have to make resource determinations all the time. And we look at them realistically. There isn't a day, there isn't a week in my office where we don't look at the resource impact of one particular case or another. Sometimes it's a relatively low-level felony, where the essential witnesses would have to be flown (sometimes with accompanying family members) from as far away as

Mobile, Alabama, or Florida or Boston, as we've seen in recent cases. And so we make decisions about that. Because no department has an open checkbook. We know that.

There are no legal obstacles to this legislation. There may be moral or public policy obstacles, which, of course, is exactly what you are here to consider. But don't let the obstacle to this legislation be fiscal notes, real or conjecture. Put the full range of constitutional penalties on the books.

The death penalty is warranted in this state, and in others, for two principal reasons.

First, because it can deter certain -- not all -- certain crimes which involve premeditation and calculation, and thus save the lives of persons who would otherwise become the permanent and irretrievable victims of a crime. One example of this is a crime such as murder for hire.

I realize there is a huge debate on deterrence, and let me just give some simple examples of what we are talking about. If in the next 10 years just one Alaskan has their life spared (and their families are spared the pain we are about to hear about from the victims who testify) because a criminal made a calculated decision not to risk capital punishment in this state, then we have all earned our pay for today, and for many days to come.

The Hit Man and the Judge

We recently saw a conviction in a case where a man, angry over a years-old divorce case, sought to hire a hit man to kill a former Alaska superior court judge. He went to an ex-con, a convicted felon who was then at liberty, and asked him to do the killing. Well, I am happy to say that this particular ex-con did the right thing. He went to a trooper who he knew, and began working with the State to investigate the crime of murder for hire.

I don't know this ex-con. And I don't know what kind of calculations he made. Had someone offered him \$10,000 to write graffiti on the judge's door, would he have done it? Maybe. If someone had offered him \$10,000 to break into the judge's unoccupied house, and create some mischief, or steal something, would he have done it? Maybe. But he made a decision that he wasn't a killer, and he wasn't going to participate in a murder for hire. That's why he came to us.

Alaska's laws should serve to protect innocent life and to discourage potential hired killers from temptation. We need to up the ante. We need a responsible death penalty on the books for premeditated killings such as murder-for-hire.

How the Carrs Armored Car Killer Was Caught

There is another case, which, while not similar, permits an analogy to be drawn.

We are all probably aware of one of the worst crimes Alaska has seen in recent years, which was the murder of a Loomis armored car guard at the Carrs Aurora Village here in Anchorage.

We had no suspects. The killer, Jon Woodard, was a body-builder, a strong, pony-tailed Steven Segal-wannabe who planned the robbery like something out of James Bond. He robbed the store wearing a ski mask and sun glasses, so that witnesses couldn't even see the colors of his eyes. He was wearing a bullet proof vest, which almost no one ever does in committing crimes. He was carrying a very powerful Glock 10. And he was wearing what looked to other people like a Sony Walkman. In fact, it was a one-way radio that was connected to a lookout on the skywalk above Northern Lights and Benson. The lookout had binoculars and a radio to tell the shooter which entrance the police might respond to.

We had no information. No suspects. And I will tell you honestly that, according to the police, if someone hadn't been killed in that case, we probably never would have solved the robbery. Here's why: The killer, Jon Woodard, was actually an accomplished criminal who had masterminded a series of armed robberies at Chilkoot Charlie's, the Fireweed Theatre, and other Alaska businesses. Woodard used a group of low-level criminals to aid him in his crimes. All were loyal. None ever reported him to police.

All that changed on June 8, 1992, when Jon Woodard took a giant step beyond robbery and committed the crime of murder, a crime which, in most other states, would be a capital offense.

One of Woodard's cohorts, David Van Housen, became extremely nervous when he learned that a guard had been killed. Van Housen was a frozen foods manager at Carrs, the "inside man" for the robbery. But although he had signed on for robbery -- he hadn't signed on for murder. He started talking, and eventually entered a deal to cooperate with police. That's what broke the case, and led to the successful prosecution of one of the state's most dangerous killers.

We want other defendants to make the same decision that David Van Housen made. He decided he didn't want to face murder charges. His case, like his decision to cooperate, is somewhat unusual. But it doesn't have to be that way. In crimes that accelerate from robbery to murder, Alaska should have a measured system of penalties on the books that provide a powerful incentive for co-defendants to come forward, to cooperate and to do the right thing.

Justice and the Protection of Innocent Life

The second reason that the death penalty is justified is that society has a right to exact a just and proportionate punishment. Some offenses are so reprehensible that no other penalty presents an adequate response.

Arguments against the death penalty fail to address, among other things, the very

serious problem of protecting prison officers and inmates from dangerous prisoners already serving life sentences for murder, without any possibility of parole. At least half a dozen federal prison officers have been killed over the last two decades. And the inmates charged in at least three of these incidents were already serving life sentences for murder.

The control unit of the Marion, Illinois penitentiary is in the most secure cell block of America's highest security prison -- the prison that was built to replace Alcatraz. And there have been at least 20 prisoners who have murdered prison officials or other inmates while in prison.

Now, to my knowledge, this hasn't happened yet in Alaska. But, number one, let's put that law on the books to protect Alaska's prison guards, inmates, and innocent civilians such as the man killed in the mail bombing. And, second, let's put that law on the books to address justice when and if that horrible day comes, when an Alaska prison official or an Alaska inmate is killed in prison.

In this way, we can see that the real end served by the death penalty is the protection of innocent lives. I will give you two examples:

Eddie Simon Wien was convicted and sentenced to death in Los Angeles superior court many years ago, 1957. But instead of being executed, he was released from prison in 1975 to live in west Los Angeles, without warning to his neighbors. Within months he began to attack and kill women in the area. Fortunately, for other victims, he was apprehended relatively quickly. He was convicted in 1976 of the First Degree Murder of one woman, the attempted murder of another, and numerous sexual offenses.

What do you say to the parents of the woman who was killed by Wien after he got out of jail? And to the women who were scarred by him for life? They would not have been victims. She would be alive today if Eddie Wien had been executed, as originally ordered by the court and the jury. Here, the death penalty would have spared an innocent life.

And, finally, we've been discussing today the most dramatic case that we have for this in Alaska. Doug Gustafson has now plead guilty to murdering an innocent Alaskan through the use of a powerful mailbomb that Gustafson helped build from inside prison. We have shown that the state of Alaska is unable to prevent imprisoned killers from killing again.

The opportunity for the imposition of the death penalty should be added to Alaska's books. A criminal justice system that is limited, like ours, only to lesser sanctions, is lacking in adequate deterrence, and fails to meet our community standards, and the community's need to exact a just and proportionate punishment for the gravest offenses.

I would like to discuss one other area. The bottom line we are talking about is punishing those who do evil. Now, I know that to some in this community, that very word, "evil," is an embarrassment. A reference to old fashioned attitudes. But many of the people

in this room, certainly police, prosecutors and corrections officers, know better. They know that crime, and especially violent crime, is not an academic exercise. That is because they see it close up and first hand. They know that crime and crime fighting is usually a question of right and wrong, good and evil. And they know that a society that cannot understand the difference between right and wrong cannot protect itself.

There are people out there intent on doing wicked things. There are intentional cop killers. And as such barbarous acts reveal, a criminal thinks in a way that is simply different than anybody else who is at this table.

Some would like to believe that society is more to blame than the criminal. Some say crime is caused by parents who were too distant. Others, that it is caused by parents who are too smothering. Some say crime is caused by Alaska's poverty. Others, it is caused by Alaska's prosperity. TV violence, boredom, passionate irresistible impulses. Everything and everyone is blamed, except for the criminal.

Those who work the streets know otherwise. The fact of the matter is, in the vast majority of cases, the criminal chooses his way of life, his companions, the nature of the particular crime he commits. He rejects society and its values. He is not the victim, he is the victimizer.

The law abiding society you represent has a duty, an obligation, to punish these wrong doers. This tradition speaks not of a society that disparages human life, but rather one that treasures innocent human life, as precious and unique.

Just punishment is a civilized response to wrong. It is necessary, not only as a deterrent, but for its own sake. Which is to say, for the sake of justice.

In the classic Western that is airing on television this week -- the original McMurtry classic, Lonesome Dove -- there are two pioneering lawmen who finally put an end to a brutal gang's deadly rampage through the Oklahoma Territory. One of the outlaws turns out to be Jake Spoon, the lawmen's old partner. In the moments before arresting and then hanging his old friend, the Captain says, "It's a bad situation. But there he is. He put himself in it."

There are some simple truths in this saga. There is always the freedom to choose not to do evil. We are talking about individual responsibility.

The Governor's position is this: For the most heinous crimes, such as anyone who kills a law enforcement officer, no penalty is too tough. The Alaska people, as has been well expressed today, are overwhelmingly in favor of this kind of tough, anti-violence legislation. The proposals are now before the legislature, and should be passed without delay. The Alaska people are in no mood to talk tough, while some pursue the failed policies of leniency.

The Death Penalty in China

I've heard the other side. People often ask me how I would feel if someone I cared about faced the death penalty unfairly.

Well, I do have some personal experience with the death penalty. But it was in China, not the United States.

In the mid-1980's, Beijing University made bold and creative use of Americans to address sensitive subjects that its professors were unwilling or unable to teach. When I first stepped off the plane in 1985, a young constitutional lawyer named Chen Xiaoping was the one-man reception committee, a 5-foot tall bundle of brilliant energy and hope.

Each evening he would drop by my room, bright, earnest, burning with intelligence and passion. Each morning he would translate my lectures on Mr. Jefferson's Declaration of Independence, the Bill of Rights, his Chinese voice reading Martin Luther King's "I Have A Dream" to a crowded room that grew from an original 20 to 80 to more than 300, gathering outside the windows and spilling over into the hall.

Three years later, in the days before the tanks rolled, Chen and his bullhorn were familiar features in Tiananmen Square. He called for the rule of law by establishing an independent judiciary not subject to China's political winds. U.P.I. reported that the government believes Chen was the "mastermind" behind the demonstrations.

After the Tiananmen Massacre, he scurried to escape. Unable to link up with the underground railroad that brought others to fame and freedom, Chen returned to Beijing with an indomitable spirit. On the day before he turned himself in, he told his colleagues:

"I'd rather be in jail like a man, than free like a dog."

But Chen faced much more than jail. The New York Times headline cut straight to the bone: "China Legal Scholar Faces Death Penalty." Because when his closed-door trial began in 1990, he became the first of the four so-called "Black Hands" to face the death penalty for his leadership in Tiananmen Square.

Chen was convicted but later spared. And I spent a lot of bad nights during his trial and sentencing in 1990.

And the point is this: Yes, I know, up close and personal, that governments can be arbitrary and cruel.

But here in Alaska, where we don't give a damn how they do it Outside, there are limits to the lessons that can be gleaned from what has gone wrong in other jurisdictions. This is not China, and it is not even Texas or Florida, to name three jurisdictions where the

death penalty has become commonplace.

And so as you consider this bill today, perhaps the bottom line question is this: Do you have faith in Alaska's courts? Do you have faith in Alaska's constitution? Do you have faith in Alaska's juries?

Well, I've practiced Outside. Grew up in Chicago. Taught law in China. I prosecuted, most recently, in New York City. And yes -- my answer is yes -- Alaska is different. And I do have faith in the wisdom and the justice of Alaska's courts, Alaska's laws, Alaska's people.

Alaska's Police Memorial

If I may also conclude on a personal note:

We just finished Veteran's Day and Veteran's Week's observations. And most of you are already familiar with the Vietnam Memorial in Washington, D.C. But in our nation's capitol, not far from the courthouse, there is another memorial that is not as well known. It is a memorial to the 30,000 law enforcement officers who have been killed in the line of duty in the United States. Their names are engraved in stone.

The President spoke at the ground-breaking ceremony there three years ago. Many grieving family members -- husbands and wives and children -- came to mourn, came to cry, came to honor their fallen heroes. It was very dramatic. The candlelit night sky was pierced by a single blue laser, to represent the thin blue line that separates violent criminals from the society it is our duty to protect.

I am proud to say that the words I wrote for the President that day are now carved in stone in that memorial in Washington. And among those 30,000 names, the names of the 26 Alaska peace officers are sort of hard to find. They can get lost out there. But that is not the case at the headquarters of the Alaska State Troopers here in Anchorage. I am sure many or most of you have been there, and seen where the names of those 26 officers are engraved on the statue of an Alaska cop protecting an Alaska child.

And, in closing here today, I urge you: Before any more names are added to Alaska's memorial, this law should be added to Alaska's books.

I am now available to answer any questions you may have. Dean Guaneli is available from Juneau to assist in any analysis concerning the fiscal notes that have been attached to these two proposed bills.

#

House District 36

Alatna
Allakaket
Aniak
Anvik
Arctic Village
Beaver
Bettles
Birch Creek
Canyon Village
Central
Chalkyitsik
Chicken
Chistochina
Chitina
Chuathbaluk
Circle
Copper Center
Crooked Creek
Dot Lake
Eagle
Evansville
Fort Yukon
Gakona
Galena
Grayling
Gulkana
Healy Lake
Holy Cross
Hughes
Huslia
Igigig
Iliamna
Kakhonak
Kalskag
Kaltag
Kenny Lake
Koyukuk
Lake Minchumina
Lime Village
Livengood
Lower Kalskag
Lower Tonsina
Manley
McCarthy
McGrath
Medfra
Mentasta
Minto
Nabesna
Newhalen
Nikolai
Nondalton
Northway
Nulato
Port Alsworth
Rampart
Red Devil
Ruby
Shageluk
Slana
Sleetmute
Stevens Village
Stony River
Takotna
Tanacross
Tanana
Tazlina
Telida
Tetlin
Tok
Tonsina
Tulukak
Tyonek
Venetic
Wiseman

Representative Irene K. Nicholia

State Capitol • Juneau, Alaska 99801
Phone: 465-4527 FAX: 465-2294



Health, Education and
Social Services Committee
Special Committee on Fisheries

March 10, 1994

Representative Jerry Sanders
State Capitol
Juneau, AK 99802

Dear Representative Sanders:

I am writing regarding House Bill 162, Authorizing Capital Punishment. I read with interest your recent letter in which you assert that capital punishment can be applied fairly and evenly without regard to race.

The chart you prepared to back up your assertion is not convincing. Rather it does not recognize extensive research and evidence showing continued systematic racial bias in the use of the death penalty in the United States. In fact, research indicates racial disparity in every stage of the legal process from charging to sentencing.

You have offered no evidence that anything is different in Alaska. It appears to me that your own statistics demonstrate that minorities are disproportionately represented in the state's prison population and are disproportionately convicted of Murder the 1st degree. For example, it appears that Blacks are represented in the prison system at about three times their representation in the general population.

I disagree with your statement, "the ratio of Natives convicted of first degree murder is relatively close to their percentage of Alaska's total population." According to your own statistics, if the statewide Native population rate of 15.09% was applied to the first degree murder cases cited, the number of offenders drops from 37 to 27 prisoners. **The additional loss of 10 lives is significant.**

One last point. In your statistics you cite a racial category as "Indian." Does this include other Alaska Native groups such as Yup'ik, Inupiaq, Siberian Yup'ik, Aleut, and Alutiiq?

As you know, many of the the people I represent are Alaska Native. I cannot in good conscience support any legislation which would disproportionately affect the people I represent. This is especially true, when the outcome of that discrepancy results in death.

Sincerely,

Representative Irene K. Nicholia



Representative Jerry Sanders

District 19

- Vice Chair, Rules Committee
- Vice Chair, Community & Regional Affairs Committee
- House State Affairs Committee
- Special Committee on Oil & Gas
- Legislative Council
- International Trade & Tourism

Recently, concerns have been raised during the discussion of the merits of House Bill 162, the capital punishment bill, about whether the measure can be applied fairly and evenly without regard to race. I believe it can.

As the attached statistics show, while natives make up 15 percent of the state's population, they make up 33 percent of the prison population. However, less than 21 percent of the prisoners serving time for first degree murder are native.

The following chart, based on 1990 figures, makes it readily apparent that the ratio of natives convicted of first degree murder is relatively close to their percentage of Alaska's total population.

BREAKDOWN OF STATE AND PRISON POPULATIONS BY RACE

| Race | State Population 567,846 | Prison Population 2,793 | 1st Degree Murder 182 |
|----------|-----------------------------|----------------------------|--------------------------|
| | percentage | percentage | percentage |
| Asian | 3.47 | 1.0 | 2.19 |
| Black | 3.95 | 12.0 | 9.34 |
| Hispanic | 3.13 | 2.4 | 2.19 |
| Indian | 15.09 | 33.0 | 20.32 |
| White | 73.16 | 51.0 | 65.93 |
| Other | 1.17 | | |

When the bill's nine aggravating factors are considered, it is quite certain that the native percentage will drop below that of their percentage of the general population.

NINE AGGRAVATING FACTORS IN HB162

- 1) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person in that it involved 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, fire fighter, 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;
- 9) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group.

When the mitigating factors are considered, the percentage of natives to which the bill would apply would drop far below the percentage of the general population.

THE FOUR MITIGATING FACTORS IN HB162

- 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.

8-LS0414J
Luckhaupt
3/11/94

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 162(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES SANDERS, Olberg, Bunde, Kott, Vezey, James

A BILL

FOR AN ACT ENTITLED

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

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

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

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

8 * Sec. 2. AS 12.30.020(a) is amended to read:

9 (a) A person charged with an offense shall, at that person's first appearance
10 before a judicial officer, be ordered released pending trial on the person's personal
11 recognizance or upon the execution of an unsecured appearance bond in an amount
12 specified by the judicial officer unless the offense is a capital felony, an unclassified
13 felony, or a class A felony or unless the officer determines that the release of the
14 person will not reasonably assure the appearance of the person as required, or will

1 pose a danger to other persons and the community. If the offense with which a person
2 is charged is a felony, on motion of the prosecuting attorney, the judicial officer may
3 allow the prosecuting attorney up to 48 hours to demonstrate that release of the person
4 on the person's personal recognizance or upon the execution of an unsecured
5 appearance bond will not reasonably assure the appearance of the person, or will pose
6 a danger to other persons and the community.

7 * Sec. 3. AS 12.30.040(b) is amended to read:

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

12 * Sec. 4. AS 12.47.110(b) is amended to read:

13 (b) On or before the expiration of the initial 90-day period of commitment, the
14 court shall conduct a hearing to determine whether or not the defendant remains
15 incompetent. If the court finds by a preponderance of the evidence that the defendant
16 remains incompetent, the court may recommit the defendant for a second period of 90
17 days. The court shall determine at the expiration of the second 90-day period whether
18 the defendant has become competent. If at the expiration of the second 90-day period
19 the court determines that the defendant continues to be incompetent to stand trial, the
20 charges against the defendant shall be dismissed without prejudice and continued
21 commitment of the defendant shall be governed by the provisions relating to civil
22 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
23 crime involving force against a person and the court finds that the defendant presents
24 a substantial danger of physical injury to other persons and that there is a substantial
25 probability that the defendant will regain competency within a reasonable period of
26 time, in which case the court may extend the period of commitment for an additional
27 six months. If the defendant remains incompetent at the expiration of the additional
28 six-month period, the charges shall be dismissed without prejudice and either civil
29 commitment proceedings shall be instituted or the court shall order the release of the
30 defendant. If the defendant remains incompetent for five years after the charges have
31 been dismissed under this subsection, the defendant may not be charged again for

1 offense arising out of the facts alleged in the original charges, except if the original
2 charge is a class A felony, [OR] unclassified felony, or capital felony.

3 * Sec. 5. AS 12.55.025(i) is amended to read:

4 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d),
5 12.55.155(f), and 12.55.165, or in determining if a sentence of death should be
6 imposed under AS 12.58, the preponderance of the evidence standard of proof applies
7 to sentencing proceedings.

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

9 (a) A defendant convicted of murder in the first degree shall be sentenced to
10 a definite term of imprisonment of at least 20 years but not more than 99 years, or
11 shall be sentenced to death. A defendant convicted of murder in the first degree, but
12 not sentenced to death, shall be sentenced to a mandatory term of imprisonment of
13 99 years when

14 (1) the defendant is convicted of the murder of a uniformed or
15 otherwise clearly identified peace officer, fire fighter, or correctional officer who was
16 engaged in the performance of official duties at the time of the murder;

17 (2) the defendant has been previously convicted of

18 (A) murder in the first degree under AS 11.41.100 or former
19 AS 11.15.010 or 11.15.020;

20 (B) murder in the second degree under AS 11.41.110 or former
21 AS 11.15.030; or

22 (C) homicide under the laws of another jurisdiction when the
23 offense of which the defendant was convicted contains elements similar to first
24 degree murder under AS 11.41.100 or second degree murder under
25 AS 11.41.110; or

26 (3) the court finds by clear and convincing evidence that the defendant
27 subjected the murder victim to substantial physical torture.

28 * Sec. 7. AS 12.55.125(f) is amended to read:

29 (f) If a defendant is sentenced under (a) or (b) of this section,

30 (1) imprisonment for the prescribed minimum term may not be
31 suspended under AS 12.55.080;

- 1 (2) imposition of sentence may not be suspended under AS 12.55.085;
- 2 (3) imprisonment for the prescribed minimum term may not be
- 3 otherwise reduced;
- 4 (4) a sentence of death may not be suspended under AS 12.55.080.

5 * Sec. 8. AS 12.55.145(a) is amended to read:

6 (a) For purposes of considering prior convictions in imposing sentence under
7 AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i)

8 (1) a prior conviction may not be considered if a period of 10 or more
9 years has elapsed between the date of the defendant's unconditional discharge on the
10 immediately preceding offense and commission of the present offense unless the prior
11 conviction was for a capital, [AN] unclassified, or class A felony;

12 (2) a conviction in this or another jurisdiction of an offense having
13 elements similar to those of a felony defined as such under Alaska law at the time the
14 offense was committed is considered a prior felony conviction;

15 (3) two or more convictions arising out of a single, continuous criminal
16 episode during which there was no substantial change in the nature of the criminal
17 objective are considered a single conviction unless the defendant was sentenced to
18 consecutive sentences for the crimes; offenses committed while attempting to escape
19 or avoid detection or apprehension after the commission of another offense are not part
20 of the same criminal episode or objective.

21 * Sec. 9. AS 12.55.155(f) is amended to read:

22 (f) Under this section, if [IF] the state seeks to establish a factor in
23 aggravation at sentencing or if the defendant seeks to establish a factor in mitigation
24 at sentencing, written notice must be served on the opposing party and filed with the
25 court not later than 10 days before the date set for imposition of sentence. Under this
26 section, factors [FACTORS] in aggravation and factors in mitigation must be
27 established by clear and convincing evidence before the court sitting without a jury.
28 All findings must be set out with specificity.

29 * Sec. 10. AS 12 is amended by adding a new chapter to read:

30 CHAPTER 58. CAPITAL PUNISHMENT.
31 ARTICLE 1. IMPOSITION OF SENTENCE.

1 Sec. 12.58.010. SENTENCING PROCEDURE FOR A CAPITAL FELONY.

2 (a) If, after a trial by jury, a defendant is convicted of a capital felony, the court shall
3 conduct a separate sentencing proceeding before the trial jury as soon as practicable.
4 If a jury trial has been waived or if the defendant has pled guilty, the sentencing
5 proceeding shall be held before a jury impaneled for the purpose.

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

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

17 (1) beyond a reasonable doubt that an aggravating factor or factors exist
18 to justify the death sentence;

19 (2) by a preponderance of the evidence that the aggravating factor or
20 factors outweigh any mitigating factors found to exist by a preponderance of the
21 evidence; and

22 (3) that the defendant should be sentenced to death.

23 Sec. 12.58.020. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
24 After considering the evidence and the recommended sentence, the court shall enter
25 a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).
26 The court may not impose the death sentence unless the jury (1) finds beyond a
27 reasonable doubt at least one aggravating factor, (2) finds by a preponderance of the
28 evidence that that factor or those factors are not outweighed by any mitigating factors
29 found to exist by a preponderance of the evidence, and (3) recommends that the
30 defendant be sentenced to death. If the jury findings include an aggravating factor or
31 factors that are not outweighed by one or more of the mitigating factors and if the jury

1 recommends a sentence of death, the court shall sentence the defendant to death. If
2 a sentence of death is not recommended by the jury, the court shall sentence the
3 defendant to a term of imprisonment under AS 12.55.125(a).

4 (b) When the court enters a sentence of death, it shall state in writing the
5 jury's findings of

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

7 (2) mitigating factors considered but found insufficient to outweigh the
8 aggravating factors.

9 (c) A judgment of conviction for which a sentence of death is imposed is
10 subject to automatic review under AS 12.58.100.

11 Sec. 12.58.030. AGGRAVATING FACTORS. In determining whether to
12 impose a sentence of death, the following aggravating factors may be considered:

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

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

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

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

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

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

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

1 in similar cases, considering both the crime and the defendant; and

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

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

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

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

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

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

12 (5) may not require the defendant to submit and file a brief unless the
13 defendant raises an issue as a point on appeal under (b)(4) of this section.

14 Sec. 12.58.110. ISSUANCE OF DEATH WARRANT. If the supreme court
15 upholds a judgment of conviction and sentence of death, the court shall issue a death
16 warrant that specifies a date of execution. The specified date of execution must be not
17 less than 30 days nor more than 60 days after the date of the warrant. The death
18 warrant shall be delivered to the commissioner of corrections.

19 ARTICLE 3. ADMINISTRATION OF THE DEATH PENALTY.

20 Sec. 12.58.200. ADMINISTRATION OF THE DEATH PENALTY. The
21 commissioner shall establish a procedure for the execution of a sentence of death
22 ordered by the state supreme court at the time and place legally appointed.

23 Sec. 12.58.210. EXECUTION UNDER SUPREME COURT DEATH
24 WARRANT. After receiving a supreme court warrant issued under AS 12.58.110, the
25 commissioner shall specify the time and place of execution.

26 Sec. 12.58.220. MANNER OF EXECUTION. (a) The punishment of death
27 shall be inflicted by continuous, intravenous administration of a lethal dose of sodium
28 thiopental until death is pronounced by a licensed physician.

29 (b) A death sentence shall be carried out within a state correctional facility.

30 Sec. 12.58.230. RETURN OF DEATH WARRANT. After the execution the
31 commissioner shall make a return upon the death warrant showing the time and place

1 in which the defendant was executed.

2 ARTICLE 4. STAY OF EXECUTION.

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

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

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

19 (c) If the sentencing court finds that the defendant is competent, the court shall
20 immediately certify the finding to the supreme court and the commissioner. The
21 supreme court shall issue and deliver another warrant to the commissioner under
22 AS 12.58.110, together with a copy of the certified finding. Unless the sentencing
23 court's finding is appealed in accordance with applicable court rule, the warrant shall
24 specify a date of execution that is not less than 30 days nor more than 60 days after
25 the date of the warrant.

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

30 (b) When the defendant is no longer pregnant, the sentencing court shall
31 immediately certify the finding to the supreme court and the commissioner. The

1 supreme court shall issue and deliver another warrant under AS 12.58.110, together
2 with a copy of the certified finding. Unless the sentencing court's finding is appealed
3 under applicable court rule, the warrant shall specify a date of execution not less than
4 30 days nor more than 60 days after the date of the warrant.

5 ARTICLE 5. GENERAL PROVISIONS.

6 Sec. 12.58.900. DEFINITIONS. In this chapter,

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

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

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

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

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

14 (2) post-conviction relief;

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

17 (4) extradition;

18 (5) habeas corpus;

19 (6) probation and parole; and

20 (7) bail.

21 * Sec. 12. AS 22.07.020(b) is amended to read:

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

26 * Sec. 13. This Act takes effect June 1, 1995.

To Jerry Sanders for Information

FEB 04 1994

Feb. 1, 1994

Gar Phillips
Joe Green
Cliff Davidson
Jim Norlund

A great injustice was done this day to the Citizens of Alaska. A House Committee voted down reconsideration of the death penalty. If you were one of those who voted against it, how could you? YOU, who were elected to legislate in the best interest of the citizens, put the general public in jeopardy. Have you no spine???

Last month, my son was murdered. While attempting to earn an honest living and unarmed, he was shot in the back of the head by a yellow coward. I have not talked to the police but I understand from the Media, an adult gave a Juvenile a gun with the instructions "to pop him" (my unarmed son), because as a juvenial, he would not be held responsible.

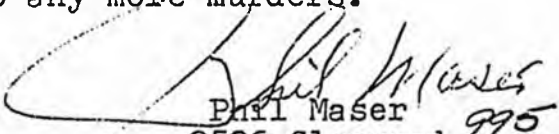
Oddly, I don't blame the kid. I blame YOU. You should be put on the stand as an accomplice to MURDER.

WHEN ANYONE ABOVE THE AGE OF REASON COMMITS A DELIBERATE MURDER THEY SHOULD KNOW THEY FACE THE DEATH PENALTY.

You must think Alaska youths are stupid. What do you teach all the current grammar and high school students in the State by your criminal action??? Look at the number of potential killers you are encouraging. Think of all the unsuspecting citizens you are putting at risk.

The next time a similar murder occurs (and it will, you are guaranteeing it) remember your complicity in the action. Better if you insist on the Death Penalty, NOW, but only in obvious cases. All cases must be reviewed by a judge.

Please show concern for the citizens of this great state. Don't YOU be an accomplice to any more murders.


Phil Maser
2526 Glenwood
Anchorage

995
08

Death Penalty Testimony before the Judiciary Committee of the Alaska Legislature.
Nov 16, 1993

My name is John Havelock. I am a former Attorney General of the State. After that I served as the Director of the Criminal Code Revision project that successfully revised Alaska's criminal code. I also served as the Director of the Alaska Justice Center and as a Professor of Justice at the University of Alaska, Anchorage for ten years. For fifteen years I also served as a consultant to the Governor's Commission on the Administration of Justice. I have taught, written and litigated questions of Alaska constitutional law.

I would like first to disassociate myself from those who oppose executions based on weakness of stomach or a misguided sense of mercy. I do not believe the State is required to show mercy to those who have shown themselves to be incapable of it. Current law allows the summary execution of persons at large who are believed to pose an immediate and substantial danger to the public. I am not offended by this law. Neither am I persuaded to oppose the death penalty by the fact that some day, a person may be executed who is innocent of the crime charged. Every year we sentence innocent people to death by failing to adopt or enforce stiff safety codes in the fishing and timber industries, to take some obvious examples. Innocents have often paid the penalty for political or economic institutions said to confer a benefit. Nor would I be bothered if death was offered as an annual option to a convicted felon who has no reasonable expectancy of ever being released alive from imprisonment, though I have no reason to suppose such a proposal has any public support.

However, I do not believe that the mandatory execution of a person, for whom life imprisonment is always an alternative, is desirable under the particular circumstance of administration of justice in Alaska. Nor do I think that it is possible to impose executions under Article I, Section 12 of the Alaska Constitution, so I believe your death penalty proposal, as framed, is dead on arrival. Those who want an electric chair as the pinnacle to our temples of justice, instead of the female figure of blind justice with scales, need a constitutional amendment.

Let me address the Alaska -specific issue of desirability of the death-penalty. First, it is a fact that the racial characteristics of those executed is a point of high interest among the general public, particularly among minority peoples.

Historically, for all but the last decade or so of this century, the death penalty was used primarily in the southern states and primarily to execute black people that committed crimes against whites. This discriminatory impact has been eliminated by executing more whites. However, it is still the case that the race of the victim is a prime determinant of execution of the offender. Also, black people are still executed disproportionately to their percentage of the total population, but not disproportionately to their percentage of persons charged with murder. Black people, in general are disproportionately a higher part of the criminally charged population because of their lower economic status.

Alaska has never been a part of the southern tradition in the race relations. On the contrary, we who have lived for some time in Alaska, take some pride in long having been a multi-racial society. No other state of the United States has such a large Native American population. Only Hawaii has a similar tradition of multi-racialism.

It is also a fact that since Alaska's Native Americans are disproportionately in the economic underclass, they show up in disproportionate numbers in our prison population. Thus it is safe to predict that there is a considerable chance that the first or second person you set out to execute, if you pass such a law, is going to be an Inupiat or a Upik or an Athapaskan or a Thlinget or Haida or an Aleut.

Regardless of whether a particular execution is seen as fair, the racial characteristics of the person executed will be a featured aspect. If we do execute a minority, it will exacerbate racism in both the white and minority population. It will become a focal point of the charging decision by the District Attorney. And incidentally, do not miss the fact that life and death discretion shifts, under such a proposal, from the judicial branch to the politicians. This has been a problem with all the recent so called reforms in sentencing by restricting judicial discretion - the power is shifted to the executive branch from the judicial. But my question with regard to the death penalty, based on principles of administration of justice, is this: does the social good in meeting popular demand for executions, outweigh the problems caused by raising the level of racial animosity in this state? I think not.

The issue of justification is also raised in Article I, Section 12 of the Alaska Constitution. I am frankly surprised that your lawyers have not identified the magnitude of the problem. Section 12 states, "Penal Administration shall be based

on the principle of reformation and upon the need for protecting the public." You don't reform a person by killing him. As for protecting the public, so long as you have life imprisonment as an option, execution is an excessive means of protecting the public.

This constitutional provision was adopted at a time when death penalties were out of favor and out of practice. There is nothing in subsequent Alaska Supreme Court decisions interpreting this section that would lead one to believe that a penalty which exceeded the need to protect the public would stand muster under this constitutional provision. Legislation which raises false expectation merely stirs up and frustrate the public. This legislation offers only injury to the administration of justice and I recommend you bury it.

Rep. J. Sanders
District 19

Dear Mr. Sanders,

I just wanted to write and let you know how much I support HB 162.

I am unable to get off from work on the 16th much to my regret.

Sir I am wondering if I can do anything else - maybe stand around with a sign or walk around and hand out papers, maybe go door to door getting signatures.

If there is anything or anywhere you could use my services to assist you getting this bill passed please let me know.

I am living in the valley however work at Spring Creek - I'm getting transferred to Palmer Correctional Center the 25th of Nov so will ^{be} there full time. I'm the one who had the arm broke by the prisoner in Seward. Thank for your letter of concern - I'm sorry I won't be able to be there the 16th. I've been passing the word.

Good luck

J.D. Karsten

FEB 26 1993

February 23, 1993

The Honorable Jerry Sanders
State Capitol
Room 13
Juneau, Alaska
99801-1182

Dear Representative Sanders,

We urge you to co-sign HB 162 supporting the death penalty in Alaska. Our twenty-one-year-old daughter was murdered by her ex-boyfriend on August 5, 1990. Her murderer, ANDREW NELSON, bought 500 rounds of ammo to practice with and checked out his weapon. He then drove around Anchorage until he located her vehicle.

After flattening the tire on her vehicle he then hid himself in the bushes awaiting our daughter and her friend. He then proceeded to empty the pistol into her head along with wounding her friend.

The court documents indicate that her murderer, Andrew Nelson, stated that he would get twenty-thirty (20-30) years for committing the crime; he felt it was worth it. The court psycharist said that Andrew Nelson has a narcissistic personality.

If the State of Alaska would have had a death penalty for this type of murder, our daughter, SANDRA LYNN POGANY, would be alive today. It continues to devastate the family. We know the enactment of this bill would prevent other families from going through the tragedy we have experienced.

Please let me know your position on HB 162, we are willing to get petitions signed and do whatever is necessary to get this bill passed.

Sincerely,

Gary Louise & Steve Pogany

Gary, Louise & Steve Pogany
Parents and brother of deceased
phone: 696-2390
fax #: 694-4557

*P. O. Box 770323
Eagle River, Alaska 99577*

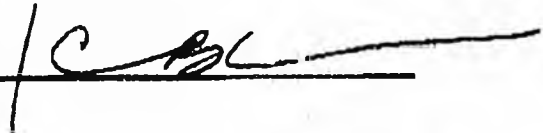


Alaska State Legislature

Please enter into the record my testimony to the JOINT JUDICIARY COMMITTEES
 committee name
 committee on HB162/SB 127, dated 11/16/93
 bill/subject

I unequivocally support CAPITAL punishment for murder. While it is ARGUABLE, at least in light of EXISTING STATISTICS, WHETHER CAPITAL punishment is a deterrent to ~~the~~ ^{THE} Commission of murder, I submit that ~~the~~ ^{THE} lack in deterrent effect heretofore indicated results ~~from~~ ^{not} from the punishment itself, but from a failure by ~~the~~ ^{THE} judiciary to impose and carry out capital punishment in a consistent and unwavering manner.

PLEASE ensure that ALASKA punishes murder in a just and appropriately retributive manner - with capital punishment.

Signed: CHARLES B. DEAN / 
 Testifier
 Pro SE

Representing (Optional)
P.O. Box 2282, SITKA, AK 99835
 Address
907-747-1072
 Phone No.

DEATH PENALTY

INTRODUCTION

My name is Ted Lemaire. I have lived in Alaska for twenty-six years. My wife and I have reared two sons and a daughter here. We have found Alaska to be a great place to live. In a quiet way, we have tried to be well informed and active in our community. When we left the flat-lands of Ohio, our ideas were that we were abandoning the over crowded cities and their ever increasing crime rates. Thus, we are not happy to see the increase in crime that is around about us. For this reason, we are urging this legislature to take a very hard, serious look at all of the anti-crime bills that have been introduced. One of which concerns the introduction of the death penalty, which is our purpose for being here today.

Many folks would think that because of an event that occurred on August 22, 1991 that I would be in favor of the death penalty. There is nothing further from the truth. On that date, my eleven year old granddaughter was kidnapped, sexually assaulted, and murdered. One week ago, her murderer was sentenced to 114 years in jail. Thus ended the hardest twenty-eight months of my life.

Today, as much as is humanly possible, I am at peace with this situation. Death is an ugly visitor that visits every home, sooner or later. I am not disturbed that death paid us a visit. Death is something over which none of us have any control, or at least very limited amount of control. I could have lost a granddaughter just as easily by accident or disease. That part, I have no trouble in reconciling. In some ways, that must be worse. To see a child suffer two to five years from leukemia must be a very devastating experience. The real problem for my family was the aspect of crime. As crime becomes more senseless, the harder it is to bear.

To say that I am in favor of the death penalty because of Mandy's death is a huge falsehood. For I have been of that persuasion at least all of my adult life, and possibly longer.

Crime is a very real problem. My insurance investigator friends say there are only two types of people. Those that have had an accident. And those that will have an accident. As crime becomes more prevalent and violent, the sooner it will reach you, not as a legislator, but as a person or as a family. Perhaps not directly. Someone close to you will become the primary victim of crime. You will be only the secondary victim of crime. I can tell you from personal experience, it is not a great position to have! It contains nothing but great unbearable agony.

1. THE DEATH PENALTY AS A DETERRENT

The first argument that the opponents of the death penalty use is that there is no proof that it is a deterrent to the criminal. That statement shows that they fail to understand crime and the criminal. One of the basic differences between the criminal and the rest of us is that it is impossible to deter the criminal. They can be slowed-up or be forced to reschedule the event. Even modern technology does not deter the criminal. He just finds a new technique. But they will accomplish the planned act.

My granddaughter's killer is an example of this fact. He stalked at least two other girls before he achieved his goal. These two girls are alive today only by strange twists of fate. The two girls were spared only because a car suddenly appeared on the same road. The first girl lived a short distance from the killer and knew him by face and name. The second girl lived over 20 miles away from the killer. She did not know him. This attempt was prevented by a passing motorist. He recognized the girl as a daughter of a friend. He read panic on her face. When the killer left the scene, the motorist questioned what he had seen. Since the girl was safe, whatever the problem was, it was then a moot question. The motorist, further, was a neighbor of the killer and recognized his vehicle. That would have been adequate reason for a normal person to abandon such activities. But it did NOT deter the killer. He kept searching for the right opportunity.

Have you considered the difference between you and a bank robber? The difference is very slight. Both go into a bank and give the teller a small piece of paper. Your's may be a check or a deposit slip. Standard commerical paper. The bank robber uses a note saying something to the effect of placing all your money in the bag. It is not that we never have bad thoughts. The fact is we do. The difference between us and the criminal is that we can be deterred by a host of things. The criminal cannot. He has real tenacity. And he will repeat the same act over and over again.

A few months ago, we witnessed on TV a confrontation between a police officer and a gunman. You will recall this episode that occurred near Tudor and Muldoon. The gunman could not be deterred by a sizeable contingent of police officers nor their weapons. Death means nothing to a criminal. And he was a repeat offender.

The death penalty is a very real deterrent to crime to thinking people. The criminal may display cunning, craftiness, mechanical wizardry, shrewdness, and the ability to manipulate people. But lack the ability to see how the principles of right and wrong applies to them. The real test of deterrent is on the law abider and not on the criminal.

One of the reasons that the death penalty deterrent factor cannot be tested on the criminal is that it has never been consistently practiced. The law must be applied to all that commit the specific crimes listed.

If you want to see the criminal mind at work, and the impossibility of deterring it, consider two fellows by the names of Gustafson and Cheley. Being locked up in prison would not, and could not, keep them from continuing their murderous career.

2. CRUEL AND UNUSUAL PUNISHMENT

This is the other favorite argument of the opponent. These words are taken from the most important document that man has ever written. The death penalty is recognized within this document as being proper.

In addition, I think that the opponent has things reversed. It is cruel and unusual punishment on the law-abider to let the criminal live. This is true for at least three reasons:

- A. The effect upon the criminal.
- B. The ever present threat of crime.
- C. The family of the criminal can have finality over their loved-one.

A. The effect upon the criminal.

If there was a mad dog loose on Fourth Avenue at this hour, we all would know the solution to the problem. It is so fast and simple. I use that illustration in spite of being known as the biggest animal lover anywhere. It is because I have even stronger feelings for my fellow human. That is why I am speaking here today.

Dogs and people can both become psychic because of the mistreatment that they have received from humans. They both can reach a level of psychosis that is totally unacceptable. The practitioners of the mental health industry are unable to provide any cures for the criminal. Fancy diagnoses are offered, but no cures. These diagnoses appear to be a big hinderance to the solution of our crime problem.

Since there is no cure, is our only option to warehouse them like merchandise on a shelf? That idea is very offensive to me. That is definitely cruel beyond words! To lock a person away for such long periods and to remove almost all of the usual and basic human drives and abilities, for something that will not work, is beyond comprehension. Either indefinitely or permanently to lose the right to take a walk, drive a car, select ones friends, or go out to dinner is not life. It is only logical that if we are going to take away the right to life, or the right to live, take it away fully.

B. The ever present threat of crime.

Please watch our law enforcement people at work. It is astounding the number of times that they come in contact with someone that they call by name. When you come in contact with an officer, are you immediately recognized? I would doubt it, in spite of the regularity that your face appears in a public meeting, or is on TV, or in the newspaper.

A name is broadcast on the police radio. Another officer will call in giving a more current address, aliases used, names of associates, modus operandi, types of weapons carried, contraband material frequently transported, where they hang out, or their disposition toward violence. This information becomes available long before the computer will locate it. This is possible only because of the huge number of repeat offenders.

Our beloved country has tried the technique of being nice to our criminals. AND IT HAS BLOWN UP IN OUR FACE. I have a retired friend. He now enjoys basking in the sunshine year-round. He tells how, as a kid, he was always in trouble. Then one day, he met a judge who gave the choice of joining the Army or prison. He chose the Army. After basic training, he was sent to Germany as a prison guard. How is that for irony? This prison was

jointly operated by the US and German governments, along European concepts. The nicest thing to be said was that it was not operated in the Hilton style like ours. At that point, he made the decision that he had seen all of prison life that he desired. He became a good and productive law abiding citizen.

Yes, reformation is possible. But I don't see it as a product of our Hilton prisons. Do I want to return to the times of Devil's Island? No, that is cruel and unusual punishment. There is a big gap between the two ideas that can be profitably used.

Recycling is a present day topic. However, the recycling of our prisoners must stop. We are running criminals in, and out, and back in again to prison time after time. Repeat offenders, even of so called minor offenses, must be dealt with firmly. I am tempted to say harshly. I would not object to seeing the death penalty applied to those that refuse to be reformable. Crime has become a way of life to them, and the death penalty is the only way to break the habit of crime.

C. The effect upon the criminal's family.

I know that as a parent I cannot live my children's life. They must make many decisions for themselves. The consequences of these decisions will be theirs. I am proud that in the main, the decisions of my children have been good ones.

As a parent, I do not know how I would react upon my child being accused of committing a crime. Worse, if that child was found guilty and was sentenced. I was taught as a child never to bring embarrassment to the family name. Usually when a police car came to our neighborhood, it was to notify the next of kin of a death. For a police car to be there for some other reason would bring down the scorn of the neighbors. I did not live in Podunk Center. It was in the big city of Detroit, Michigan. For some reason those ideas seem to have been forgotten in 1993.

For the families of those convicted of crime, this must be a horrendous event. A prison must be absolutely the last place that they would want their child. They must worry about the safety, the associates being cultivated, and the things being learned by their kid while in prison. Present day experience shows that is a justifiable cause to worry.

Parents would have to worry about if and when they would be released and what is the possibility of repeat offenses. I once worked with a lady that had a close relative that was serving time. He was a repeat offender. His record was that sixteen years of his thirty-two years was spent behind bars. I was not aware of this situation until one day that I noticed her highly visible nervous condition. This was not her normal conduct. She did not want him loose. In less than thirty days after his release, he committed another major crime that resulted in the loss of a life.

Is it reasonable to think that a parent will forget their own flesh and blood? Involuntarily, they will carry the stigma until their dying day. It would seem to me that the death penalty would help to remove the stigma. This would be a way that the parents could achieve finality with the deed or deeds of their child. They certainly would have to be relieved that he could not cause any additional pain or death. One of the important facets of the grief process is to be able to find finality.

What would the friends or other relatives say to the parents during the incarceration? Would they ask about his well being? Perhaps, it be easier to ignore the subject. Whatever is their position, it will cause the parents pain.

Do I think House Bill 162 will accomplish my desired, and most Alaskan, goals? Yes, I do. I know that this law can do nothing for my Mandy. Statisticians may claimed that I should escape from further personal involvement with serious crime. Fine, but you are still exposed. The next victim can be anybody.

We are guaranteed by the Constitution, and the Bill of Rights, not only the right to life, but also the pursuit of happiness. I am here to tell you that when you become a crime victim, you are deprived of those rights. The primary crime victim loses his

life, or the desire to continue it. The secondary crime victim loses the desire to pursue happiness. This is because there is no basis to believe that happiness is possible. Christmas loses its appeal. The same is true with birthdays and anniversaries. The interest in hobbies are replaced with the desire to sit and brood. It results in the deterioration of all of the relationships that you hold dear.

The biggest problem that I see in the use of the death penalty is the legal hassles generated. I personally get so fed-up with all of the appeals filed. The large bulk of them are not based on law, facts, evidence, or simple right or wrong. The action is based on wild emotion. A very unstable commodity at best. Our legal system is breaking down by weight of the frivolous suits and appeals. Only one way to put an end to this. Penalize the attorney that filed it. Get him in the pocketbook, royally. That will catch his attention.

I urge the passage of this House Bill 162. It will enhance all of our lives. It is a very reasonable and effective process.

Thank you.

THOM HIBPSHMAN
Investigator
P.O. Box 384
Sterling, Ak. 99672
(907) 262-3287 1-800-478-3289

11-18-93

BRIAN PORTER
716 4th Avenue, Suite 640
Anchorage, AK. 99501-2133

Received

NOV 19 1993

B.P. PORTER

Dear Mr. Porter,

I do not know if you remember me. I am the son of Earl Hibpshman and I have known you for many years.

Since I have seen your name in the Anchorage papers lately, concerning the proposed bills advocating the execution of persons that would commit certain types of crimes, I wish to point out to you some things that are of great concern to me.

There are few that think higher of law enforcement officers than I do. My history, as you know, is one of knowing and socially engaging with police officers. Policemen and policewomen are as much a part of my past as anything else. Also, I commonly work to defend police officers and their departments and detachments when they are sued for deadly force, etc. Because of my attitude toward police officers, I hope that you will be able to open-mindedly consider what I am about to say to you.

It is true that anyone that commits the crime of homicide against a police officer should suffer the greatest punishment. I am fully in agreement with capital punishment and I have been for as long as I can recall. Yet you are not correct in deciding that those that commit certain types of homicide are any more deserving of capital punishment than those that commit other types of murder.

If a police officer is working in his or her line of duty and becomes the victim of a homicide, is he or she more special than a taxi driver, a prostitute, a grocery clerk, a fireman, a school teacher, an insurance fraud investigator, etc.? Why would we consider the crime of killing a policeman more serious than the crime of killing anyone else?

Anyone that I have talked to about this, and there are many, agree with me that this is purely a special interest law that you are proposing. The police officers associations (which have wrongfully become political lobby groups working to create laws, instead of working to enforce them as the people command) have more money and man power than the average citizen. I have found no one that does not feel this way, with the exception of some police officers.

Some of the police officers that I have talked to about this say that this is a step in the right direction. That is a naive statement. It is a slap in the face to some of the common men and women in our state.

I have not written this letter to offend you. I stress to you that you are correct in pushing for a capital punishment bill. We need some sort of serious deterrent to thwart the killings of innocent persons in our state. Yet you and the political lobbyists that are pushing these bills are making a serious mistake because you are offending those that are not law enforcement personnel. The public sees this bill as nothing more than a proposal brought by those that have the power and

the money, with no consideration for the common individual. This bill is wrong and should be stopped in its present form.

The days of the public seeing the policeman as a hero and protector of good are gone. It is my personal opinion that the labor unions that invaded the police departments have caused too high of wages. This has resulted in persons wishing to become police officers because of salaries, instead of taking the job because of a desire for intrigue, and a wish to serve the people. The public is outraged at the mistakes that have been made over the years by some of the officers around the state, and at the manner in which those incidents have been handled by the police department administrators. I have been active in defending against some of the litigations that were brought because of some of those mistakes. Because of my background and my career in defending departments and officers, I must say that what you are trying to do will only serve to further alienate the public from the police officers in our state.

While the opinions that I am about to express are not my own, I feel that you should know about them, if you do not already.

Many of the public see that the police are better armed than they (the public), and the public does not trust the common police officer because of this.

The public does not feel that the common police officer is more honest than the average citizen.

The public feels that the average policeman (state troopers and A.P.D.especially) is grossly overpaid.

There are currently many persons that feel that, if they are the victim of a serious crime, they will simply handle the matter themselves, rather than trust their situation to a policeman.

There are many in the public that see a policeman wearing a bullet-proof vest, driving a government automobile, equipped with a shotgun, connected to other officers with a radio, etc. and are in no more danger at work than a commercial fisherman or those in other professions. When the seemingly outrageous salaries of A.P.D. and the troopers are brought into consideration, the result is a common person seeing a policeman as an over protected man or woman that makes too much money for the services they render, and that cannot be trusted because of these things.

These are some of the reasons that people are rude to police officers or simply disregard what an officer says or does. This is a serious problem that is growing each day and the bill that you are proposing is only making the situation worse.

I feel that we are rapidly moving toward social upheaval. Respect is something that is not as common as it used to be. The crime rate is through the roof. The public attitude toward police officers is growing worse. The bill that you are proposing, while obviously well-intended, will cause even more social unrest because it is appearing to the public that police officers feel that they are above those that they are sworn to protect and to serve, and that this bill says that it is a more serious crime to kill an officer in the line of duty than it is to kill anyone else while they are at work.

I feel that you would be more correct to propose a bill that states that anyone that is convicted of 1st degree murder should suffer execution. Period. It should not matter whether the punishment takes the form of lethal injection, hanging, firing squad, or anything else. The only thing that should matter is that the person purposely killed another human being without justification. There should be no more criteria involved.

There are those that say that the killing of a police officer is more serious because the policeman is an agent of the government and therefore killing him or her is to attack our government and

society as a whole. True, a policeman, doing his duty, is a representative of the good of the society. Yet that does not mean that he or she is better or more important than the rest of society and that the the killing of that officer is a more serious crime. The police officer is an important part of our social structure. Yet he is no more important than the common lay person.

It is not my intent to attack what you are trying to do because I agree that cop killers are the lowest of our society. Yet is a cop killer lower than a baby killer, one that assassinates for hire, one that dissects prostitutes, one that robs and kills the owner of a liquor store, or anyone else in our state?

Please consider what you are proposing. This bill is causing outrage in the middle class of our state and it should not be made into law until the wording includes captial punishment for the killers of any innocent person, not just police officers and those that have been tortured, etc.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thom Hibpsman", is written over a horizontal dashed line.

THOM HIBPSHMAN

Alaskans **AGAINST** the Death Penalty

Sender Address

Postoffice Box No., ZIP

Business Office

Home No.

Any Other Name

Alaska Secretary of State, P.O. Box

Address of James Carpenter

Company Name

Business Office

Home No.

Any Other Name

Business Office

Home No.

Any Other Name

Business Office

Home No.

Any Other Name

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Business Office

ALASKANS AGAINST THE DEATH PENALTY - STATEMENT OF PURPOSE

Alaskans Against the Death Penalty (AADP) is a coalition of organizations and individuals who have joined together to oppose House Bill 162 and Senate Bill 127. If adopted, these bills will permit the death penalty in Alaska.

We oppose the death penalty for numerous and diverse reasons; the organizations and individuals which make up this group represent a broad range of viewpoints about why the death penalty legislation should be defeated. These reasons include:

CONCERN ABOUT COST. Executions have proven far more expensive than putting murderers in jail for life. Establishing a death penalty in Alaska will cost more than \$21 million dollars in the first four years. Maintaining a death penalty system will continue to require tens of millions of dollars each year. These vast expenditures will do very little to increase public safety and are unwarranted in times of declining oil revenues.

CONCERN ABOUT CRIME. The death penalty does not deter murderers. Instead, it will divert resources from effective crime prevention programs and law enforcement efforts that could actually reduce the crime rate in our state. Our criminal justice system should focus on preventing the tragedy of violent crime; the death penalty accomplishes nothing towards this end.

CONCERN ABOUT FAIRNESS. Studies repeatedly show that racial prejudice and poverty often influence sentencing. Our nation's death rows have always held a disproportionately large population of African-Americans. In Alaska, Alaska Natives comprise a disproportionately large segment of the jail population, and would likely receive a disproportionate number of death sentences. Indigent people who cannot afford highly skilled trial lawyers are also more likely to end up on death row. Additionally, nothing in the proposed bills would bar the execution of persons with mental illness or mental retardation, or minors who may not comprehend the magnitude of their crimes. Implementing a death penalty under these circumstances would run counter to fundamental concepts of justice and fairness.

CONCERN ABOUT MISTAKES. Every year, news reports are published about innocent people who were convicted and sentenced to death for crimes they did not commit. Mistaken identification, perjury, prejudice and governmental misconduct have each contributed to erroneous convictions. In the past twenty years alone, 48 convicted persons have been released from death rows in the U.S. because of well-established innocence.

CONCERN ABOUT BETTER ALTERNATIVES. Nationwide, polls show that most people prefer alternatives to the death penalty, such as sentencing murderers to life in prison without the possibility of parole for at least 25 years and requiring that restitution payments be made over time by the prisoner to the victim's family. Increasingly, people are recognizing that we can get "tough on crime" without the death penalty.

We believe that our fellow Alaskans, if informed about the realities associated with the imposition of the death penalty, will join us in opposing House Bill 162 and Senate Bill 127. We encourage you to join the efforts of the coalition by voicing your objections to the death penalty, volunteering your time, or offering your financial support. Please feel free to call us if you have questions. We invite all inquiries and interest.

ALASKANS AGAINST THE DEATH PENALTY
P.O. BOX 202296
ANCHORAGE, ALASKA 99520-2296
(907) 258-2296

MURDER

Continued from Page 1

whatever Susie had to endure."

So today, when Jaeger hears people talk of wanting revenge, she understands perfectly.

But don't expect her to agree. A torturous internal struggle to reconcile her urge for revenge with her religious beliefs has Jaeger certain of one thing: Society must resolve its problems through something other than violence.

Which is why Jaeger will be part of the Journey of Hope.

"I know people think this lady is off the wall," she said. "Or they think — and this really hurts me — they think I must not really have loved my little girl."

But that couldn't be further from the truth. Because Jaeger's opposition, ultimately, was born of love.

"I argued and argued with God and really had a wreaking match. I gave God permission to change my heart."

First, though, would come a test — agonizing and heartbreaking.

Within days of the disappearance, police received a call from the kidnapper offering to exchange Susie for a ransom. Other calls would follow, but the suspect could never decide how to make the exchange.

The family's hopes rose and fell as reports of possible suspects and tips surfaced, then faded.

During that time, Jaeger took an unusual step.

"I began to pray for him every day, which initially was the last thing I felt like doing," she said.

"I worked hard to discipline myself, to remind myself this man was a son of God, even if he hadn't behaved like one."

Then, after a wire service story about Susie's disappearance appeared a day before the one-year anniversary, the kidnapper called again.

"It became clear he was calling to taunt me," Jaeger said. "But in spite of the fact he was being very smug and very nasty, to my own amazement, I realized that I was feeling genuine concern and compassion for him."

That concern stunned the kidnapper. He broke down and wept and the two began a conversation that would last an hour.

Jaeger flooded him with questions about her daughter: "How are you keeping her? Is she getting any education? How are you fixing her hair? What kind of clothes is she wearing?"

The call provided investigators with some much-needed clues. Coupled with other information — and details gleaned from another call to Jaeger — police arrested a 25-year-old man named David Meirhofer nearly three months later.

'Journey' to abolish death penalty starts at prison, ends at Statehouse

Star Staff Report

"Journey of Hope ... from Violence to Healing" is the creation of Murder Victims' Families for Reconciliation, several other national groups and Amnesty International.

The journey will begin with a rally at the Indiana State Prison in Michigan City on June 5. It will conclude two weeks later with a rally at the Indiana Women's Prison and a march to the state Capitol.

In between, it will make stops at a number of cities in Indiana and surrounding states.

Here is the full "Journey of Hope" itinerary:

June 5: March and rally at the Indiana State Prison, Michigan City.

June 7: Gary and Hammond.

June 8: South Bend and Mishawaka.

June 9: Elkhart and Goshen.

June 10: Lafayette.

June 11: Fort Wayne.

June 12: Chicago.

June 14: Bloomington.

June 15: Richmond, Ind., and Dayton, Ohio.

June 16: Evansville.

June 17: Louisville, Ky.

June 18: Meeting at Christian Theological Seminary, Indianapolis, 1 p.m., and at Martin University, 7:30 p.m.

June 18: March from the Indiana Women's Prison to the state Capitol at 10 a.m. Closing and concert at the United Auto Workers Hall, 6204 East 30th Street.

For information about specific events in each city, call the Journey of Hope office at (219) 982-7751.

A search at an abandoned Montana ranch turned up a chilling hint of Susie's fate, however: part of a backbone experts believed came from a young female child.

Later, Meirhofer admitted he had killed Susie about a week after he'd taken her.

Even so, Jaeger said she had no interest in revenge. She wanted Meirhofer treated, not executed.

"To have him killed in Susie's name would be to violate the goodness, the sweetness and beauty of who Susie was," her mother reasoned.

Meirhofer accepted an offer from federal authorities to plead guilty in exchange for life imprisonment. Four hours later, though, he committed suicide.

"It was not what I wanted for him," Jaeger said. "It was another terrible blow."

Since her daughter's death, Jaeger has met many parents who have lost children to acts of violence.

And she has seen the effects of keeping a vindictive mind-set.

"While I've been there and know it is a normal, valid human response, I also know we have to get beyond that," Jaeger said.

"I'm not saying you forgive and forget, because you never forget."

And she certainly doesn't believe people who commit violent crimes should be put back on the street.

But Jaeger rejects the notion that putting killers to death is a measure of justice for their victims' families.

"There are," she said, "no amount of retaliatory deaths that will compensate for the loss of our loved ones."

A change of heart

Bill Pelke is a steel worker in Portage who hadn't given the death penalty a second thought. Until 1965.

That was the year his 78-year-old grandmother — Ruth Pelke of Gary — was beaten and stabbed to death by a group of girls who knocked on her door requesting Bible lessons.

A 15-year-old girl named Paula Cooper was arrested and charged as the ringleader.

At the time, Bill Pelke wanted nothing less than her death.

"My thoughts were, they were handing out the death penalty for serious crimes and if she didn't get it, it would devalue the life of my grandmother," Pelke said.

He thought his prayer had been answered when the teenager was convicted and sentenced to die.

Four months later, he had a change of heart.

Personal troubles had set Pelke thinking about his life, his grandmother's life and her death.

He pictured tears running down his grandmother's face — tears he believed could stem only from love and compassion she felt for her young assailant, now sitting alone in a jail cell.

Convinced that his grandmother would want a family member to speak out against Cooper's execution, Pelke became active in the anti-death penalty movement. He participated in protest marches in Florida in 1990 and in Texas in 1991.

During the Texas march, Pelke suggested a march be held in Indiana and that Murder Victims' Families for Reconciliation — an

whose board he serves — should be its sponsor.

The Indiana event is expected to be one of the largest anti-death penalty events in recent years, drawing participants from across the country.

"Murder is a horrible crime," Pelke insisted. "But there has to be some other way than the death penalty."

Painful childhood memories

When Sam Sheppard talks about executions, childhood pain from long ago still seeps through.

In 1954, his father, Dr. Sam Sheppard, was a 30-year-old surgeon who owned a Dutch Colonial home in suburban Cleveland, a sporty Jaguar and a Lincoln Continental convertible.

His mother, Marilyn Sheppard, was 31 and four months pregnant.

Life, in short, was good.

But in July of that year, Sheppard's world was turned upside down.

"My mother was murdered when I was 7 years old. Within five to six months of the murder, the State of Ohio asked the jury to execute my father for a crime he didn't commit," Sheppard said.

"So my view is I lived through the trauma of a murdered parent and then was terrorized by the state with the threat of the execution of my father," said Sheppard, also a board member of Murder Victims' Families for Reconciliation.

A jury ultimately found the elder Sheppard guilty of second-degree murder, instead of first-degree, which meant the death penalty could not be imposed.

Eventually, Sheppard won a new trial and was exonerated in 1968. He died four years after being released from prison.

His son still shudders at the thought of what could have happened.

"I know that if they had convicted him of first-degree murder and executed him within six to 18 months, which they were doing in those days, I would not be alive."

"I could not have withstood another trauma of that magnitude in my life."

Like Pelke and Jaeger, Sheppard believes violence — whether in the form of guns on the street or electric chairs in state penitentiaries — is not the solution to violent crime.

"I sincerely believe it hurts people more, particularly the children," said Sheppard, who lives in Cambridge, Mass.

"I went to high school in Indiana, to Culver Military Academy. I know first-hand that people in Indiana are decent, solid people," he said.

"I think if they are exposed to the truth, they will be able to decide for themselves."

THE INDIANAPOLIS

STAR

3 who have been touched by murder unite in stand against death penalty

■ Love-filled memories stronger than a desire to bring about revenge.

By Rob Schneider
STAR STAFF WRITER

Marietta Jaeger was a mom, Bill Felke was a steel worker, and Sam Sheppard was a 7-year-old boy without a care in the world.

Living in different parts of the country, chances are their paths never would have crossed.

But murder has brought them together. In different times and places, each lost family members to crimes of stunning viciousness.

This week, all three will journey to Indiana to take part in a statewide demonstration — a two-week "Journey of Hope," sponsored, in part, by the families of murder victims.

And they, along with members of other organizations participating in the event, have a most



Marietta Jaeger conquered her rage by praying for her daughter's killer.

astonishing goal:

An end to the death penalty.

Ask Marietta Jaeger, and she will tell you about anger.

It overflowed within her one June day in 1973.

Her 7-year-old daughter, Susie, had been missing for days, kidnapped from her tent in a Montana campground.

The FBI, local authorities and volunteers had combed the area for clues. But they found nothing.

Finally, the searchers turned their attention to a river that ran next to the campground, dragging it for signs of the girl's body.

"The boat would move and it would stop. Every time it would stop, my heart would stop because I was so afraid they would find Susie," Jaeger said.

As she watched, it began to dawn on Jaeger that she might never see her daughter again.

And the anger began to well up inside her.

"Finally, I just couldn't keep it squelched anymore," Jaeger said. Her image of herself as a "good Catholic girl" began to crack.

By the time she went to bed that night, she could barely contain her rage.

"I said to my husband ... 'I could kill him,'" said Jaeger, who now lives in Detroit. "I meant it with every fiber of my being. I'm sure I could have done it with my bare hands and a smile on my face.

"I felt it was a matter of justice, that he needed to pay for what we had already gone through and for

See MURDER Page 2

MAGDALENO ROSE-AVILA

MAGDALENO ROSE-AVILA is the Western Regional Director of Amnesty International USA in Los Angeles, California. Amnesty International [AI] is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners, and an end to torture and executions. AI received the Nobel Peace Prize in 1977 for its work to promote human rights worldwide.

Mr. Rose-Avila has been a long-time human rights activist and outspoken opponent of the death penalty. Prior to commencing his current position in 1990, he was National Director of AIUSA's Campaign to Abolish the Death Penalty from 1987 to 1990. In that capacity, he coordinated international and national efforts to end capital punishment and traveled to other countries on behalf of abolition, including an Amnesty mission to Jamaica. From 1985-87, he served as Southern Regional Director of AIUSA in Atlanta, Georgia. In 1988, he was Media Coordinator for AI's Worldwide Human Rights Concert Tour, "Human Rights Now!", which featured Bruce Springsteen, Sting, Peter Gabriel, Tracy Chapman, and Youssou N'Dour and traveled to 18 countries, including Argentina, Brazil, Zimbabwe, Ivory Coast and Hungary.

Prior to joining Amnesty's staff, Mr. Rose-Avila was a Special Assistant to the Chair of the Democratic National Committee from 1981 to 1984, and a coordinator for the Peace Corps in Guatemala and Nicaragua from 1978 to 1980. He has also served as a Special Assistant at the U.S. Department of Labor (1986-88), as Director of the Colorado Migrant Council (1985-86), and as an organizer for the United Farmworkers of America (1970-74). Mr. Rose-Avila received a BA degree in Theater, Journalism and Communications from the University of Colorado at Boulder, and is the founder of Your Human Rights Theater and Teatro de Valle. He most recently acted in the Los Angeles production of The Last Pad by William Inge, a play about the last days of a death row inmate.

MARIETTA JAEGER

MARIETTA JAEGER lost her 7-year-old daughter to violent crime in 1973. She is the author of *THE LOST CHILD*, a book that chronicles her experiences and spiritual journey surrounding the kidnap and murder of her daughter during a family camping trip. She is currently a Board Member of *MURDER VICTIMS FAMILIES FOR RECONCILIATION*, a national support group of murder victims' family members who work for abolition of the death penalty. In her passionate advocacy against state killing, Ms. Jaeger has stated:

Concerning the claim of justice for the victim's family, I say there is no amount of retaliatory deaths that would compensate to me the inestimable value of my daughter's life, nor would they restore her to my arms. To say that the death of any other person would be just retribution is to insult the immeasurable worth of our loved ones who are victims. We cannot put a price on their lives. That kind of justice would only dehumanize and degrade us because it legitimates an animal instinct for gut-level, blood-thirsty revenge.

Ms. Jaeger is an active member of Amnesty International, and in 1989 led AI's Campaign Against the Death Penalty in Japan and South Korea. She is a member of the National Coalition Against the Death Penalty, the Michigan Coalition Against the Death Penalty, and a past Director of the Michigan Coalition for Human Rights. She has spoken extensively against capital punishment at local and national conferences. She has also been a presenter for numerous lectures, workshops and retreats on forgiveness, reconciliation, peacemaking and non-violence in the U.S. and Canada. Ms. Jaeger lives in inner-city Detroit, Michigan, where she is a member of the Detroit Peace Community and Promotion Manager for *THE WITNESS*, an ecumenical social justice journal.

WHAT DO MVFR MEMBERS SPEAK ABOUT?

MVFR members describe the experience of losing a loved one through murder and their eventual recognition, unique to each one, of how hatred and a desire for revenge is deleterious and even destructive to themselves most of all. They share their struggles to let go of their vindictive feelings to move on an up to a healthier, more humane way of responding to the offender and dealing with their grief. Audiences are witnesses to their triumphs as MVFR members attest to the inner peace and healing which is restored to their hearts and minds as they begin to seek compassion and concern for the persons responsible for the crimes which took away loved ones from their lives. Many folks tell stories of forgiveness and reconciliation; all, for a variety of credible and compelling reasons, articulately and vehemently oppose the death penalty.

-MVFR

Please enter into the Record

Jt Judiciary

My name is Mark Boesser. I live at Lena Cove, Juneau. I have been a priest of the Episcopal Church for 42 years, serving 33 of those years in Alaska.

My question is: How can any society possibly benefit from re-enacting the very violence it so vehemently condemns? In my opinion we neither want nor need the death penalty.

If, as has been well documented, the death penalty does not serve as a deterrent, what purpose can it possibly serve?

I once naively thought it would save money. However I learn, to my surprise, that just the opposite is the case. For a number of reasons the death penalty proves to be even more expensive than holding an offender in prison for life.

If, as indeed the facts bear out, the death penalty is creating an ever increasing problem for correctional systems all across the country, why should we take upon ourselves problems we can avoid?

Historically the death penalty has been shown to be capricious, unfair, and racially biased.. served disproportionately upon economically disadvantaged members of ethnic minorities. Is that what is wanted? Surely not!

What purpose can it possibly be conceived to serve unless it be vengeance, and, I ask you, is that mankind's prerogative? It certainly cannot heal the devastating rage and grief of the victim's families. What is possibly gained by attempting to take vengeance into one's own hands?

The General Convention of the Episcopal Church, it's national deliberative and legislative body, has opposed capital punishment on the basis that the life of an individual is of infinite worth in the sight of Almighty God, and the taking of such a life falls within the providence of Almighty God and not within the right of human beings.

This opposition of the Episcopal Church to capital punishment has been reaffirmed again and again (1958, 1969, 1979).

The institutionalized taking of human life prevents the fulfillment of Christian commitment to seek the redemption and reconciliation of the offender.

And the reality is that there are incarceration alternatives for those who are judged to be too dangerous to be set free in society.

Given such considerations, the Episcopal Church has called upon its dioceses and members of the Church to work actively to abolish the death penalty in states that have it.

I, personally, am proud and grateful that the Territorial Legislature of Alaska had the wisdom to reject the death penalty years ago. To turn our back upon that wisdom and choose the death penalty now would, to my mind, be to take a tragic, tragic step backwards.

**I urge you with all my heart to reject HB 162
and SB 167**

Thank you.

**The Rev. Mark A. Boesser
17585 Lena Loop Rd.
Juneau, Alaska 99801
ph. (907) 789-1445**

2. of two



Alaska State Legislature

Please enter into the record my testimony to the Joint Judiciary Committee
committee name

committee on Capital Punishment, dated 11/16/93
bill/subject

I am opposed to capital punishment, I am for lifetime imprisonment without change of parole. I believe people who have committed heinous crimes ~~who~~ should never be freed to live in society, I also believe in the sanctity of human life, from conception to NATURAL death.

If we decide to kill someone because they've killed someone else, we would be no better than the murderer. We would have stooped to their level of behavior.

Currently, statistics say it's not even "cost-effective" to kill someone by capital punishment. It's "cheaper" to imprison for life. This way of thinking is distorted, in my opinion. How can life ever be equated to cost?

If life is not respected, then why not continue to promote a death culture by promoting abortion, euthanasia, assisted suicide? Why NOT destroy the weak and the old? They're not "cost-effective" to our society either.... There is another reason I am opposed to capital punishment. Innocent people; wrongly accused, sentenced to death. Two thousand years ago a man named Jesus Christ was put to death by capital punishment. As I pondered this event, I began to wonder WHY we would desire to put someone to death in 1994. Aren't there enough deaths in AK? Isn't there enough violence? Doesn't violence breed more violence?

From what I can tell, there is no correlation between enforcement of capital punishment and reduced crime rates, nor do I see a correlation between increased crime rates and states that ban capital punishment. Clearly, capital punishment is not a proven deterrent to crime.

Maybe, just maybe, life imprisonment with NO CHANCE of parole would be a deterrent. Lets work on "NO CHANCE OF PAROLE" and see if we can make some progress. Going to prison should NOT BE A JOKE. It should be a FATE WORSE than death. Thank-you for listening/reading

Signed: Mary S. Soltis
Testifier

Representing (Optional)
615 DeGroff Sitka AK 99835
Address
(907) 747-5624
Phone No.



Alaska State Legislature

House + Senate
Judiciary Committees

Please enter into the record my testimony to the

committee name

committee on Capital Punishment, dated

11/16/93

bill/subject

I am opposed to HB 162, SB 127 and HJR 43 for a wide variety of reasons. In part, these items pander to our fears and our need for revenge. I am not convinced ~~the~~ that the death penalty has been or will be applied evenly and fairly. I know a white male who killed someone and did not spend any time in prison. I know an Eskimo man who killed someone and he will spend most of his life in prison. The difference, in part, was personal wealth. Add this to the possibility of killing innocent persons and the system
(over)

Signed:

John J. Shaffer

Testifier

self

Representing (Optional)

303 Kinsham Sitka Alaska 99835-7124

Address

907-747-8725

Phone No.

has too many flaws. A lot of people will lie to gain favors from the system for their own crime and time.

These bills and resolution promotes the philosophy that we (society) will make a witness against murder by sponsoring state sanctioned murder. That is not logical to me!

I would prefer living in a state that did not have that philosophy.



Alaska State Legislature

Please enter into the record my testimony to the House/Senate Judiciary Comm.
 committee name
 committee on Death Penalty, dated 11/16/93
 bill/subject

I apologize for not being able to wait long enough to testify. I do wish to register my objection to House Bill 162 + Senate Bill 127 -

Aside from the factual argument that the death penalty is not a deterrent (evidenced by 37 states usage) implementation of the proposal would serve to actually cheapen the value of human life in Alaska. When 99% sentences (60 w) good time are available [likely more] a deterrent than threat of death to most offenders, the need to kill for retribution is made clear. Such a warning with the mind set of the offender is not a positive for Alaska nor will anyone be safer for it.

Signed: Moshe Calberg Zoren
 Testifier

Representing (Optional)
7540 E-17th Ave - Anchorage 99503
 Address
337 7741
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____ committee name

committee on Death Penalty, dated Nov. 16, 1993
bill/subject

In such a violent age, it is a gross mistake to perpetrate more violence by conveniently "killing our mistakes". Putting to death those who once merited our protection as an abused or neglected child. At what point do we withdraw that concern for those who are so deranged, angry etc. as to kill and in turn decide to kill back? It is inhumane in a society where we are afraid to spank a child on one hand but if he grows up sick we will kill him. We need to stop "growing" criminals to begin with, concern ourselves with

preserving our children, retaining family values

Signed: Riuka Chana Zorea
Testifier

Representing (Optional)
7540 E. 17th Ave

Address
333 4037

Phone No.

and somehow stop the killer before he becomes one.

November 18, 1993

Senator Robin Taylor
Chair, Senate Judiciary
P.O. Box 1441
Wrangell, Alaska, 99929-1441

Received

NOV 22 1993

881. R

Senator Taylor;

I am writing to you in re. to your role as the Chair person of the Senate Judiciary and pertaining to the hearing held on 11-16-93 re. the death penalty in Alaska. I was not able to attend the hearing, and so may sound redundant or misinformed at times in this correspondence.

I am an avid gun collector, and believe that one must maintain the right to defend one's freedom, safety, property, family, etc. from any entity that violates historical social boudaries, and that this defense is acceptable at whatever level is deemed to meet the definition of necessary or justifiable force for that moment. Thomas Jefferson, Paine, et al even went so far as to identify domestic governments, individuals, etc. as acceptable targets of that force if certain criteria were established.

I am also a licensed clinical social worker, a mental health professional, a licensed marital AND family therapist, a member of the AkCLU, ACLU, NRA, etc. I have a newborn baby daughter; Rayna Kathryn Nelson. I contemplate the legislation dicussed at the hearing this past Tuesday when I look at her. I know that if some-one were to victimize her physically, sexually, etc. that I would quite likely contemplate or even act in re. to seeking serious vengeance.

At the same time, I know that we live in arbitrary, fickle, unpredictable and illogical times. The occurrences of prosecutorial power being abused (see the Randy Weaver case, though I detest racists/aryan scoundrels, also see the case of Geronimo Pratt and Leonard Peltier), the frequency of over-zealous law enforcement, and the reality of victory in court often times being more based on who provides the best circumstantial evidence (drama), and who has the most manipulative attorney leads me to fear the thought of a very imperfect and biased system being able to define who lives and who dies. In the case of the person who witnesses the murdering of a family member, and takes the life of the perpetrator there on the spot with no question as to guilt or innocense, I have no problem with that. I do have a problem with an obviously flawed, biased system defining past events for which none of them were present, then ruling on who lives and who dies.

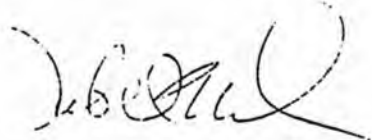
If this law were to include a section stating that if it were found . . . after the execution of the sentence was carried out that there was reasonable evidence that the accused had, in fact, not committed thealleged crime, that the judge, jury members, law enforcement officers, and prosecutors all serve the maximum amount of time allowable for negligent homicide (as that is what they would have committed), and that this was

unwaivering conditions for any and all trials involving a potential death sentence then I would not have as great a problem with the proposal as the persons behind such a verdict would be establishing their faith in the system at a very suitable level.

This is the same system that said that the recriminalization of marijuana, unconstitutional as it was, would not be enforced, but was rather just to make a statement to the "children." The same system that saw John Collette looking at life without parole for cultivation of marijuana less than three years later. Yes, Senator Taylor, it is a fickle, arbitrary and illogical system that I would certainly not trust with the power to decide life and death. In my work as a mental health practitioner, I have seen rapists sentenced and released after serving fifteen months, then watched as a first-time offender is sentenced to thirty-five years without parole for involvement in a non-violent and mutually agreed upon cocaine sale. Senator Taylor, the lack of logic and obvious lack of ability to prioritize criminal behavior scares the breath out of me when considering giving this "system" the power to kill people.

I beg of you to please consider this when deciding on the future of this very dangerous legislation.

Sincerely,



Dirk R. Nelson, LCSW, LMFT
P.O. Box 2437
Valdez, Alaska, 99686

Home Phone: (907)-835-5894
Work Phone: (907)-835-2838

cc; House Representative Brian Porter
House Judiciary Chair
716 W. 4th Ave.
Suite 640
Anchorage, Alaska, 99501-2133

Legislative correspondence file

Tom Moyer
2047 Amy Dyan Road
Fairbanks, AK 99712

FAXED
11/15

November 15, 1993

Representative Jerry Sanders
716 4th Avenue Suite 360
Anchorage, AK 99501

Received

NOV 18 1993

Re: Capital Punishment

Dear Representative Sanders:

In anticipation of the hearings on November 16, I would like to take the opportunity to put my opinion of HB 162 and related measures (SB 127 and HJR 43) on the record.

Personally, I am inalterably opposed to the death penalty. As a former legislator, I had the chance to spend a great deal of time reviewing the arguments from both sides of the capital punishment issue. My contemplations and research reinforced my personal belief that there simply is no argument that justifies the use of the death penalty.

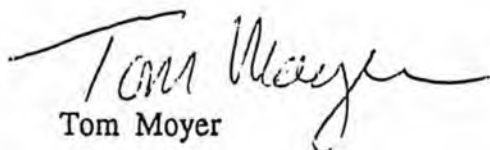
Admittedly, there is considerable support for the death penalty in our society. In far too many cases, the support for capital punishment stems from vengeance, anger and hate. Some advocates say it no longer matters whether it serves as a deterrence or not, that retribution alone justifies capital punishment, that society must exercise control and "do something". I cannot agree with those who think that vengeance is a human instinct and that it should be transformed into a judicial principle. The statistics show that the actual numbers of executions in our country are relatively low. Criminal justice experts believe this reflects the public's deep-seated ambivalence about the issue despite the fact that over three quarters of respondents to public opinion polls say they support the death penalty. Sometimes it is the job of a lawmaker to work to change "societal norms" when they are misguided rather than comply with them. That is a true test of leadership.

Friends or family members of the murder victims are understandably among the most fervent supporters of the death penalty. Demanding an "eye for an eye, a tooth for a tooth" is easy at such times. However, it is my belief that the state should not participate in what it forbids its citizens. It is our duty as citizens and the duty of our government to be rational at such times on behalf of all society. It is nothing less than a moral imperative that society as a whole enforce a rational, higher standard of conduct for our government. Do our laws allow the Commissioner of Corrections to "establish a procedure" to rape rapists or burn the homes of arsonists as punishment? No, of course not! Yes, murder is a more serious crime, the most serious of all; but using the official power to execute is simply an admission that we have failed as a contemporary society. Innocent people have been executed in the name of justice. Minorities and the poor have been given the death penalty in disproportional numbers. The former warden of San Quentin, Mr. Clinton Duffy once said, "The death penalty is the privilege of the poor." Rehabilitation efforts have been mixed at best. Abandoning them in favor of retribution is also an inexcusable admission that we have simply given up.

Cannot a modern, dignified, humane society, one on the verge of an unprecedented time of world peace, find better ways to prevent murder, help the victim's family, and treat the offenders than simply killing them? A life sentence without parole is not soft on crime, so says Mr. William D. Leeke, former South Carolina Commissioner of Corrections who had hoped never to have to go through an execution but was responsible for overseeing two late in his career. He said: "We would have a much more civilized society if we could find a way not to kill people, but that is perceived as idealistic and soft on crime and liberal, but I think putting people in prison for the rest of their lives is not being soft on crime."

The death penalty may even make great politics for some, but it is not good social public policy. Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Tom Moyer". The signature is written in dark ink and is positioned above the printed name.

Tom Moyer

cc: Chairs, House and Senate
Judiciary Committees

file

Kathy Kainer
311 Melody Place, Apt A
Anchorage, AK 99504

Received
NOV 19 1993
MAIL PORTER

November 16, 1993

To the Honorable Representatives and Senators of the House and Senate Judiciary Committees:

I want to thank those of you who took time out of your busy schedules to listen to public comments about House Bill 162 and Senate Bill 167 - Capital Punishment for Murder. Although I was allowed to testify, the hour was late and I am a better writer than speaker, so please allow me to supplement my remarks with this letter.

I want to commend you on your efforts to make this state a safer place for law abiding citizens to live. I agree that it is the state's responsibility to protect us from violent crime. As an Anchorage resident who is afraid to walk the two blocks from my home to the nearest store after dark, I thank you for your attention to this issue. However, I think with the testimony you heard today you should realize that importing the death penalty will not make the streets of Anchorage or any other Alaskan city safer.

Representative Sanders stated that even if the death penalty does not serve as a deterrent this bill should be passed because it is the will of the people. He cited polls showing that the vast majority of Americans support the death penalty. Randall Burns countered that if people are informed about the option of life without parole and the costs associated with administering the death penalty, support drops to less than 45%. If you had asked me in 1985 if I supported the death penalty I would have said "yes", since I had never given the issue much thought. Once I joined Amnesty International and was exposed to the facts about the death penalty, I changed my mind. If you go back to your constituents and ask them about their support of the death penalty, spend some time sharing with them some of the facts you heard today about the cost and its inability to deter based on the experience of states that have the death penalty, and offer them the alternative solution of life without parole, I think you will find that support for the death penalty is a mile wide and an inch deep.

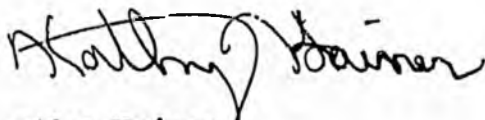
There will always be those who clamor for revenge, regardless of the cost. The desire for vengeance should not dictate public policy.

I encourage you to research the experience of our allies who have abolished the death penalty and still manage to have a much lower rate of murder and other violent crimes

than the United States. Ask your neighbors in Canada why they think Vancouver has such a lower crime rate than Seattle. They are both large cities, less than 100 miles apart, and Washington has a death penalty law that supposedly deters crime. Their answers may surprise you.

I hope you will carefully consider the testimony you heard today, abandon your efforts to import a death penalty and begin to focus on real solutions to the problem of crime in our communities.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Kainer". The signature is written in dark ink and is positioned above the typed name.

Kathy Kainer

The Constitutional Problem with an Alaska Death Penalty in a Nutshell.

by John Havelock (testimony of Nov 16, 1993)

Mr. Chairman, it may help the committee if I set out in as few words as possible why this bill is unconstitutional when obviously somebody has told you that it is constitutional. In a nutshell, the person so advising you has put too much reliance on a statement on the floor of the convention by a committee chair and not enough on the plain meaning doctrine and the importance of other doctrines used in making constitutional law.

At the convention, (1309), Delegate Awes was asked by Delegate McLaughlin, "was it the intent of this clause to abolish capital punishment on the theory that you cannot reform a dead man?"

Delegate Awes replied: " ...this sentence has been almost the identical words as in other state constitutions, and in those states the supreme court upheld that it does not abolish capital punishment..." Delegate Doogan goes on to say that he believes the Supreme court of Indiana has so ruled and this clause was taken from Indiana.

Please note, and I will come back to it, that the Alaska delegates believed that what a Supreme Court said about this language at a particular time and place was the guiding principle in determining its meaning.

Delegate Doogan goes on to say, "it was purported to intend that this clause would have nothing to do until the time a person was sentenced... 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...."

Let me first point out that statements of delegates and legislators while useful are not determinative. As the Supreme Court has said in *Division of Elections of State v Johnstone*, "adherence to the common understanding of words is especially important in construing provisions of the Alaska Constitution because the court must look to the meaning that the voters have placed on its provisions." That is, it is what the people might have thought, not what the delegates thought that is the determinative factor in legislative history. What was the plain meaning of the words? The plain

meaning was obviously the common observation of Delegate McLaughlin: dead men cant be reformed.

The other thing to remember is that the gloss that is put on a constitution over the years is far more important to understanding that constitution than the actual words. For example with regard to the U.S. Constitution, what did the original delegates think was included in due process or equal protection? Do you think they thought that it could control legislative apportionment? Even considering the present subject, do you think the Philadelphia delegates had the slightest notion that due process would result in the present constitutional fabric which governs the death penalty under the federal constitution? Surely the answer is "no" if not "hell no". The framers set out generalized principles and it is for the courts of succeeding generations to set out what these principles mean in particular applications just as it was for the Indiana court to determine the meaning of this language in its particular application given the evidence and the state of science at the time.

For an example of the treatment of the opinion of a delegate, look what Delegate Doogan said in the quote I gave. Is Doogan's interpretation the law today? "Hell no", any reasonably informed lawyer would answer. In dozens of cases, the court has held that this language is mandatory and not advisory, that it covers sentencing and that the judiciary is bound by it and it applies long before the person is sentenced. So much for Doogan's opinion.

So why is Awes shot in the dark any more likely to hit on what this general language means thirty five years later? As she said, the language is subject to the interpretation of courts. The court will consider the application of this phrase in its particular setting: social, economic, scientific not in 1956 but in 1990 whatever, if you make the mistake of passing this. It will hear evidence on whether the death penalty is required to meet the twin goals of sentencing, that it has embraced many times: protection of the public and reform of the offender. It will be weighed in the context of the constitutional doctrine (not available to delegate Hawes or to the Indiana Supreme Court) that the right to life is a fundamental interest and that the state must show a compelling interest to deprive a person of that right. Where is the evidence that would uphold this law? I just don't think it is there. And at the same time you have all kinds of evidence of legislative intent that runs against the ~~argument built on protection of the public. No one can predict perfectly what a court~~ will do, but I wouldn't give you more than a 10% chance of sustaining this bill.

Calista Corporation

Statement

of

Matthew Nicolai

Senior Vice President

Before the November 16, 1993 Joint Public Hearing

Alaska State Senate, Judiciary Committee

Alaska House of Representatives, Judiciary Committee

Concerning

Senate Bill No. 127

and

House Bill No. 162

Mr. Chairman, Robin Taylor of the Alaska State Senate, Mr. Chairman, Brian Porter of the Alaska House of Representatives, Members of the Joint Committees of the Senate and House Judiciary Committees'. My Name is Matthew Nicolai, Senior Vice President, Calista Corporation.

Calista Corporation is an regional Alaska Native Corporation established under the Alaska Native Claims Settlement Act of 1971. Calista Corporation has an enrollment of 13,308 shareholders. Calista region 56 villages encompass the Kuskokwim and the lower Yukon Rivers' of a population base over 20,000 people.

We appreciate the opportunity to testify before you today to discuss the Senate Bill 127 and House Bill 162 as it relates to the Yupik people of the Calista region. Calista Corporation is not in favor of either Senate Bill 127 or House Bill 162. We are not in favor of the death penalty.

In 1990 Calista Corporation published a paper to understand the plight of the Yupik people in western Alaska. "The Calista Region, A Gentle People- A Harsh Life," was prepared by our Land and Natural Resources Department and the Village Management Services to better educate the public of the lives of the Yupik people in our region. We attributed a whole chapter on, "A New Crisis in the Calista Region-'The Decline of Native Well-Being,' " examined alcohol abuse, suicides, domestic violence, child welfare.

We published our findings to bring this issues in the forefront of policy makers. We wanted to address problems faced by our Natives. We invested time and energy to develop testimony to bring forth our problems we face in the villages. We testified before federal and state committees on economic problems of our villages.

Our traditional values and customs have changed drastically over a short time period. The drastic change of lifestyles has eroded our established patterns of trust we have to our Elders. In the Yupik lifestyles, Elders were the center of traditional governing bodies and

justice system. Our traditional child rearing lifestyles are virtually non-existence in the villages.

Without Elders guidance and not understanding of new policies affecting our villages, we began to see confrontation by our young.

Lifestyle change is like an walking into an lions den that awaits its prey to tear apart. Alaska Natives are those people that have walked into the lions den. An unkind world with many laws that confront our own unwritten traditional laws. Confrontation breeds violence. Violence leads to heinous crimes and other crimes of passion.

Studies by state and federal governments show alcohol related violence is the leading cause of accidents and deaths in Alaska. We read every day of violence related crimes of our own Alaska Natives. The states correctional facilities all over the state list the Alaska Natives as it leading residents.

Passage of Senate Bill No. 127 and House Bill No. 162 will further erode our cultures. We do not favor the passage. However, we would like for these committees to investigate the Natives plight in the states justice system.

We thank the committees of the senate and house for holding hearing on these bills. We are available for further comment if necessary.

TESTIMONY OF TREFON ANGASAN ON HB 162

HOUSE JUDICIARY COMMITTEE

NOVEMBER 16, 1993

My name is Trefon Angasan, and I am the Vice President of Corporate Affairs of the Bristol Bay Native Corporation. I am testifying today on behalf of the 5,400 shareholders of the Bristol Bay Native Corporation, most of whom live in Alaska.

First, I am testifying as an Alaska Native upon behalf of Alaska Natives. Alaska Natives share the concern of the House Judiciary Committee with crime--specifically, with the crime that is the subject of HB 162: first degree murder. Let me explain why Alaska Natives have this concern. Homicide ranks as the sixth or seventh most common cause of death among Alaska Natives, a murder rate four times the national average. Native male homicide victims outnumber native women victims by about three to one. Nevertheless, Native women face a higher risk of death by homicide than women elsewhere in the United States.

Let me cite a few more statistics to show you why Alaska Natives are concerned with crime. Thirty four per cent of the Alaska prisoner population are Natives, although Natives represent only sixteen per cent of the total population.

Now, let me explain to you the reason for the Alaska Native crime rate. The vast majority of crimes committed by Alaska Natives are due to alcohol. A study of the Alaska Justice Forum in 1991 concluded that in those rural Alaska Native villages that were the subject of that study that ninety five per cent of felonies involved alcohol.

I cite these statistics to you so that you will appreciate the perspective of Alaska Natives on crime. We believe that the Alaska legislature should deal with the cause of crime and not place its emphasis on capital punishment. Capital punishment will not prevent an alcoholic from committing crime--it merely will eliminate him as a person. Please take all of the money that will be spent on the administration of a bill providing capital punishment, and spend it on the prevention and treatment of alcoholism.

I would also like to add that Alaska law enforcement officials treat Alaska Natives at times as though capital punishment was already a part of Alaska law. For example, the Alaska police department recently shot and killed a shareholder of the Bristol Bay Native Corporation whose major problem was alcoholism and not crime. This is happening to Alaska Natives across Alaska. Too often, Alaska law enforcement officials use lethal means of self defense when bullets are not called for in law enforcement.

In conclusion, I would like to address that provision of HB 162 which calls for an advisory vote at the November 1994 general election on capital punishment. Alaska Natives as well as many other Alaskans have called for a vote of Alaskans on the question of a preference for subsistence in times of need in rural Alaska.

Alaska Natives believe that the question of subsistence--a life or death issue for many Alaskans--certainly deserves a place on the ballot if the Alaska legislature decides to place capital punishment on the ballot.

Charles Campbell

3020 Douglas Highway, Juneau, Alaska 99801 (907)586-5793

Representative Brian Porter, Chairman
House of Representatives, Judiciary Committee
Juneau, Alaska

January 24, 1994

Dear Chief Porter:

You will recall that I was Director of Correction about fifteen years ago, when corrections was a part of Health and Social Services. During that time Helen Bierne asked me to prepare a position paper on a bill that had been introduced in the Legislature reauthorizing the death penalty. Helen wanted me to research the question and write up my conclusions. She did not tell me what conclusions she hoped that I would reach.

Although I had been in corrections for many years, I had had no experience with the death penalty. As a long-time federal prison man, the death penalty never came up for me. I had certain moral and religious compunctions about it (still do) but little in the way of practical knowledge to back them up.

I spent a couple of weeks almost exclusively on this matter; I obtained and read everything I could get my hands on about capital punishment. I had many long-distance telephone conversations with people who had been involved or otherwise had singular knowledge of the subject. I gave special consideration to Alaska's unique circumstances, especially in terms of our ethnic and cultural diversity, and the kinds of crimes that were, and still are, often committed here.

The result of all of this was that I became an implacable opponent of the death penalty- especially for our state. Over the years I have kept up with this subject, and have become more convinced every year that we should avoid returning to use of capital punishment here.

Aside from the damage it would do to the social fabric of our state, the main arguments against the death penalty are: 1. Lack of deterrent value (A friend of mine, a university based criminologist, told me recently that he does not know of one accredited person in the field of criminology that still holds the position that the death has deterrent value.) 2. High cost (far more costly than life imprisonment.) 3. The impossibility of administering the death penalty fairly, & 4. irreversibility.

With your permission I will testify on Wednesday. Meanwhile, here is a copy of a reference sheet, in which I spell out my views. You won't have time to read it anytime soon, but I hope you will have a look at it before taking a final position on this crucially important question.

However you may finally stand on this matter, I am glad you are Chairman of the Committee, because I know the question will be given full and fair consideration.

Best wishes to you,

Charles Campbell

Charles Campbell
Juneau, Alaska
January 1994
(907) 586-5793

TWELVE REASONS WHY ALL ALASKANS SHOULD OPPOSE THE DEATH PENALTY

More often than not, debate over the death penalty involves discussion of unresolvable 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 some 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. *The death penalty is irreversible:* 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 at the very least would have raised reasonable doubt. 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. These men may have been 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 incontrovertible innocence of twenty-three persons executed in our country during this century and the probable innocence of others. Many other innocent defendants have been sentenced to death in American courts and would have been executed had it not been for the belated appearance of witnesses, or the discovery of suppressed evidence. We will never know how many innocent people have been executed. In any case, it can hardly be denied 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. *The death penalty has no value as a deterrent:* This is a settled argument. If there is even one accredited criminologist remaining in the United States who continues to take the position that the death penalty has special value as a deterrent, he or she has been notably silent for several years. Three isolated investigations done in the 1970s purported to show that executions result in fewer murders. These studies used research methods normally restricted to economic research. Proponents of the death penalty continue to cite these studies, even though long ago discredited by social scientists. The methodology used was found to be seriously flawed by a National Science Foundation report.

On the other hand certain other highly respected studies strongly suggest that the death penalty may be more apt to induce than deter violent behaviour, among persons predisposed to such behavior. Glenn Pierce and William Bowers of Northeastern University analyzed data on all executions that occurred in New York State over a period of fifty-seven years. Over that period of time one or more executions in a given month added a net average increase of two homicides to the total committed in the next month. 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. 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 murder. 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. *The death penalty is exorbitantly expensive:* 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. The conservative Supreme Court now in place has chipped away at the death penalty appeal structure, but it has gone about as far as it can go. 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.

We should be grateful that constitutional rulings prevent significant alteration of the process, because it a process that has been successful in correcting errors and saving innocent lives. More than a third of all death penalty sentences have been set aside or commuted since 1976.

Texas and Florida have spent over \$300 million executing 103 defendants since 1976. The murder rate in both states has continued to rise. Across the country millions of dollars have been squandered on the death penalty. The 227 executions carried out during the past eighteen years have cost the taxpayers from one to six million dollars each. At present there are more than 2800 people on death row across the country, comprising a dollar drain that will reach into the billions, this coming at a time when resources are desperately needed for effective law enforcement and crime control.

4. *The death penalty weakens law enforcement:* 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 and prosecuting criminals. 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. And it is of major significance that use of the death penalty, which has no value as a crime control measure, drains away resources that would be otherwise be available for law enforcement.

5. *The death penalty is capricious:* Since 1976 there have been more than 200,000 homicides in the United States. There have been 227 executions. By no means could all of those executed be considered more deserving of death than thousands of others who were 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 have little 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:* If this proposition is not always true, it is true all-too-often. 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. More recently, 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. In 1983 the U.S. Court of Appeals had observed that there is "substantial and uncontroverted evidence... that execution by lethal injection poses a risk of cruel, protracted death... Even a slight error in dosage or administration can leave a prisoner conscious but paralyzed while dying, a sentient witness of his or her own asphyxiation." (Chaney v. Heckler, 718 f.2d 1174 [1983])

No matter how skillful and efficient state-paid executioners may become, most theologians, ethicists, and untold numbers of thoughtful people in our society, will continue to consider the act of killing a human being, when there are better options, to

be abhorrent by its very nature. It is a matter of sinking to the level of the persons we execute.

8. *The death penalty is destructive to the families of victims:* 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, the agony of uncertainty is over at the end of the trial. When the death penalty is not an available option, or is not sought, first-degree murder prosecutions are concluded with relative speed, typically resulting in sentences to 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, all too often, are encouraged to nurture their bitterness and grief over the many years of the appeal process.

9. *The death penalty is creating an ever-growing problem for correctional systems across the country:* More than 2800 individuals are presently under sentence of death in the United States. About 200 are added to this number each year, while an average of fewer than sixteen have been executed each year during the past fifteen 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 serving life sentences tend to be tractable. Typically, they are productive workers who are managed in the prisoner population at minimal cost. The work assignment 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. *The death penalty is a relic of less civilized times not favored by the American people:* The popular media tell us of poll results that indicate approval of the death penalty by from 70% to 80% of the American people. For some reason, it is rarely reported that fewer than half of the respondents in most of these surveys prefer the death penalty when an acceptable option is available, a life term without parole for example. A careful look at the polls provides some surprising insights. In Georgia, 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 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.

11. *The death penalty is racially biased:* 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. (The defendant was an Afro-American.) Among the undisputed statistical evidence was a finding that "the average odds of receiving a death sentence among all indicted cases were 4.3 times higher in cases with white victims. It appears that the Court could not bring itself to deny that previous death penalty convictions in Georgia were to some extent tainted by empirically proven racial bias, but chose to dismiss the matter with the dubious contention that "a constitutionally significant risk of racial bias" was not proven.

There is a wealth of evidence of racial bias in administration of the death penalty in other jurisdictions. 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 many of the people who come before our criminal courts are economically disadvantaged members of ethnic minorities. 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. *The death penalty serves no purpose:* 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. They have consistently seen to it that perpetrators of heinous, pre-meditated murders are locked up, for all intents and purposes, for life. Bills intended to reauthorize capital punishment have been repeatedly introduced in the Legislature over the past dozen years. But the sponsors and supporters of such legislation are rarely heard advancing their reasons. Why is it that we hear so little articulation of purposes to be served, needs to be met, problems to be solved or advantages to be gained, by resumption of capital punishment in Alaska after its abolition by the territorial legislature thirty five 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, would be supportive of such

a profound redirection in criminal justice policy if they should learn that the essential rationale is based on vengeance.

Note: Charles Campbell was Director of Corrections in Alaska from February 1979 to February 1982. He has had a variety of other jobs in the criminal justice field over a period of more than forty years.

26 January 1994 RE: HB 162 AK Death Penalty bill
TO: HOUSE JUDICIARY FR: CONSTANCE F. GRIFFITH

I OPPOSE HB 162. I OPPOSE KILLING; THE DEATH PENALTY IS KILLING. I BELIEVE THE STATE'S RESOURCES OUGHT TO BE DIRECTED TO PREVENTING KILLING. THAT IS NOT EASY. ADMITTEDLY, IT IS EASIER FOR YOU TO "GET TOUGH" AND KILL KILLERS. HOWEVER, IF YOU LOOK AT WHO KILLS, AT THE CIRCUMSTANCES SURROUNDING KILLING, YOU WILL FIND THAT SOME KILLINGS (DRIVE-BY SHOOTINGS, FOR EXAMPLE) ARE "SENSELESS". YOU NEED TO MAKE SENSE OF THESE REPREHENSIBLE EVENTS. A DRIVE-BY KILLER IS A PERSON WITH "NOTHING BETTER TO DO" BECAUSE THAT PERSON WAS NEVER CHALLENGED BY HOME OR SCHOOL TO BECOME PURPOSEFUL, PRODUCTIVE, CREATIVE, AND SENSITIVE TO OTHERS. OTHER KILLERS ARE CHILDREN-GROWN-UP WHO WERE SEVERELY ABUSED BY ADULTS WITH NO INTERVENTION BY ANYONE, WHOSE ANGER SEETHES AND WHO TAKE THAT ANGER OUT ON OTHERS AS THEY LEARNED: BY VIOLENCE. AND ALL OF US KNOW THAT ALCOHOL AND DRUGS ARE BEHIND MANY OF THE KILLINGS. WHAT ARE YOU DOING TO PROVIDE ALTERNATIVES TO DRUG USE? ARE YOU TEACHING CHILDREN THE CONSEQUENCES OF DRUG ABUSE AND ALCOHOL USE?

UNLESS YOU ADDRESS THE UNDERLYING ISSUES, MORE PEOPLE WILL BE KILLED SENSELESSLY, AND YOU WILL KILL THE KILLERS, AND YOU WILL NOT HAVE BROUGHT ANY VICTIMS BACK TO LIFE. ARE YOU NOT REALLY SENSITIVE TO THE RIGHTS OF POTENTIAL VICTIMS (ALL OF US) WHEN YOU PROVIDE RESOURCES TO PREVENT OUR POSSIBLE DEATHS? EXCELLENT EDUCATIONAL AND ALTERNATIVE-TO-DRUGS PROGRAMS TO BUILD SELF-ESTEEM IN "IDLE" YOUTH; FAMILY HELPER PROGRAMS TO END CHILD ABUSE ARE WAYS TO USE RESOURCES TO PROTECT US FROM POSSIBLE DEATH. THE FALL-OUT FROM SUCH PROGRAMS WILL BE MORE CITIZENS WHO ARE A BENEFIT TO SOCIETY, AS OPPOSED TO BEING LOCKED AWAY IN EXPENSIVE MAUSOLEUMS CALLED PRISONS. I CONCUR WITH AADP'S POSITION.



Alaska State Legislature

Received

JAN 26 1994



Please enter into the record my testimony to the Capital Punishment committee name
 committee on HB 162, dated 1/26/94
 bill/subject

Thank-you for hearing me on this matter. My silence may indicate that I condone capital punishment, and that would, in itself be a crime!

As I read + re-read this bill, it reminded me of the dark ages when people who attempted to commit suicide were put to death for their crime! This is 1994. Are we still playing God, deciding who lives and who dies, who can be forgiven and who can't? Do we still think we can solve social problems with murder. That's what this bill should be named - 'Murder for murder'.

Well, "revenge", you say. "They've committed a sin that can never be forgiven". "Justice", you cry. "A life for a life".....

In my 36 years, I have never seen anyone healed by revenge. Revenge is NOT justice. Forgiveness is justice. I've heard it said, "forgiveness is the ultimate revenge". Perhaps, but in my opinion, forgiveness is the opposite of revenge.

Signed: Mary S. Soltis
 Testifier

see pg. 2

Representing (Optional)
1615 DeGroff
 Address
747-5624
 Phone No.

pg. 1 of 2

IF others don't respect life or brutally take a life, then it's our job to confine them, remove them from society FOREVER (more on that later), minister to them, but it is never our job to kill them. For then, we would also disrespect life.

Life imprisonment with no chance of parole should be a fate worse than death. Since there are no statistics that say death is a deterrent to crime, why not work on something less irrevocable than death, less final in case of an innocent prisoner. How about self-sustaining farms where they would make or grow everything needed, or do without; recycling farms; making license plates in the Arctic Circle!! Whatever - the point being - No chance of parole needs enforcing, and here is an untapped labor source.

Sect. 12.58.320 Disposition Pending Pregnancy is a contradiction to the rest of the bill. A sentence of death EXCEPT in the case of pregnancy. Many would say, "the child is not a person, just a blob of tissue that would be a future burden to the State of ~~the~~ Alaska", "Why should the fetus of a murderer matter?" or "If death is the answer, why not abort the child's life also?"

It's time to make a choice. No more fence-sitting. Will you choose life, or will you choose death?

It is my humble opinion that we should leave capital punishment in the dark ages and focus on life imprisonment with NO CHANCE of parole. Please vote against capital punishment.

PUBLIC TESTIMONY

TO: CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE

DATE: JANUARY 25, 1994

FROM: MICHAEL W. LAQUIRE
BOX 6369
SITKA, ALASKA
(907)-747-4880

RE: HB 162 CAPITOL PUNISHMENT FOR MURDER

MESSAGE:

I URGE YOU NOT TO SUPPORT THE TAKING OF HUMAN LIFE.
I FAVOR LIFE TIME INCARCERATION, OVER CAPITOL PUNISHMENT,
NOT AS THE SYSTEM IS SET UP NOW, INSTEAD I ADVOCATE FORFEITURE
OF PRISONERS RIGHTS/PRIVILEGES, SUCH AS TV, GYMS, AND FREE
TIME TO PULL SCAMS INSIDE AND OUTSIDE PRISON, REPLACE THE FRILLS
WITH HARD LABOR, MAKE THE PRISONS SELF SUPPORTING, AND KNOCK
OFF EARLY PAROLE.

Sincerely
M.W. Laquire

Date: January 25, 1994

Fax To: Representative Porter
House Judiciary

Fax # 465-3834

From: Sara Boesser

Fax: 789-7450

PO Box 34202, Juneau, AK 99803

Voice: 586-5230

Regarding: Opposition to the Death Penalty.

Dear Representative Porter:

I am writing you because I strongly oppose the death penalty. Please do not vote for HB162.

Studies repeatedly show that death penalties are no deterrent to violent crime. For that reason alone, the House should abandon this bill as a bad use of our shortfall budget.

Another severe deterrent to passing a death penalty bill is the fact that the death penalty is inherently skewed to kill more poor and non-caucasian persons than anyone else. Our courts, police and juries unfortunately still act overwhelmingly against people of color -- white persons are apt to be arrested less often and given lighter sentences for the very same crimes. This imbalance makes the death penalty inherently unacceptable.

If you want to work against crime, I urge you and your colleagues to put our valuable state dollars where they're most needed: in crime prevention. Not just more police, but more prosecution of sexual violence, domestic violence, incest, and other crimes that put youth at risk of falling out of the system and into lives of despair where they become criminals themselves. Put more money into collecting child support payments from non-custodial parents -- so that children aren't so poor they feel they have to steal to have what they want.

The death penalty is too costly and unjust a means for a non-deterrent end-- and comes too late to make a difference for anyone. Crime prevention is where the money has to go to make streets and homes safer for all of us.

Thank you --
Sara Boesser

EIGHTEENTH ALASKA LEGISLATURE - SECOND SESSION

BEFORE THE HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE BRIAN PORTER, CHAIRMAN

WRITTEN TESTIMONY OF
SCOTT ATWOOD STERLING
REGARDING SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 162

JANUARY 26, 1994

CHAIRMAN PORTER AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

My purpose in testifying today is to register my profound opposition to capital punishment in general and Sponsor Substitute for House Bill 162 in particular. I wish to emphasize the fact that although I am a lawyer I am testifying solely as a private citizen, that I am not representing a client, and that my views are my own. I request that my written testimony be put on the record.

In my opinion capital punishment should not be restored in Alaska for the following reasons:

1. It is hypocritical to punish heinous crimes by means of a heinous crime--the deliberate taking of another human life.
2. Research does not confirm the claim that capital punishment is an effective general deterrent. Studies instead tend to confirm the old English story about pickpockets working the crowds attending the hangings of pickpockets.
3. Once inflicted, the death penalty's irreversibility prevents correcting those instances in which the criminal justice system convicts the wrong person. While absolute truth on such matters is unattainable, there are strong suspicions - and, more

recently, empirical evidence - that some innocent persons have received the death sentence.

In this regard the Eighteenth Legislature would do well to remember that courts - including the Supreme Court of the United States - consider the concept of "innocence" to have two meanings. A person is "innocent" if he or she is not the one who committed crime. So far as I know the sponsors of House Bill 162 have yet to explain how the bill's statutory scheme would operate to prevent the execution of a person convicted of a crime which he or she did not commit. The irreversibility of the sentence of death is one of the best reasons for condemning its use.

A person is also innocent, regardless of whether he or she is the one who committed the crime, if his or her conviction was improperly secured. The statutory scheme for appellate review of capital offense convictions accompanied by imposition of a death sentence as set out in House Bill 162 cannot assure an accused - or society - that improprieties in the process will be identified and remedied before the sentence of death is carried out - particularly since the bill requires that appellate review be undertaken no later than sixty (60) days from the date of imposition of sentence.

4. Administration of capital punishment in law and practice is inconsistent with retributive theories of punishment, for under such theories we would punish by death all of those convicted of premeditated murder but would punish no other crime in.

this manner. House Bill 162 (whether its sponsors, drafters and supporters realize it or not) follows a retributive theory of punishment because it would authorize capital punishment only for premeditated murder and only for certain persons convicted of that offense, and punish no other crime or accused in that manner.

The logic of retribution entails punishing cruelly and unusually those who murder in a cruel and unusual fashion, but the Eighth Amendment, and Section 12 of the Alaska Constitution, forbid just that retributive logic.

5. Research on who receives the death penalty shows that the penalty is not applied in proportion to the seriousness of the crime. What really happens is that death is imposed on a randomly selected subset of those convicted of capital offenses. Prosecutorial discretion in charging and plea bargaining virtually assures this randomness - a fact which this committee should require the Department of Law to fully address because the actual effects of such randomness - including insidious as well as overt racism, appointment of inadequate defense counsel, and bias in jury selection among others - if for no other reason than to document how the department will, as a matter of policy, avoid discriminatory imposition of the death penalty to Alaska Natives, Asians, Pacific Islanders and other minorities.

Alaska legislators who represent Alaska Native constituencies would do well to remember that the death penalty is

far more frequently imposed on blacks who victimize whites than on those who victimize blacks before casting their votes in favor of House Bill 162.

Alaska legislators who represent Alaska Native constituencies should read for themselves the so-called "Baldus Study," which was conducted by a team of researchers lead by David Baldus for the NAACP in the early 1980's. The researchers analyzed the relationship between sentencing outcomes and racial characteristics in 2,484 homicide cases charged and sentenced in Georgia from 1973 to 1979. The data suggested strong race-of-victim discrimination as well as more punitive treatment of black offenders in white-victim cases.

Alaska legislators who represent Alaska Native constituencies should also be aware of the fact that despite the incontestable evidence adduced by the Baldus Study, the Supreme Court of the United States under Chief Justice William Rehnquist has firmly put an end to statistical challenges to the administration of the death penalty by the expedient of holding that while proof of racially discriminatory sentencing patterns in capital cases can establish arbitrariness in violation of the Eighth Amendment, the burden of proving such discrimination is higher - much higher - than the burden required to prove discrimination in jury discrimination and employment discrimination cases! See McCleskey v. Kemp (1987).

6. As a class paroled murderers show lower recidivism rates for their crimes than do most classes of felons. There is no evidence that the death penalty, as opposed to long-term imprisonment, is an effective specific deterrent. Murderers on death row are, in fact, more likely to engage in violent crimes within prison than are those serving life terms.

Another reason to cast a cold eye on House Bill 162 is that if it becomes law (the advisory vote provision I consider nothing more than a shameless effort by the bill's sponsors and supporters to get out the vote for their re-election) it will, sooner or later, produce a travesty of justice such as that which occurred in Louisiana in the case of Perry v. Louisiana (1990).

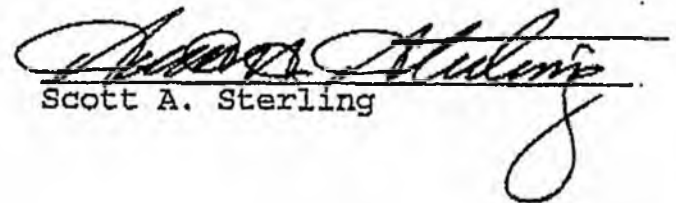
At issue in Perry was whether a state can forcibly medicate insane people for the sole purpose of making them mentally competent to be executed. Louisiana sought to restrain convicted murderer Michael Perry and inject him with a psychotropic drug that would calm his disordered mind so that he would know what was happening to him when he was electrocuted.

Louisiana defended its position as being consistent with what the "majority" of its citizens wanted, or, to put the matter bluntly, the authorities were more than willing to accommodate the public's bloodlust no matter how cruel - no matter how barbaric - no matter how degrading - satisfaction of that bloodlust required the authorities to be.

Where, then, is the line beyond which the Alaska Legislature will not go in accommodating the bloodlust of the majority of Alaskans who supposedly support capital punishment? How far we will go if capital punishment is authorized and imposed in various cases but murder and recidivism rates do not change in proportion to changes in our population? How far will we go if capital punishment is authorized and imposed in various cases but one more innocent people are executed? Will we treat the families and friends of those people with solicitude for their "rights" as "victims?"

I submit that no member of the Alaska Legislature is capable of definitively answering those questions just as no one of us - legislator or not - is capable of assuring that capital punishment will achieve the ends of justice.

Far better that we concentrate our limited resources on attacking the root causes of crime in Alaska, and simply avoid altogether the quagmire which House Bill 162 would create.


Scott A. Sterling



Representative Jerry Sanders

District 19

Vice Chair, Rules Committee
Vice Chair, Community & Regional Affairs Committee
House State Affairs Committee
Special Committee on Oil & Gas
Legislative Council
International Trade & Tourism

S P O N S O R S T A T E M E N T House Bill 162

Because of what I was hearing, from my constituents and other Alaskans, I made it a priority to introduce legislation which would reinstate the death penalty in Alaska. Based on polls taken last year, over 75% of Alaskans polled favor capital punishment in cases of first degree murder. Nationally, the number is even higher -- 87% of the people say there should be a death penalty, according to one recently published study. And when it comes down to it, in the eyes of the people, it isn't about cost-effectiveness. It isn't about over-crowded prisons. It isn't even about revenge. It's about justice. It's about making it impossible for the Gustafsons of this world to mail bombs from prison, continuing to murder, with nothing to lose.

When society feels there is no justice, vigilantism will fast become the order of the day. There are some acts so heinous, the only way to deal with them, and maintain the people's faith in the integrity of the system they entrust to protect them, is for society to rid itself of those who choose to commit such acts. I emphasize the word choose. In the legislation I've introduced, House Bill 162, we're talking about only one crime as being so particularly heinous as to warrant death as punishment. That crime is murder in the first degree, with the presence of statutory aggravating factors not outweighed by any mitigating factors.

House Bill 162 provides the defendant, in capital cases, with the "SUPER DUE PROCESS" our United States Supreme Court has held must be allowed such defendants. House Bill 162 has built in protections to ensure the defendant every last chance for a fair, thorough review of his or her case. I only wish we could come up with a law which would guarantee the same procedural protections for murder victims before they are murdered. Then, nobody would have to die.

We owe it to both potential victims, and potential murderers, to have a death penalty in Alaska. Without one, we are creating not only murder victims, but murderer victims -- people who may not have premeditatedly killed had they been raised understanding the consequence of their actions would be their own death.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 25, 1994

SUBJECT: Sectional Summary of SSHB 162 (Work Order No. 8-LS0414\E)

TO: Representative Jerry Sanders
Attn: Bob Krogseng

FROM: Jerry Luckhaupt *JL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.41.100(b) to provide that murder in the first degree is a capital offense.

Section 2 of the bill amends AS 12.30.100(b) to provide that a person charged with a capital offense is not eligible for release before trial.

Section 3 of the bill amends AS 12.30.040(b) to provide that a person convicted of a capital felony may not be released on bail either before sentencing or pending appeal.

Section 4 of the bill amends AS 12.47.110(b) to provide that a person that has been found to incompetent to stand trial and has remained incompetent for five years may still be retried if the original charge is a capital felony.

Section 5 of the bill amends AS 12.55.025(i) to exclude capital sentencing proceedings from application of the preponderance of the evidence standard of proof. To impose the death penalty the trier of fact must find the existence of an aggravating factor beyond a reasonable doubt.

Section 6 of the bill amends AS 12.25.125(a) to add the death sentence as a permitted sentence upon conviction of murder in the first degree.

Representative Jerry Sanders

January 25, 1994

Page 2

Section 7 of the bill amends AS 12.55.125(f) to provide that a sentence of death may not be suspended under the suspension of execution of sentence statute, AS 12.55.080.

Section 8 of the bill amends AS 12.55.145(a) to provide that a previous conviction for a capital felony may be considered and used by a court, regardless of when the conviction occurred, as a previous conviction when imposing sentence for those offenses for which the legislature has prescribed presumptive terms.

Section 9 of the bill amends AS 12.55.155(f) to clarify that that subsection only applies to the establishment of aggravating and mitigating factors at sentencing for offenses for which the legislature has prescribed presumptive terms.

Section 10 of the bill is the statutory "meat" of the bill. This section adds a new chapter to AS 12 with the following sections:

AS 12.58.010 provides that (a) when a defendant is convicted of a capital felony the court shall commence a separate sentencing proceeding before the same jury that convicted the defendant or, if the jury trial was waived or the defendant pled guilty, the court will impanel a jury for the sentencing; (b) during the sentencing proceeding evidence may be presented as to any aggravating or mitigating factor the court determines to have probative value; (c) after hearing the evidence the jury shall deliberate and issue a recommended sentence with written findings of whether the jury unanimously finds the existence of at least one aggravating factor listed in AS 12.58.030, unanimously determines by a preponderance of the evidence that the aggravating factor or factors outweigh any mitigating factors that the one or more members of the jury may have found to exist by a preponderance of the evidence, and unanimously find that the defendant should be sentenced to death.

AS 12.58.020 provides procedures for the imposition of sentence by the court. If the jury finds as provided in AS 12.58.010(c) then the court must impose the death penalty but if the jury does not find an aggravating factor, or finds the aggravating factor or factors outweighed by the mitigating factors, or does not recommend that the defendant be sentenced to death, then the court may not impose the death sentence but must impose a term of imprisonment as provided in AS 12.25.125(a). When a sentence of death is imposed under this section it is subject to automatic review by the Alaska Supreme Court under AS 12.58.200.

AS 12.58.030 provides a list of aggravating factors which may be considered by a jury and, if at least one of these factors is found to exist, upon which a death sentence may be based.

AS 12.58.040 provides a list of mitigating factors which must be considered by the jury along with any other mitigating factors that may exist and which must be outweighed by the aggravating factor or factors in order to support a sentence of death.

AS 12.58.100 provides procedures for an automatic, priority review by the Alaska Supreme Court of the judgment of conviction of any capital felony in which the death sentence is imposed.

AS 12.58.110 provides that after review of the conviction and sentence the Alaska Supreme Court shall issue a death warrant and set a date of execution if the court upholds the conviction and sentence.

AS 12.58.200 requires the commissioner of corrections to establish a procedure for the execution of a sentence of death.

AS 12.58.210 requires the commissioner of corrections to specify the time and date of execution after receiving a death warrant from the Alaska Supreme Court.

AS 12.58.220 specifies that the death sentence shall be inflicted by lethal injection within a state correctional facility.

AS 12.58.230 requires the commissioner of corrections to make a return upon the death warrant showing the time and place in which the defendant was executed.

AS 12.58.300 requires the commissioner of corrections to give notice if the commissioner believes the defendant has become incompetent or is pregnant and provides a stay of execution.

AS 12.58.310 provides procedures for determining and reviewing the competency of the defendant.

AS 12.58.320 provides that if the defendant is pregnant the sentence of death shall be stayed during the pregnancy and when the defendant is no longer pregnant that the sentencing court shall notify the Alaska Supreme Court and the commissioner of corrections and the supreme court will issue a new death warrant.

AS 12.58.900 provides definitions.

Section 11 of the bill amends AS 22.07.020(a) and provides that the court of appeals does not have appellate jurisdiction in a case involving criminal prosecution when the death sentence has been imposed.

Representative Jerry Sanders
January 25, 1994
Page 4

Section 12 of the bill amends AS 22.07.020(b) to provide that the court of appeals does not have appellate jurisdiction to review appeals of death sentences.

Section 13 of the bill provides for an advisory vote of the qualified voters at the November 1994 general election on the question of whether capital punishment for murder in the first degree should take effect.

Section 14 of the bill provides that the advisory vote provision (section 13 of the bill) takes effect immediately.

Section 15 of the bill provides a June 1, 1995 effective date for the rest of the bill other than the advisory vote provision. Special effective date provisions require a two-thirds vote of each house to be effective under the constitution.

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Representative Jerry Sanders

District 19

Vice Chair, Rules Committee
Vice Chair, Community & Regional Affairs Committee
House State Affairs Committee
Special Committee on Oil & Gas
Legislative Council
International Trade & Tourism

November 22, 1993

In the interest of providing Alaskans with accurate information, and as the sponsor of House Bill 162, which seeks reinstatement of the death penalty in Alaska, I am compelled to address inaccuracies in the Anchorage Daily News' November 16 Compass piece, "Bill based on false assumptions about death penalty", by Kathy Kainer.

First, the author refers to myself and Representative Harley Olberg as the ones who "introduced" House Bill 162. In fact, we are sponsor and cosponsor, respectively; additional cosponsors of HB 162 are Representatives Con Bunde, Jeanette James, Pete Kott, and Al Vezey. In addition, the Senate Judiciary Committee is also sponsoring legislation seeking reinstatement of the death penalty, through Senate Bill 127. The primary difference between the two bills is that the House version calls for prosecutorial discretion, and the Senate version (currently) does not; because both bills are in their first committees of referral, these and other elements may be amended before reaching the floor. This is a critical period for citizen input; the final version of the bill should be crafted to reflect, as closely as possible, the will of the people and the mandates of both the Alaska and federal constitutions.

Next, Ms. Kainer suggests that because there are no conclusive studies regarding the deterrent value of capital punishment, we shouldn't have it available as a criminal sentence. The implications of this attitude are distressing; the lack of conclusive evidence goes in both directions -- in other words, there are no conclusive studies indicating capital punishment is not a deterrent. As legislators, should we err on the side which is in direct opposition to what our constituents are saying they want? Or should we, in the absence of statistics either way, honor the wishes of those we have pledged to serve? If only one Alaskan's life is saved because a potential murderer decides his or her own life is too precious to place at risk, the law is worth having on the books. Anyone doubting that murderers would ever consider the possible sentence while calculating their crimes should read the transcript from Andy Nelson's murder trial, which I have available at my office. Incidentally, it is my personal opinion that, for optimal deterrent value, executions should be mandatorily televised -- the solemnity of the occasion will be brought into the psyche of the citizenry much more effectively than simply reading about it in the paper or hearing about it on the radio or television news. Potential jurors would

also be reminded that death is a sentence to be recommended only under the most special of circumstances.

Ms. Kaine goes on to say that HB 162 "claims that capital punishment allows society to most severely condemn the premeditative taking of human life. In other words, we are going to teach that it is wrong to kill by killing the killers. I hope our legislators can see the fallacy in this sort of logic." The flawed logic lies with Ms. Kaine's incomplete digestion and woefully distorted regurgitation of the words found in sub 2 of Section 1 of the bill: "[the legislature finds that imposition of the death penalty for the crime of murder in the first degree] 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." How Ms. Kaine interprets the above words to mean simply that "we are going to teach that it is wrong to kill by killing the killers" is beyond me. At present, murder is grossly violative of society's norms. If the legislature works as it should, when the day comes that murder is considered, by the majority of citizens, to be a less serious crime (perhaps because of overpopulation?), you will see a consequent reduction of the severity of possible sentences. At least in the eyes of most Alaskans, premeditated murder is still viewed as a heinous enough act to justify, in certain circumstances, a sentence of death. Let's not simplify, underestimate, or disregard the importance of the collective norms of society (including, but not limited to, members of Amnesty International) -- for it is these norms which legislators must consider in enacting laws, and which ultimately define the parameters of our social interaction.

In the next paragraph, Ms. Kainer lists countries which do not have capital punishment, apparently in an attempt to persuade the readers that Alaska should join these countries. In the first paragraph, however, she accuses political leaders of "jumping on the death penalty bandwagon." Which "bandwagon" is preferable -- the "international bandwagon" banning capital punishment, or the "Alaska bandwagon" seeking reinstatement of the death penalty at the request of a majority of the constituency? While I find statistics from other countries interesting, as an elected representative, ultimately I consider two things: What my constituents want, and the confines of the Alaska and federal constitutions -- not the social policies or purposes of punishment in Nicaragua or Romania (two of the countries Ms. Kainer cited as examples we should follow). In addition, Ms. Kainer's implication that capital punishment is acceptable for "exceptional circumstances. . . such as treason", strikes me as inconsistent, and a sadly shortsighted minimization of the profound "exceptionalness" of premeditated murder.

Ms. Kainer goes on to claim that the death penalty punishes the "poor, minority, mentally retarded and uneducated members of society." She cites no statistics to back this up; Amnesty International tends, however to use Professor Michael Radelet's In Spite of Innocence: Erroneous Convictions in Capital Cases,

(Northeastern University Press, 1992) as a tome in decrying the arbitrariness of sentences of death. I have read the book; obviously a good deal of research went into putting it together, but most of the cases cited were from about 1900 to 1930. Many of the protections we take for granted -- indeed, we consider them rights -- were nonexistent when most of those cases were heard. The Miranda rule, Furnam v Georgia, not to mention other rules of evidence and procedure, have brought us a long way from the gross past miscarriages of justice. Furthermore, a 1989 study cited by the Anchorage Daily News (June 19, 1989 "Death Penalty: U.S. system produces an agonizing legal limbo") is in direct contradiction to Ms. Kainer's assertions of adverse impact upon minorities. The study, provided by the NAACP Legal Defense and Educational Fund, Inc., reported that, since capital punishment was reinstated in 1976, 52% of prisoners on death row have been white; and 56% of those executed have been white.

Ms. Kainer's comment that a prosecutor "decides to go after the death penalty based on whether or not he thinks he can get a conviction" further reflects her misunderstanding of the process, and of the bills. The imposition of the death penalty is independent of the first degree murder conviction. With both the House and Senate bills -- (though more so with the House Bill, which provides prosecutorial discretion, so that cases not containing the requisite aggravating factors are eliminated from consideration for the death penalty from the onset) -- there are specific statutory aggravating factors, one of which the sentencing jury must unanimously find to exist, beyond a reasonable doubt, before the death penalty can realistically become a possible sentence. In addition, the jury must unanimously find that the aggravating factors are not outweighed by mitigating factors. Last, the jury must unanimously recommend death, and may decline from doing so even if the first two conditions are met. The jury's decision, if it does not recommend death, is final (if it does recommend death, on the other hand, it is light years away from being final, thanks to the "Super Due Process" mandated by our United States Supreme Court). Ms. Kainer's assumption that "powerful relatives" or "political influence" or "money" would influence jurors represents an underestimation of the integrity of the average Alaskan.

I can well understand the Ms. Kainer's desire, as a member of Amnesty International, to place HB 162, and those legislators willing to act upon the wishes of their constituencies by sponsoring such a bill, in the least favorable light possible. But by the same token, I would hope she could understand my commitment, as an elected representative of Alaskans both in District 19 and statewide, to do all I can to advance the collective desires of those I am honor bound to represent. Perhaps such mutual empathy is too much to expect; I can accept that. What I cannot allow to pass without comment, however, is her apparent unwillingness or inability to actually read the text of the bill, resulting in the perpetuation of the types of assumptions (false ones, that is) which Ms. Kainer herself decries in her closing paragraph.

Jay Sander

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

October 27, 1993

SUBJECT: Constitutionality of House Bill 162, imposing capital punishment

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Jack Chenoweth
Legislative Counsel 

I am substituting for Jerry Luckhaupt, who is in lay-off status, for the purpose of responding to your recent request.

You have asked, broadly and without citing reference to any particular provision of the state or federal constitutions, whether House Bill 162 is constitutional. The measure, reimposing the death penalty, has been assigned to the House Judiciary Committee.

I have reviewed the files of this bill and its Senate companion (SB 127) and of the files of the bills on this subject with which I worked during the Sixteenth Legislature. Except as specifically noted in the matter discussed below, I believe HB 162 would be found constitutional.

I

The principal line of constitutional challenge to death penalty provisions has been through the Eighth Amendment to the United States Constitution ^{1/} and the parallel

^{1/} The Eighth Amendment to the United States Constitution provides:

BAILS, FINES AND PUNISHMENTS. Excessive bails shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

state constitutional provisions--in Alaska, article I, section 12 of the state constitution.^{2/}

The chief features of House Bill 162 have been drafted to conform to the requirements enunciated by the United States Supreme Court that apply to death penalty cases. Those requirements derive from a series of capital punishment-related decisions beginning with 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)) (striking down death penalty statutes under the application of the Eighth Amendment when state law permitted trial juries random, unguided discretion in the imposition of a capital sentence) and culminating in the opinions issued in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (upholding against an Eighth Amendment-based challenge statutes that provide guidance to judge and juries that effectively prevented arbitrary imposition of death sentences) and Woodson v. North Carolina, 428 U.S. 280, 49 L.Ed. 2d 944, 96 S.Ct. 2978 (1976) (finding that a **mandatory** death sentence upon conviction for first degree murder violated the Eighth Amendment). The Gregg decision gives helpful direction in the drafting of capital punishment legislation, for it includes discussion relating to the requirement of a divided or bifurcated procedure in which the jury separately considers the sentence, the requirement that the jury recommending a sentence make specific findings as to the presence of applicable aggravating or mitigating factors to support its sentencing recommendation, and the requirement of mandatory appellate review.

This measure incorporates those provisions in its principal substantive section, bill section 11. In that bill section are to be found provisions to require a separate sentencing proceeding before the same jury that convicted the defendant or, if the jury trial was waived or the defendant pled guilty, the court is to impanel a jury for the sentencing. It directs that during the sentencing proceeding evidence may be presented as to any aggravating or mitigating factor the court determines to have probative value, and that after hearing the evidence the jury shall deliberate and issue a recommended sentence with written findings of whether the jury unanimously finds the existence of at least one aggravating factor listed in a later section, unanimously determines by a preponderance of the evidence that the aggravating factor or factors outweigh any mitigating factors that the one or more members of the jury may have found to exist by a preponderance of the evidence, and unanimously find that the defendant should be sentenced to death. The procedures also provide for an automatic review of a death sentence by the Alaska Supreme Court.

^{2/} Article I, section 12 of the Alaska Constitution provides:

EXCESSIVE PUNISHMENT. 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.

Additionally, the measure provides a list of aggravating factors which may be considered by a jury and, if at least one of these factors is found to exist, upon which a death sentence may be based, and includes a series of mitigating factors which must be considered by the jury along with any other mitigating factors that may exist and which must be outweighed by the aggravating factor or factors in order to support a sentence of death.

II

The question has been asked whether, independently of the federal constitutional protection against cruel and unusual punishment, article I, section 12 of the Alaska Constitution would 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 element 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. Furman v. Georgia and Gregg v. Georgia, *loc. cit.* 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 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 found 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); Commonwealth v. Zettlemyer, 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. . . .

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. den., 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.^{3/} 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."^{4/}

^{3/} 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.

^{4/} 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,

(continued...)

Alaska's constitution omits that term, substituting in its place a reference to "protecting 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.

III

I want now to speak to several other issues of constitutional dimension that have been addressed to my attention during the course of my review of this legislation.

A

The House bill specifies that the death sentence shall be inflicted by hanging or, at the option of the defendant, by lethal injection. The fact that a defendant would be required to make a choice about the manner of the defendant's execution ^{5/} should not render the proposed legislation unconstitutional.

^{4/}(...continued)

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.

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

^{5/} Technically, as the bills are drafted, the defendant is not required to make a choice. The statute requires the defendant to be hanged, but gives the defendant the opportunity to exercise the alternative of lethal injection.

Washington's statutes, like the proposed bills discussed here, offer a defendant the choice between hanging and lethal injection, with the former--hanging--made the preferred manner of execution. See RCW 10.95.180(1). Considering the question, the Washington Supreme Court determined that a statutory requirement that the defendant make a choice did not violate the "cruel and unusual punishment" clauses of the state and federal constitutions. State v. Rupe, 683 P.2d 571, 593 - 594 (Wash. 1984) (imposition of death penalty reversed on other grounds), on further consideration after remand and reimposition of death sentence, 743 P.2d 210 (Wash. 1987), cert. den. 486 U.S. 1061, 100 L.Ed.2d 934, 109 S.Ct. 2834 (1988), reh. den. 487 U.S. 1263, 101 L.Ed.2d 976, 109 S.Ct. 25 (1988).^{6/} Considering the same capital

^{6/} On the point of whether or not the provision of a choice of methods of execution was constitutional, the Washington Supreme Court responded:

Defendant's final constitutional challenge to the death penalty statute raises the issue of whether allowing an individual a choice between two methods of execution is unconstitutional. . . .

. . . The broader question, of whether a choice between hanging or lethal injection is unconstitutional, has never been at issue in this state.

Neither defendant nor the State offers authority to support their position. Contrary to both parties' assertions, logic dictates neither result. Individual reactions to the various methods of execution and the right to choose vary greatly. In some cases, a person may be so appalled by the thought of physically hanging by the neck that the option of death by lethal injection is welcome. To others, the idea of lying strapped upon a gurney awaiting the lethal poison to seep into one's veins at an unknown time may be equally abhorrent. These individuals embrace the idea of choosing the method of their death as a way to avoid their own private terrors. But to a third type of individual, the choice itself is cruel. As they await the day of their death, they are faced not only with the terror of death itself but also with the terror of making the wrong choice on how to die. These individuals do not embrace the idea of choice; they dread its requirement that they take an active part in their own demise.

To resolve this issue either way would require that, in one case or the other, the court's personal view of cruelty prevails over the views of condemned felons. By removing the choice, we impose a cruel punishment upon those who dread a particular method of execution. Retaining the right of choice on the other hand, may impose severe psychological pressure on those who are frightened of the decision itself.

On balance, on this record, we cannot agree with defendant's assertion that the choice in and of itself is necessarily cruel punishment. The record before us is devoid of any evidence relating to what psychological effect the choice of execution method has upon those sentenced to death.

(continued...)

punishment statute, the Ninth Circuit recently reached a like conclusion on just the federal constitutional question. Campbell v. Blodgett, 978 F.2d 1502, 1517 (9th Cir. 1992).

B

The fact that the death penalty is imposable on juveniles should not render capital punishment unconstitutional under the Eighth Amendment of the United States Constitution.

In companion cases, Stanford v. Kentucky and Wilkins v. Missouri, 492 U.S. 361, 106 L.Ed.2d 306, 109 S.Ct. 2969 (1989), reh. den. 106 L.Ed.2d 635, 110 S.Ct. 23 (1989), a five-member majority of the United States Supreme Court concluded that the Eighth Amendment's "cruel and unusual punishment" provision did not forbid a state from executing persons who were juveniles when they committed the offenses for which they had been convicted. By implication, the court seemed to conclude that it would be unconstitutional, as a violation of the Eighth Amendment, for a state to impose the death penalty on one younger than 16 at the time of commission of the offense. ^{2/}

As a result of these decisions, and of the effect of one other, it appears that, as Justice O'Connor's concurring opinion in Thompson v. Oklahoma, 487 U.S. 815, 101 L.Ed.2d 702, 108 S.Ct. 2687 (1988) relates, there is some age below which a juvenile's crimes cannot be constitutionally punished by death. Persons convicted for offenses committed when they were 16 or 17 years old are not protected by an Eighth Amendment-based claim that they are too young to be executed. Persons convicted

^{2/}(...continued)

Moreover, defendant does not even allege that he has or will undergo emotional trauma by having to select the method of his demise. He merely asks, as part of a general constitutional attack on the statute, that this court address the issue in the abstract. To accept defendant's argument would require that we speculate as to whether it is more cruel to impose a choice or a given method of execution. This we decline to do.

Rupc, 683 P.2d at 593 - 594.

^{2/} The reference to age 16 derives in part from a Court decision the previous year, Thompson v. Oklahoma, 487 U.S. 815, 101 L.Ed.2d 702, 108 S.Ct. 2687 (1988). In Thompson, four members of the Court determined that the application of the Oklahoma death penalty statute to a defendant who was 15 years old at the time of the offense did constitute a violation of the Eighth Amendment, while Justice O'Connor, casting a fifth vote to vacate the juvenile's death sentence, determined that the evidence in the case would not support a finding that the Oklahoma legislature had given special care and deliberation in its decision to impose a death penalty that might lead to its use against a juvenile.

for offenses committed when they were younger than 16 years old may be protected under the Eighth Amendment from execution. However, that protection may not be available if there is evidence from which a reviewing court could find that the legislature had given the requisite special care and deliberation in its decision to allow executions of juveniles of an age younger than 16. That evidence would likely incorporate a statement in the legislation itself of the minimum age of the defendant on whom the state may impose the death penalty and the reason(s) for reaching that decision. ^{8/}

It is, of course, always possible that Alaska's appellate courts, construing and applying article I, section 12 of the state constitution, could reach a different conclusion on this point. ^{9/}

^{8/} As drafted, neither HB 162 nor SB 127 now contains that kind of provision.

^{9/} The question, of course, is whether, in the event this capital punishment measure becomes law, the Alaska Supreme Court would read the state constitution's article I, section 12 to find that the execution of a youth for an offense committed while under the age of 18 violates the "cruel and unusual punishment" clause of that provision. The federal jurisdictions that have considered the question have determined that imposition of the death penalty on youthful offenders does not violate the Eighth Amendment. Prejean v. Blackburn, 743 F.2d 1091, 1098 - 1099 (5th Cir. 1984) (considering the capital punishment statute of Louisiana), modified on rehearing on other grounds, 765 F.2d 482 (5th Cir. 1985), cert. den. 492 U.S. 925, 106 L.Ed.2d 604, 109 S.Ct. 604 (1989); High v. Kemp, 819 F.2d 988, 993 (11th Cir. 1987) (considering sentence under Florida law), cert. den. sub nom. High v. Zant, 492 U.S. 926, 106 L.Ed.2d 609, 109 S.Ct. 3264 (1989), reh. den. 492 U.S. 937, 106 L.Ed.2d 635, 110 S.Ct. 23 (1989). See also Graham v. Lynaugh, 854 F.2d 715, 718 (5th Cir. 1988) (considering Texas law). A number of state courts have reached the same conclusion, but all based the conclusion principally on a reading and application of the United States Constitution's Eighth Amendment. State v. Valencia, 602 P.2d 807, 809 (Ariz. 1979), Ward v. State, 733 S.W.2d 728, 733 - 734 (Ark. 1987), State v. Harris, 359 N.E.2d 67, 71 - 72 (Ohio 1976), vacated on other gds. sub nom. Harris v. Ohio, 438 U.S. 911, 57 L.Ed.2d 1155, 98 S.Ct. 3148 (1978), Ice v. Commonwealth, 667 S.W.2d 671, 679 - 680 (Ky. 1984), High v. Zant, 300 S.E.2d 654, 662 (Ga. 1983), Trimble v. State, 478 A.2d 1143, 1158 - 1164 (Md. 1984), Cannaday v. State, 455 So.2d 713, 725 (Miss. 1984).

Article I, section 12 of the state constitution provides the Alaska court a different basis by which to consider the question. The current test of whether or not a particular punishment amounts to a cruel and unusual punishment derives from Green v. State, 390 P.2d 433, 435 (Alaska 1964):

Only those punishments which are cruel and unusual in the sense that they are inhuman or barbarous, or so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice may be stricken as violating the due process clauses of the state and federal constitution. Such punishments would also be void under article I, section 12 of the Alaska Constitution which declares that cruel and unusual

(continued...)

2/ (...continued)

punishments shall not be inflicted.

(Emphasis added; footnotes omitted). See also Thomas v. State, 566 P.2d 630, 635 (Alaska 1977); Allam v. State, 830 P.2d 435, 441 (Alaska App. 1992). Under that test, it is open to the Alaska court to conclude that the execution of persons under the age of majority--that is, minors under the age of 18--constitutes the imposition of a punishment that is "completely arbitrary" and "shocking to the sense of justice."

My sense is that the Alaska Supreme Court would probably not reach a decision at variance with the decisions in the majority of other jurisdictions, but I cannot be certain of it.

To set a legislative mark on the matter as it considers this measure, the legislature may wish to follow the model provided in the majority of the states that impose the death penalty inserting a provision into the respective death penalty enactments prohibiting its imposition on persons who committed capital crimes as minors. In states that have set statutory minimums, the range of years that are the minimum ages for which capital punishment may be imposed spans ages between 10 and 18:

age 10:

South Dakota S.Dak. Comp. Law § 23A-26-8a-2

age 14:

Arkansas Ark. Code Ann. § 9-27-318(a)(1) and (b)(1)
Utah Utah Code Ann. §78-3a-25

age 15:

Louisiana La. Children's Code, art. 305
Virginia Va. Code Ann. § 16.1-269(A)(1)

age 16:

Indiana Ind. Code Ann. § 35-50-2-3(b)
Kentucky Ky. Rev. Stat. § 640.040(1)
Missouri Mo. Rev. Stat. § 565.020
Nevada Nev. Rev. Stat. § 176.025
Oklahoma by court decision, Thompson v. Oklahoma, 487 U.S. 815 (1988)
Wyoming Wyo. Stat. § 6-2-101(b)

age 17:

Georgia Ga. Code Ann. § 17-9-3
New Hampshire N.H. Rev. Stat. § 630:1(V)
North Carolina N.C. Gen. Stat. § 14-17 (w/exceptions)
Texas Texas Pen. Code Ann. § 8.07(d)

age 18:

California Cal. Penal Code § 190.5

(continued...)

C

When Jerry Luckhaupt first drafted this bill, he cautioned on one point of the measure:

... [S]tates sometimes limit the applicability of the death penalty to certain types of first degree murder, for example situations similar to those cases for which a 99 year mandatory term of imprisonment are required under Alaska law. See AS 12.55.125(a)(1)-(3). . . .

... I am deeply concerned with the range of sentences available to someone convicted of a capital offense, murder in the first degree. AS 12.55.125(a) currently provides for a prison term of not less than 20 years nor more than 99 years for most murders in the first degree and for mandatory terms of 99 years for some murders. Under the bill draft, to this current sentencing range would be added the punishment of death in cases determined by the jury to warrant the death sentence. The possibility that someone convicted of murder in the first degree in one case may only receive 20 years and someone convicted of murder in the first degree in another case may receive death is troubling due to the disparate range of possible sentences. This is not always a problem in other states with the death penalty, for at least in those states whose statutes I have examined, the legislature has apparently authorized only two possible sentences for a capital felony, life imprisonment or death. The disparity between life imprisonment and

2/ (...continued)

| | |
|-------------|--|
| Colorado | Colo. Rev. Stat. § 16-11-103(1)(a) |
| Connecticut | Conn. Gen. Stat. Ann. § 53a-46a(f)(1) |
| Illinois | Ill. Comp. Stat. Ann. ch. 720 § 5/9-1(b) |
| Maryland | Md. Ann. Code art. 27, §412(f) |
| Nebraska | Neb. Rev. Stat. § 28-105.01 |
| New Jersey | N.J. Stat. Ann. §§ 2A: 4A-22(a); 2C: 11-3(g) |
| New Mexico | N.Mex. Stat. Ann. §§ 28-6-1(A); 31-18-14(A) |
| Ohio | Ohio Rev. Code Ann. § 2929.02(A) |
| Oregon | Ore. Rev. Stat. §§ 161.620 and 419.476(1) |
| Tennessee | Tenn. Code Ann. § 37-1-134(1) |

A number of these jurisdictions have, in addition to setting a statutory minimum for imposition of the death penalty, codified consideration of the defendant's age as a mitigating factor in capital cases, as the bill you are considering would do.

I found the Tennessee provision interesting in this respect: If a minor is charged with first degree murder for which capital punishment is imposable, the waiver of the minor from juvenile proceedings to stand trial as an adult is contingent upon the prosecutor's not having the right to seek imposition of the death penalty of a person who was a minor when the offense was committed.

death, while great, is not as great as the disparity between death and 20 years imprisonment. This "problem" is a cause of concern for me and, at this stage of my research in this area, I am not prepared to say that I believe it would not be a constitutional problem.

(Emphasis added). As background, let me note that in my own review, I was able to confirm that about two-thirds of the states that impose capital punishment do so, as Jerry indicated, in the context in which only two sentences are possible: death-or life imprisonment without possibility of parole. Of the balance of the jurisdictions, a large number set out a third sentencing possibility--life imprisonment **with** possibility of parole only after the passage of a long term of incarceration, usually at least 25 to 30 years. ^{10/}

Implicit in Jerry's statement is a concern that the sentencing scheme for capital felonies that would be in place by the enactment of the changes proposed in the House Bill could be found disproportional in effect, that it would not pass muster under a "proportionality" test that the United States Supreme Court has identified in conjunction with review of capital punishment cases under the Eighth Amendment to the United States Constitution.

As I understand the proportionality requirement, the bill should not present an Eighth Amendment problem.

In the context of capital punishment cases, a "proportionality review" is a determination by the appellate court as to whether or not the imposition of the **death penalty** in the case under review is consistent with the punishment imposed on others who have been convicted of the same offense. See Pulley v. Harris, 465 U.S. 37, 43, 79

^{10/} It would be my observation that the revision of this state's first degree murder punishment as proposed by HB 162 would leave Alaska anchored at the "short" end of the spectrum in that, under some circumstances, the statute would authorize imposition of a term of imprisonment for a conviction for a capital felony of perhaps as little as 20 years. On a minimum 20 year sentence, then, allowing for the statutory reduction of time served for good behavior under AS 33.20.010(a), at least theoretically, the defendant's sentence could result in a period of actual incarceration of about 13 years.

The jurisdictions that provide an alternative to life imprisonment without possibility of parole to capital felons not sentenced to death usually set a mandatory minimum period of time that the person convicted must serve before the person becomes eligible for parole. So, for example, the pertinent Florida statute requires a defendant convicted of a capital felony to serve a minimum of 25 years of a sentence before becoming eligible for parole, Fla. Stat. Ann. § 775.082(1), while Oregon law requires that a defendant convicted of aggravated murder and sentenced to life imprisonment must be confined for a minimum period of 30 years, but becomes eligible for parole consideration after passage of 20 years of that sentence. Ore. Rev. Stat. § 163.105(1)(c) and (2).

L.Ed.2d 29, 36, 104 S.Ct. 871, 875 (1984). In Pulley, the Supreme Court held that a proportionality review, while useful, is not constitutionally required of an appellate court in all capital cases. Proportionality review, then, goes an inquiry into or consideration of the effect of the jury's application of aggravating and mitigating factors that culminate in a decision as to whether or not to recommend imposition of the death sentence. In the event the jury determines that the weight of mitigating factors outweighs the effect of any aggravators and does not recommend the capital penalty, the court's authority to impose sentence is essentially unchanged: in order to impose the 99-year mandatory sentence, the court must find evidence of at least one of the statutory factors listed in AS 12.55.125(a); if it does not, it has discretion, within the range identified, to determine the sentence. In short, though the span of punishment for a capital felony proposed by the measure is relatively large, spanning from 20 years to 99 years or death, the range of the possible sentence that the defendant faces should not, in and of itself, give rise to a successful Eighth Amendment-based challenge.

IV

As a concluding point to this memo, I want to raise a question not related to your inquiry.

I had not thought about it until now, but the research I undertook in the preparation of this memo raised a question in my mind about the handling of executions, the attendance of witnesses, and coverage by the media. The bill before you is silent on the subjects of attendance at an execution by witnesses and of press access to executions. ^{11/} Do you not want to give those subjects some consideration? One or the other, or both, could become a disputed topic giving rise to future litigation.

JBC:lmb:gc
93-211.lmb

^{11/} It appears that some 36 states now authorize imposition of the death penalty. Table 8.3, "State Death Penalty (As Of October 1990), set out in The Book of the States, 1992-1993 Edition, pp. 549 - 551. Of them, 12 have laws that specifically authorize the presence of members of the media during an execution, 21 authorize the presence of selected public members to witness an execution, and 4 permit the presence only of certain specially designated officials and friends or relatives of the condemned who are invited to be present by the condemned. Noted in footnotes 13 and 15, pp. 1043 - 1045, "First Amendment Analysis of State Regulations Prohibiting the Filming of Prisoner Executions," Geo. Washington Law Review 60 (1992), pp. 1042 - 1080. [Vermont, identified in the compilation, has, in fact, revised its statute defining first degree murder for which the death penalty may be imposed to eliminate provisions for the imposition of capital punishment, though its body of statutes continues to contain sections that spell out the circumstances for confinement and execution of condemned prisoners.]

Legislative Research Agency

Alaska State Legislature



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

September 1, 1993

MEMORANDUM

TO: Senator Robin Taylor

FROM: Christine M. Cheff *Cheff*
Legislative Analyst

RE: Capital Punishment: An Update
Research Request 94.021

You asked that we update a previous memorandum prepared by this agency concerning capital punishment (LRA Memorandum 91.035). In particular, you asked for current information about costs related to carrying out the death penalty.

There are still just 37 states with death penalty statutes. According to recent information published by the Bureau of Justice Statistics, at year end 1991 there were 2,482 prisoners under sentence of death in 34 states and within the federal prison system (Attachment A).¹ That represents a 5.8 percent increase over the number held at the end of 1990. Fourteen prisoners were executed in 8 states in 1991--Texas (5), Florida (2), Virginia (2), Georgia (1), Louisiana (1) Missouri (1) North Carolina (1) and South Carolina (1)--which brought to 157 the number of executions since the death penalty was reinstated in 1976.

A comprehensive discussion of death penalty costs is presented in the attached July 1993 Legislative Research Agency Memorandum 93.224.² It provides an overview of various studies and reports concerning the issue, including a report prepared by Duke University that was published in May of this year.³

I hope this information will be useful. Please do not hesitate to call if we can be of further assistance.

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
Fax: (907) 163-3351

November 15, 1990

MEMORANDUM

TO: Senator Paul Fischer

ATTN: Sandy Nusbaum

FROM: Christine M. Cheff *one*
Legislative Analyst

RE: Capital Punishment
Research Request 91.035

You asked several questions about capital punishment and capital punishment laws in states other than Alaska. Each of your questions is addressed below.

States Where Capital Punishment is Legal

Capital punishment, commonly referred to as the death penalty, is currently legal in 37 states. Over time it has been abolished or declared unconstitutional in many of these states, and then reinstated. The most significant recent event which impacted death penalty laws was the 1972 U.S. Supreme Court ruling in *Furman v. Georgia*. The Court found that procedures for imposing the death penalty in Georgia and Texas were in violation of the Eighth and Fourteenth amendments of the U.S. Constitution. Because virtually all other state death penalty laws were modeled on the Georgia and Texas statutes, they were also considered to be in violation. As a result of the *Furman* decision, many states revised their statutes to meet constitutional requirements. In 1976, laws in Georgia, Florida and Texas were upheld by the U.S. Supreme Court and the death penalty was reinstated.¹

Vermont has a death penalty statute, but it was nullified by the *Furman v. Georgia* ruling and has not been revised. According to Janet Ansell, a Vermont legislative researcher, the sentence of death has been removed from most crimes, and treason is probably the only one for which it might still be imposed. The last execution in Vermont took place in 1959.

¹Mary Fairchild, "Death Penalty Laws," National Conference of State Legislatures, 1989.

the adoption of a constitutional amendment. As of October 1990, both bills were still in committee (Attachment C and D).

In West Virginia, four bills for reinstatement of the death penalty died in committee. Proposals ranged from imposing the death penalty for first degree murder to a narrowly focused House Bill which called for the death penalty in cases of first degree murder by an inmate in a West Virginia correctional facility. By a vote of 18 to 16, the Senate defeated a Senate Joint Resolution asking for a statewide referendum to reinstate the death penalty.

Four of the six bills for reinstatement in Wisconsin asked for the death penalty in homicide cases if the defendant is 16 years of age or older. Application of the death penalty for certain controlled substance offenses was called for in a Senate bill. All of the bills died in committee.

Fiscal Impact of the Death Penalty

Most studies about the fiscal impact of the death penalty conclude that, overall, it is more costly than the alternative of life imprisonment. The amount of money spent from pretrial investigation to final appeal is estimated to be as much as ten times more than the amount spent on noncapital cases.⁴

For capital punishment bills introduced during the 1989 Wisconsin legislative session, a cost estimate of \$102,061 for each death penalty case was projected by the State Public Defender. The Wisconsin Department of Health and Social Services estimated the cost of constructing between eight and 30 death row cells at \$1 to \$2 million, and annual staffing and maintenance costs at between \$280,800 and \$530,167. The estimate was based on the number of crimes for which the death penalty was imposed and the length of time required for the appeals process. In 1986 - 1987, Wisconsin spent \$15,568 annually for each prisoner confined to Waupun State Prison.⁵

A study published by the New York State Defenders Association in 1982 "identified 11 levels of review and defined a minimum of 144 cost centers that determine the total price-tag of capital punishment."⁶ By projecting costs across just the first three levels of review--the trial and penalty phase, appeals court and supreme court review--a death penalty case was estimated to

⁴Jonathan Gradess, "Execution Does Not Pay," *Washington Post*, February 28, 1988.

⁵A. Peter Cannon, *Capital Punishment in Wisconsin and the Nation*, (State of Wisconsin, Legislative Reference Bureau 1990), p. 9.

⁶"Capital Losses: The Price of the Death Penalty for New York State," New York State Defenders Association, April 1, 1982.

ATTACHMENT A
South Dakota Death Penalty, 1979 Session Law

23A-20-28. A court may direct that not more than six jurors in addition to the regular jury members be called and impaneled to sit as alternate jurors. Alternate jurors, in the order in which they were called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be disqualified, discharged, or unable to perform their duties. Alternate jurors shall be drawn at the same time and in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.

Section 50. That § 23A-20-29 be amended to read as follows:

23A-20-29. If, before the jury retires, a juror or alternate or a member of his immediate family dies, or if he or a member of his immediate family becomes ill, or upon other good cause shown to the court, the court may order him discharged.

Approved March 27, 1979

CHAPTER 160

(S.B. 53)

DEATH PENALTY PROVIDED FOR CERTAIN CRIMES

AN ACT

ENTITLED, An Act to provide the death penalty for certain crimes and the procedure for implementing such a sentence.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That subdivision (1) of § 22-6-1 be amended to read as follows:

- (1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony;

Section 2. That § 22-16-4 be amended to read as follows:

22-16-4. Homicide is murder when perpetrated without authority of law and with a premeditated design to effect the death of the person killed or of any other human being, or when committed by a person engaged in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary, kidnapping, or unlawful throwing, placing, or discharging of a destructive device or explosive.

Section 2A. That § ~~22-16-9~~ be amended to read as follows:

22-16-9. Homicide is manslaughter in the first degree when perpetrated without any design to effect death by a person engaged in the commission of any felony other than as provided in § 22-16-4.

shall include in his instructions to the jury for it to consider, any mitigating circumstances and any of the following aggravating circumstances which may be supported by the evidence:

- (1) The offense was committed by a person with a prior record of conviction for a Class A felony, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
- (2) The defendant by his act knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person;
- (3) The defendant committed the offense for himself or another, for the purpose of receiving money or any other thing of monetary value;
- (4) The defendant committed the offense on a judicial officer, former judicial officer, prosecutor or former prosecutor while such prosecutor, former prosecutor, judicial officer or former judicial officer was engaged in the performance of his official duties or where a major part of the motivation for the offense came from the official actions of such judicial officer, former judicial officer, prosecutor or former prosecutor;
- (5) The defendant caused or directed another to commit murder or committed murder as an agent or employee of another person;
- (6) The offense was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim;
- (7) The offense was committed against a law enforcement officer, employee of a corrections institution or fireman while engaged in the performance of his official duties;
- (8) The offense was committed by a person in, or who has escaped from, the lawful custody of a law enforcement officer or place of lawful confinement; and
- (9) The offense was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.

Section 8. Upon a verdict or judgment of death made by a jury or a judge, it shall be the duty of the judge presiding at the trial to sentence such convicted person to death and to make such sentence in writing, which shall be filed with the papers in the case against such convicted person. A certified copy thereof shall be sent by the clerk of the court in which the sentence is pronounced to the warden of the state penitentiary, not less than ten days prior to the time fixed in the sentence of the court for the execution of the sentence.

Section 9. If the death penalty is imposed, and if the judgment becomes final in the trial court, the sentence shall be reviewed on the record by the South Dakota Supreme Court. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court together with a notice prepared

ously sentenced to death for a Class A felony shall have such person brought before the court, and the court shall sentence such person to life imprisonment.

Section 17. When judgment of death is rendered, the judge must forthwith sign and deliver to the sheriff of the county a warrant duly attested by the clerk under the seal of the court stating the conviction and sentence and appointing the week within which sentence must be executed. The warrant must be directed to the warden of the state penitentiary at Sioux Falls, commanding the warden to execute the sentence on some day within the week appointed.

Section 18. Within ten days after the issuing of a warrant under section 17 of this Act the sheriff must deliver the defendant together with the warrant to the warden or his deputies at the state penitentiary. From the time of delivery to the warden until the infliction of the punishment of death upon him, unless he is lawfully discharged from such imprisonment, the defendant shall be kept in solitary confinement at the penitentiary and no person shall be allowed access to him without an order of the trial court except the officers of the prison, his counsel, his physician, a priest or minister if he shall desire one, and the members of his family.

Section 19. The week so appointed must begin not less than six months nor more than eight months after the date of judgment. The time of execution within such week shall be left to the discretion of the warden to whom the warrant is directed, who shall cause the execution to be performed between the hours of 12:01 a.m. and 6:00 a.m. on some day of such week, but no previous announcement of the day or hour of the execution shall be made except to the persons as may be invited or permitted to be present as provided in sections 36 and 37 of this Act.

Section 20. The judge of any court imposing sentence of death shall immediately thereafter transmit by registered or certified mail to the Governor a certified copy of such judgment together with a brief statement of the facts and circumstances of the case over his signature.

Section 21. The Governor may thereupon make such investigation of the case as he may deem proper and may require the assistance of the attorney general.

Section 22. The Governor shall have power to reprieve or suspend the execution of the sentence for such reasonable time as he may see fit for the purpose of completing his investigation or other like proper purpose but the period of reprieve or suspension shall not in any event, exceed ninety days except as provided in section 26 or 30 of this Act.

Section 23. No judge, officer, commission or board, other than the Governor, can reprieve or suspend the execution of a judgment of death except where the warden or deputy warden of the penitentiary is authorized so to do in a case and in the manner prescribed in this Act. This section does not apply to a stay of proceedings upon appeal or to the issuance of a writ of habeas corpus, certiorari or other original remedial writ of the Supreme Court.

Section 24. If a defendant confined under sentence of death appears to be mentally incompetent to proceed the warden having him in custody shall forthwith notify the Governor, who shall appoint a commission of not less than three nor more than five disinterested duly licensed physicians, one

Section 31. In case the execution of a sentence is suspended pursuant to section 30 of this Act, the Governor, as soon as he is satisfied that the defendant is no longer pregnant, shall forthwith issue his warrant appointing a week for her execution, pursuant to her sentence, beginning within a period of not less than thirty nor more than ninety days from the date of the warrant.

Section 32. If the physicians summoned pursuant to section 29 of this Act report that the female defendant is not pregnant a copy of the report shall be transmitted by the warden to the Governor but the same shall not work a stay or suspension of the execution of the sentence.

Section 33. Whenever, for any reason, or under any circumstances not otherwise specifically provided for in this Act, a defendant sentenced to death has not been executed pursuant to the sentence at the time specified and the sentence or judgment inflicting the death penalty stands in full force, the Supreme Court, upon application of the attorney general or the state's attorney of the county where the crime was committed, shall make an order to the warden in whose custody the defendant may be, commanding him to bring the defendant before the court or commanding him to apprehend the defendant if at large and bring him before the court. Upon the defendant being brought before the court, the court shall inquire into the facts and if no legal reason exists against the execution of the judgment the court shall issue its warrant to the warden of the state penitentiary directing the execution of the judgment during a week specified in the warrant and the warden shall execute the warrant accordingly.

Section 34. The punishment of death must be inflicted within the walls of some building at the state penitentiary or within the yard or enclosure adjoining thereto. The punishment of death must be inflicted by causing to pass through the body of the defendant a current of electricity of sufficient intensity to cause death and continuing the application thereof until the defendant is dead. It shall be executed by the warden of the state penitentiary or by one of his deputies.

Section 35. The board of charities and corrections shall arrange for and provide a proper and suitable place at the state penitentiary for the custody of persons awaiting sentence of death and for the execution of the death sentence together with any and all proper equipment and appliances for the infliction of such punishment.

Section 36. The warden of the penitentiary shall request, by at least two days' previous notice, the presence of the attorney general, the trial judge before whom the conviction was had or his successor in office, the state's attorney and sheriff of the county where the crime was committed, and not more than ten reputable adult citizens, including at least one member of the news media, to be selected by the warden at the execution. The warden shall also arrange for the attendance of the prison physician and two other licensed physicians of this state. The warden shall arrange for the attendance of such prison guards and peace officers as he may deem proper.

Section 37. The warden of the state penitentiary must also, at the request of the defendant, permit such ministers of the gospel, priests or clergymen of any denomination as the defendant may desire, not exceeding two, to be present at the execution and any relatives or friends requested by the defendant not exceeding five.

ATTACHMENT B
Oregon Death Penalty Statute

1989

OREGON REVISED STATUTES

Volume 3

PENAL CODE



TITLES

14. PROCEDURE IN CRIMINAL MATTERS GENERALLY
15. PROCEDURE IN CRIMINAL ACTIONS IN JUSTICES' COURTS
16. CRIMES AND PUNISHMENTS

PUBLISHED by the
LEGISLATIVE COUNSEL COMMITTEE of the
LEGISLATIVE ASSEMBLY of the STATE OF OREGON

137.452 Satisfaction of monetary obligation imposed as part of sentence; authority of Attorney General. When a person is convicted of an offense and sentenced to pay any monetary obligation, the following provisions apply to obtaining a satisfaction, full or partial, of the money judgment imposing the monetary obligation:

(1) The Attorney General, by rule, may do any of the following:

(a) Authorize the Attorney General's office, a district attorney's office, any state agency within the executive branch of government or any specific individual or group within any of these to issue satisfactions, full or partial, relating to money judgments from criminal actions or proceedings.

(b) Establish procedures and requirements that any person described under paragraph (a) of this subsection must follow to issue satisfactions, full or partial, relating to money judgments from criminal actions or proceedings.

(2) Authorization of a person under subsection (1) of this section is permissive and such person is not required to issue satisfactions if authorized. However, if a person is authorized under subsection (1) of this section and does issue satisfactions, the person must comply with the procedures and requirements established by the Attorney General by rule.

(3) If the Attorney General establishes a program under subsection (1) of this section, the Attorney General's office shall issue satisfactions under the program unless the Attorney General determines that there are sufficient other agencies authorized under subsection (1) of this section who are actually participating in the program to provide reasonable access to satisfactions on a statewide basis.

(4) This section does not authorize any of the following:

(a) The issuance of any satisfactions where the monetary obligation runs to any party other than the state.

(b) Issuance of satisfactions for any part of the judgment other than a money judgment.

(5) Any satisfaction issued by a person authorized under this section may be entered in the same manner and has the same effect on the money judgment as a satisfaction issued for a judgment from a civil action or proceeding. This subsection applies even if the full amount of monetary obligations established under the original judgment is not paid. [1989 c.472 §4]

Note: 137.452 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative

action. See Preface to Oregon Revised Statutes for further explanation.

137.460 [Renumbered 137.270]

(Death Sentence)

137.463 Death warrant; delivery to sheriff; automatic review by Supreme Court. (1) When a judgment of death is pronounced, a warrant signed by the trial judge and attested by the clerk of the court, with the seal of the court affixed, shall be drawn and delivered to the sheriff of the county. The warrant shall state the conviction and judgment and shall direct the sheriff to deliver the defendant within 20 days from the time of the judgment to the Superintendent of the Oregon State Penitentiary pending the determination of the automatic and direct review by the Supreme Court.

(2) If the Supreme Court affirms the sentence of death, a warrant, signed by the trial judge of the court in which the judgment was rendered and attested by the clerk of that court, shall be drawn and delivered to the Superintendent of the Oregon State Penitentiary. The warrant shall appoint a day on which the judgment is to be executed and shall authorize and command the superintendent to execute the judgment of the court. [1984 c.3 §5]

137.465 (1979 c.2 §5; repealed by 1981 c.873 §9)

137.467 Delivery of warrant when place of trial changed. If the place of trial has been changed, the death warrant shall be delivered to the sheriff of the county in which the defendant was tried. [1984 c.3 §6]

137.470 (1979 c.2 §6; repealed by 1981 c.873 §9)

137.473 Means of inflicting death; place and procedures; acquisition of lethal substance. (1) The punishment of death shall be inflicted by the intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until the defendant is dead. The judgment shall be executed by the superintendent of the Department of Corrections institution in which the execution takes place, or by the designee of that superintendent. All executions shall take place within the enclosure of a Department of Corrections institution designated by the Director of the Department of Corrections. The superintendent of the institution shall be present at the execution and shall invite the presence of one or more physicians, the Attorney General and the sheriff of the county in which the judgment was rendered. At the request of the defendant, the superintendent shall allow no more than two clergymen designated by the defendant to be present at the execution. At the discretion of the superintendent, no more than five

ATTACHMENT C
Michigan State Senate Joint Resolution L

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Senate Joint Resolution L

November 30, 1989, Introduced by Senators DI NELLO,
WELBORN, GEO. HART, BARCIA, MACK, CARL, DE GROW,
N. SMITH, FREDRICKS, SCHWARZ, SHINKLE, GEAKE,
CROSEY, FESSLER and GAST and referred to the
Committee on Judiciary.

A joint resolution proposing an amendment to the state constitution of 1963, by amending section 46 of article IV, to provide for the death penalty in certain circumstances.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to the state constitution of 1963, to permit the death penalty in certain circumstances, is proposed, agreed to, and submitted to the people of the state:

ARTICLE IV

1

2 Sec. 46. (1) No law shall be enacted providing for the pen-
3 alty of death EXCEPT FOR FIRST DEGREE MURDER.

4 (2) IF A DEFENDANT IS CONVICTED OF FIRST DEGREE MURDER, THE
5 COURT SHALL CONDUCT A SEPARATE SENTENCING PROCEEDING TO DETERMINE
6 WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR SENTENCED
7 AS OTHERWISE PROVIDED BY LAW.

SENATE JOINT RESOLUTION L

1 (B) A STATEMENT AS TO WHETHER SUFFICIENT MITIGATING
2 CIRCUMSTANCES EXIST UNDER SUBSECTION (9) TO OUTWEIGH THE
3 AGGRAVATING CIRCUMSTANCES UNDER SUBSECTION (8).

4 (C) A STATEMENT AS TO WHETHER THE DEFENDANT SHOULD BE SEN-
5 TENCED TO DEATH.

6 (5) WHETHER OR NOT A MAJORITY OF THE JURY RECOMMENDS A SEN-
7 TENCE OF DEATH THE COURT, AFTER WEIGHING THE AGGRAVATING AND MIT-
8 IGATING CIRCUMSTANCES, SHALL SENTENCE THE DEFENDANT. IF THE
9 COURT IMPOSES A SENTENCE OF DEATH, THE COURT SHALL SET FORTH IN
10 WRITING THE FINDINGS UPON WHICH THE SENTENCE OF DEATH IS BASED.
11 THE COURT SHALL SUPPORT A SENTENCE OF DEATH BY SPECIFIC WRITTEN
12 FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES ENUMERATED IN SUB-
13 SECTIONS (8) AND (9), THE RECORDS OF THE TRIAL AND THE SENTENCING
14 PROCEEDINGS, AND A FINDING THAT SUFFICIENT AGGRAVATING CIRCUM-
15 STANCES EXIST UNDER SUBSECTION (8) TO SUPPORT A SENTENCE OF DEATH
16 AND THAT MITIGATING CIRCUMSTANCES UNDER SUBSECTION (9) DO NOT
17 OUTWEIGH THE AGGRAVATING CIRCUMSTANCES.

18 (6) THE APPROPRIATENESS OF A SENTENCE OF DEATH SHALL BE
19 REVIEWED BY A PANEL APPOINTED BY THE SUPREME COURT OF THIS STATE,
20 UPON PETITION BY THE DEFENDANT. THE REVIEW SHALL OCCUR WITHIN 60
21 DAYS AFTER THE SENTENCE OF DEATH IS IMPOSED, UNLESS THAT TIME IS
22 EXTENDED BY THE SUPREME COURT OF THIS STATE FOR AN ADDITIONAL
23 PERIOD NOT TO EXCEED 30 DAYS. THE PANEL SHALL CONSIST OF A JUS-
24 TICE OF THE COURT OF APPEALS, A CIRCUIT COURT JUDGE WITH NOT LESS
25 THAN 6 YEARS' EXPERIENCE AS A CIRCUIT COURT JUDGE, AND THE TRIAL
26 JUDGE. MEMBERS OF THE PANEL OTHER THAN THE TRIAL JUDGE SHALL BE
27 SELECTED AT RANDOM BY THE SUPREME COURT OF THIS STATE FROM AMONG

1 (B) THE MURDER WAS COMMITTED BY A PERSON WHO WAS SENTENCED
2 TO SERVE, OR WAS SERVING, A TERM OF IMPRISONMENT AT THE TIME THE
3 MURDER WAS COMMITTED.

4 (C) THE DEFENDANT WAS PREVIOUSLY CONVICTED OF A FELONY
5 INVOLVING THE USE OF VIOLENCE OR THE THREAT OF VIOLENCE TO A
6 PERSON.

7 (D) THE DEFENDANT KNOWINGLY CREATED A GREAT RISK OF DEATH TO
8 OTHER PERSONS IN ADDITION TO THE DECEDENT.

9 (E) THE MURDER WAS COMMITTED BY THE DEFENDANT WHILE HE OR
10 SHE WAS COMMITTING OR ATTEMPTING TO COMMIT ANY OF THE FOLLOWING:

11 (i) ANY ROBBERY.

12 (ii) CRIMINAL SEXUAL CONDUCT IN ANY DEGREE.

13 (iii) ANY ARSON.

14 (iv) ANY BREAKING AND ENTERING.

15 (v) KIDNAPPING.

16 (vi) AIRCRAFT PIRACY.

17 (vii) ANY UNLAWFUL THROWING, PLACING, OR DISCHARGING OF AN
18 EXPLOSIVE, INCENDIARY DEVICE, OR BOMB.

19 (F) THE MURDER WAS COMMITTED TO AVOID OR PREVENT A LAWFUL
20 ARREST, OR TO EFFECT AN ESCAPE FROM CUSTODY.

21 (G) THE MURDER WAS COMMITTED FOR PECUNIARY GAIN.

22 (H) THE MURDER WAS COMMITTED TO DISRUPT OR HINDER THE LAWFUL
23 EXERCISE OF A GOVERNMENTAL FUNCTION, OR TO DISRUPT OR HINDER THE
24 ENFORCEMENT OF A LAW.

25 (I) THE MURDER WAS UNUSUALLY HEINOUS, ATROCIOUS, OR CRUEL.

26 (9) MITIGATING CIRCUMSTANCES INCLUDE ANY OF THE FOLLOWING:

ATTACHMENT D
Michigan State House of Representatives Joint Resolution L

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HOUSE JOINT RESOLUTION L

HOUSE JOINT RESOLUTION L

July 13, 1989, Introduced by Reps. Jaye, Runco, Dunaskiss, London, Middaugh, Willis Bullard, Walberg, Gnodtke, Rocca, Nye, Wartner, Weeks and Stacey and referred to the Committee on House Oversight.

A joint resolution proposing an amendment to the state constitution of 1963, by amending section 46 of article IV, to provide for the death penalty in certain circumstances.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to the state constitution of 1963, to permit the death penalty in certain circumstances, is proposed, agreed to, and submitted to the people of the state:

ARTICLE IV

1
2 Sec. 46. No law shall be enacted providing for the penalty
3 of death EXCEPT FOR MURDER IN THE FIRST DEGREE OF A POLICE OFFI-
4 CER OR CONSERVATION OFFICER, MURDER IN THE FIRST DEGREE COMMITTED
5 IN CONNECTION WITH SEXUAL MISCONDUCT, OR MURDER IN THE FIRST
6 DEGREE COMMITTED IN CONNECTION WITH A CONTROLLED SUBSTANCE
7 OFFENSE. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE
8 IMPLEMENTATION OF THIS SECTION.

HOUSE JOINT RESOLUTION L

Alaska State Legislature

Legislative Research Agency



P. O. Box Y
Juneau, AK 99811-3100
Phone: (907) 485-3941
Fax: (907) 483-3351

November 15, 1990

MEMORANDUM

TO: Senator Paul Fischer
ATTN: Sandy Nusbaum
FROM: Christine M. Cheff *mc*
Legislative Analyst
RE: Capital Punishment
Research Request 91.035

You asked several questions about capital punishment and capital punishment laws in states other than Alaska. Each of your questions is addressed below.

States Where Capital Punishment is Legal

Capital punishment, commonly referred to as the death penalty, is currently legal in 37 states. Over time it has been abolished or declared unconstitutional in many of these states, and then reinstated. The most significant recent event which impacted death penalty laws was the 1972 U.S. Supreme Court ruling in *Furman v. Georgia*. The Court found that procedures for imposing the death penalty in Georgia and Texas were in violation of the Eighth and Fourteenth amendments of the U.S. Constitution. Because virtually all other state death penalty laws were modeled on the Georgia and Texas statutes, they were also considered to be in violation. As a result of the *Furman* decision, many states revised their statutes to meet constitutional requirements. In 1976, laws in Georgia, Florida and Texas were upheld by the U.S. Supreme Court and the death penalty was reinstated.¹

Vermont has a death penalty statute, but it was nullified by the *Furman v. Georgia* ruling and has not been revised. According to Janet Ansell, a Vermont legislative researcher, the sentence of death has been removed from most crimes, and treason is probably the only one for which it might still be imposed. The last execution in Vermont took place in 1959.

¹Mary Fairchild, "Death Penalty Laws," National Conference of State Legislatures, 1989.

Senator Fischer
November 14, 1990
Page 2

There are no death penalty statutes in Alaska, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New York, North Dakota, Rhode Island, West Virginia, Wisconsin or the District of Columbia. The Wisconsin legislature abolished the death penalty law as early as 1853, and there has been no capital punishment statute in Maine or Minnesota since at least 1930.²

Reinstatement of the Death Penalty in the Last 25 Years

Of those states which had abolished the death penalty prior to *Furman v. Georgia*, two have reinstated it.

The South Dakota death penalty statute was abolished for the first time in 1915 and then restored in 1939. After the 1972 *Furman v. Georgia* ruling, it was abolished again. Recodification of state Criminal Procedure statutes to meet federal guidelines in 1979 resulted in enactment of the current law. A copy of the 1979 legislation for reinstatement is attached (Attachment A).

Voters in Oregon repealed the death penalty in a 1964 initiative. Bills to reinstate it have been introduced in virtually every session of the legislature since then. When the Criminal Code was revised in 1971, no death penalty provision was included. Although a 1978 initiative to make aggravated murder a capital offense was approved by the voters, the Oregon Supreme Court ruled it unconstitutional in 1980. Finally in 1984, public opinion and strong support from the governor resulted in passage of a ballot measure to reinstate the death penalty.³ (Attachment B)

1990 Bills Proposing Reinstatement of the Death Penalty

Bills for reinstatement of the death penalty were introduced in Michigan, West Virginia and Wisconsin during the 1990 legislative session.

Michigan is the only state in which capital punishment is prohibited by the Constitution. The Michigan Senate and the House of Representatives introduced joint resolutions for constitutional amendments to provide for the death penalty in first degree murder cases. The more specific House resolution asks that the death sentence be applied in cases of first degree murder of a police or conservation officer and to first degree murder committed in connection with sexual misconduct or with a controlled substance. The Senate resolution includes a jury override provision. Ratification by the voters is required for

²*The Universal Almanac*, 1990, ed. John W. Wright, pp. 204 - 206.

³Nancy Pease, "Reinstating the Death Penalty," Alaska State Legislature, House Research Agency Memorandum 84.002, 1984.

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Page 3

the adoption of a constitutional amendment. As of October 1990, both bills were still in committee (Attachment C and D).

In West Virginia, four bills for reinstatement of the death penalty died in committee. Proposals ranged from imposing the death penalty for first degree murder to a narrowly focused House Bill which called for the death penalty in cases of first degree murder by an inmate in a West Virginia correctional facility. By a vote of 18 to 16, the Senate defeated a Senate Joint Resolution asking for a statewide referendum to reinstate the death penalty.

Four of the six bills for reinstatement in Wisconsin asked for the death penalty in homicide cases if the defendant is 16 years of age or older. Application of the death penalty for certain controlled substance offenses was called for in a Senate bill. All of the bills died in committee.

Fiscal Impact of the Death Penalty

Most studies about the fiscal impact of the death penalty conclude that, overall, it is more costly than the alternative of life imprisonment. The amount of money spent from pretrial investigation to final appeal is estimated to be as much as ten times more than the amount spent on noncapital cases.⁴

For capital punishment bills introduced during the 1989 Wisconsin legislative session, a cost estimate of \$102,061 for each death penalty case was projected by the State Public Defender. The Wisconsin Department of Health and Social Services estimated the cost of constructing between eight and 30 death row cells at \$1 to \$2 million, and annual staffing and maintenance costs at between \$280,800 and \$530,167. The estimate was based on the number of crimes for which the death penalty was imposed and the length of time required for the appeals process. In 1986 - 1987, Wisconsin spent \$15,568 annually for each prisoner confined to Waupun State Prison.⁵

A study published by the New York State Defenders Association in 1982 "identified 11 levels of review and defined a minimum of 144 cost centers that determine the total price-tag of capital punishment."⁶ By projecting costs across just the first three levels of review--the trial and penalty phase, appeals court and supreme court review--a death penalty case was estimated to

⁴Jonathan Gradess, "Execution Does Not Pay," *Washington Post*, February 28, 1988.

⁵A. Peter Cannon, *Capital Punishment in Wisconsin and the Nation*, (State of Wisconsin, Legislative Reference Bureau 1990), p. 9.

⁶"Capital Losses: The Price of the Death Penalty for New York State," New York State Defenders Association, April 1, 1982.

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Page 4

cost \$1.8 million dollars as opposed to the cost of \$602,000 for 40 years of life imprisonment.

In 1988 the Miami Herald reported that since 1973, \$57.2 million was spent to execute 18 people in Florida. That cost amounted to over \$3 million per execution, which is approximately six times the cost of imprisoning those same people for their entire lives.⁷

Number of Inmates Currently on Death Row

As of December 1988, there were 2,124 persons on death row in the United States.⁸ There were over 200 persons each in the states of California, Florida and Texas awaiting execution, and 118 in Indiana. From two to ninety-eight individuals are on death row in each of the remaining states, except for New Hampshire, South Dakota and Vermont, where there are none.

Number of Executions Carried Out Since 1970

Because of the Supreme Court decision in *Furman v. Georgia*, no executions were carried out between 1968 and 1978. However there have been 104 executions since the Court reinstated the death penalty in 1976. All of those executions occurred in twelve of the 37 states which authorize the death penalty.⁹

| | | | |
|-------------|----|----------------|----|
| Alabama | 3 | Nevada | 2 |
| Florida | 19 | North Carolina | 3 |
| Georgia | 13 | South Carolina | 2 |
| Indiana | 2 | Texas | 29 |
| Louisiana | 18 | Utah | 3 |
| Mississippi | 3 | Virginia | 7 |

I hope this information will be helpful to you. Please do not hesitate to call if we can be of further assistance with this or other matters.

Attachments

⁷Ronald J. Tabak and J. Mark Lane, "The Execution of Injustice: A Cost and Lack-of-Benefit Analysis of the Death Penalty," *Loyola of Los Angeles Law Review*, 1989, p. 23.

⁸*The Book of States*, Council of State Governments, 1990 - 1991, p. 28.

⁹Cannon, pp. 13 - 14.

REPORTED CRIME FREQUENCY 1992

ALASKA CRIME CLOCK 1992



one
CRIME INDEX
OFFENSE
every 16 min. 13 sec.

one
VIOLENT CRIME
every 2 hours 19 min.

one
PROPERTY CRIME
every 18 min. 23 sec.

one
MURDER
every 8 days 7 hours 43 min.

one
FORCIBLE RAPE
every 15 hours 29 min.

one
ROBBERY
every 13 hours 57 min.

one
AGGRAVATED ASSAULT
every 3 hours 25 min.

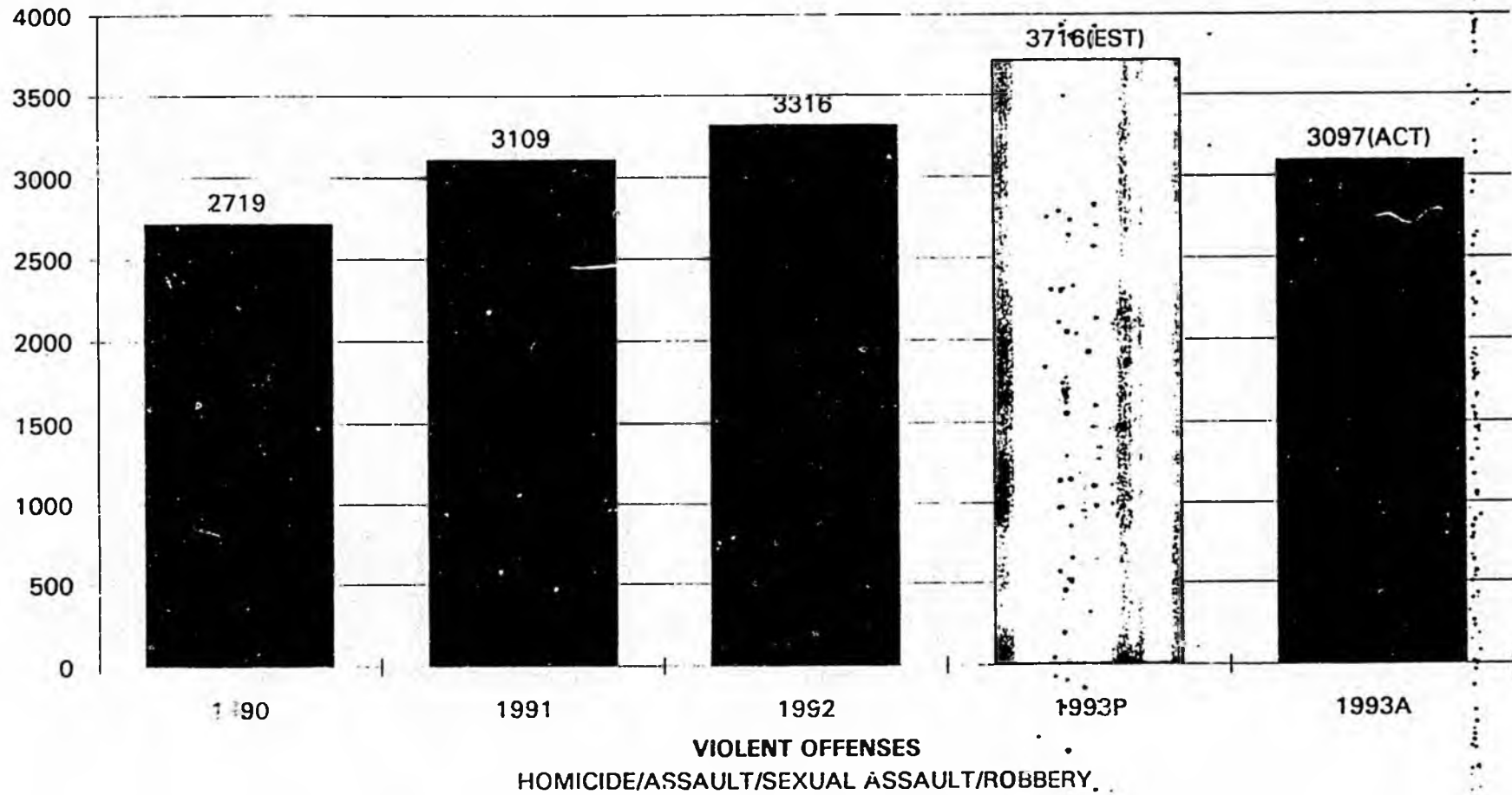
one
BURGLARY
every 1 hour 41 min.

one
LARCENY - THEFT
every 25 min. 38 sec.

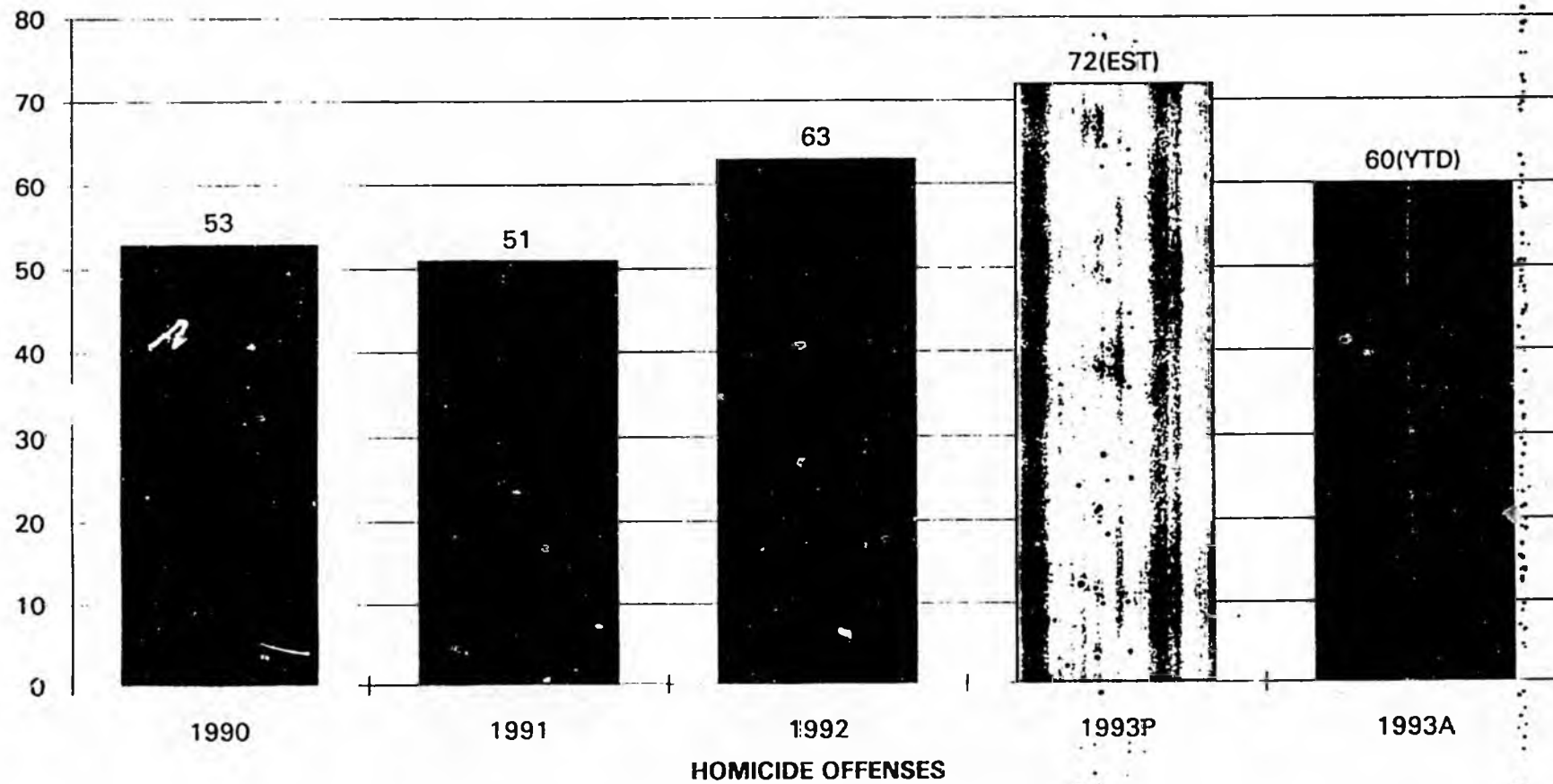
one
MOTOR VEHICLE THEFT
every 3 hours 2 min.

The crime clock should be viewed with care. Being the most aggregate representation of UCR data, it is designed to convey the annual reported crime experience by showing the relative frequency of occurrence of the Index Offenses. This mode of display should not be taken to imply a regularity in the commission of the Part I Offenses; rather, it represents the annual ratio of reported crime to fixed time intervals.

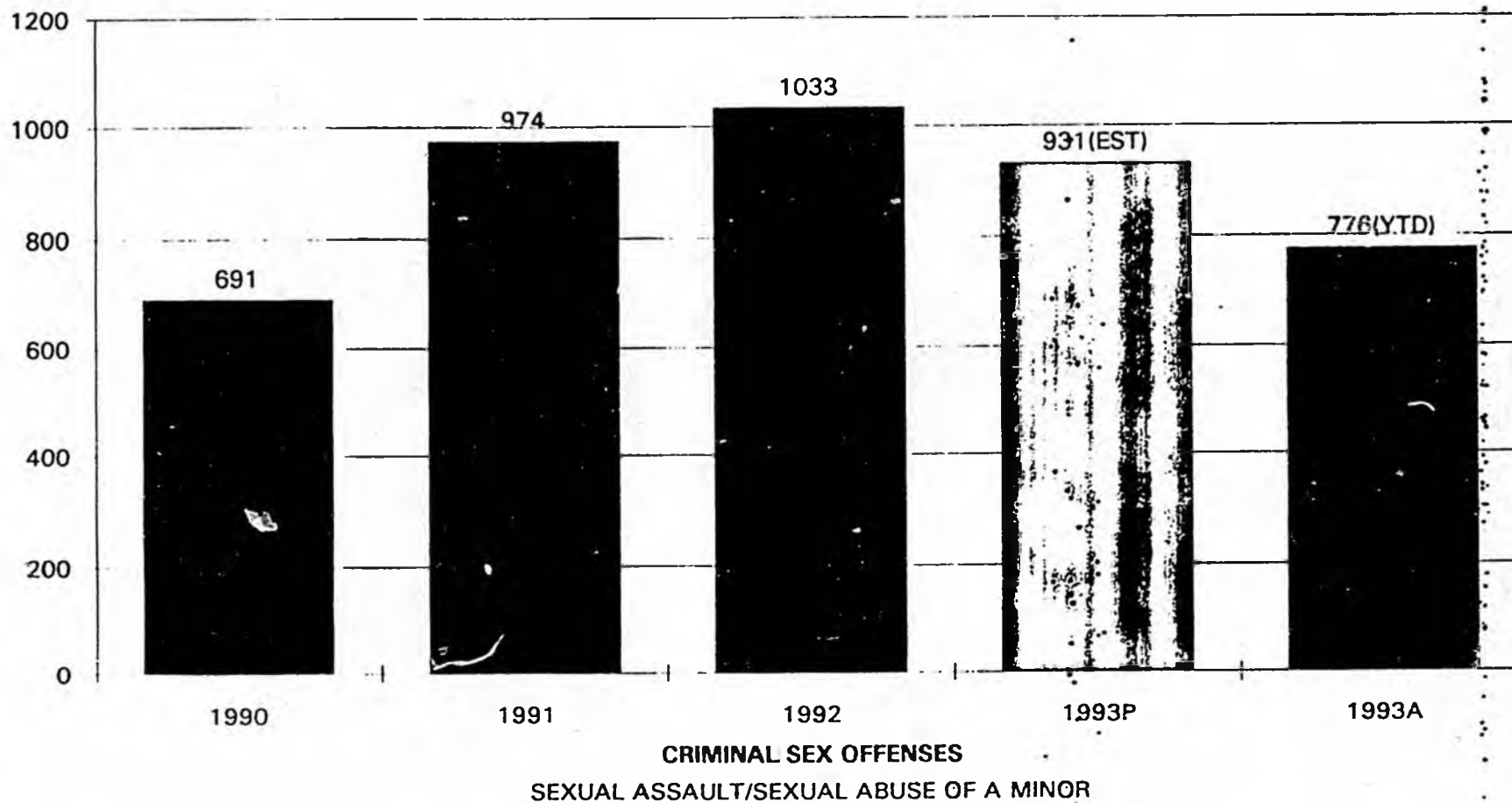
ALASKA STATE TROOPERS



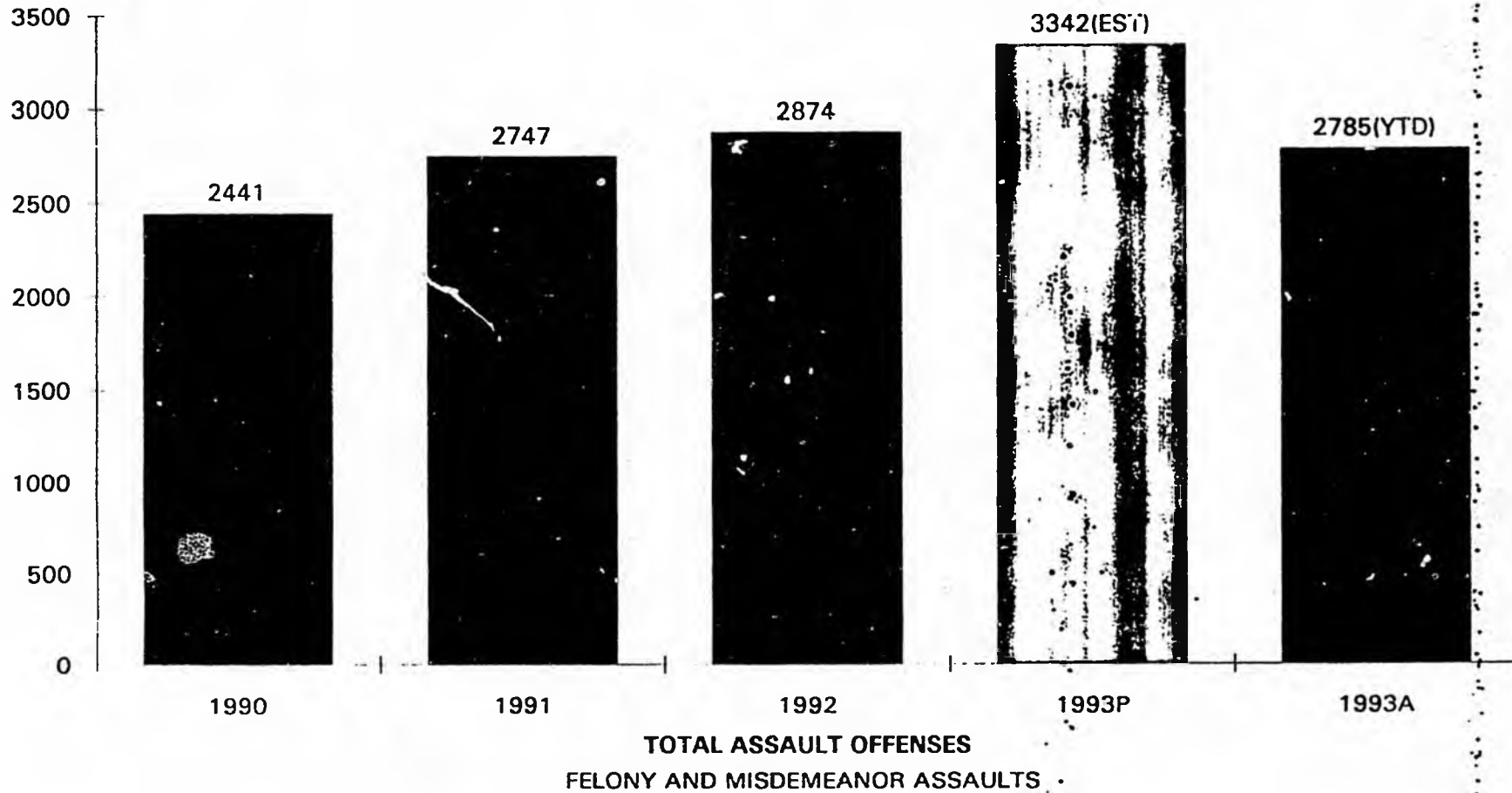
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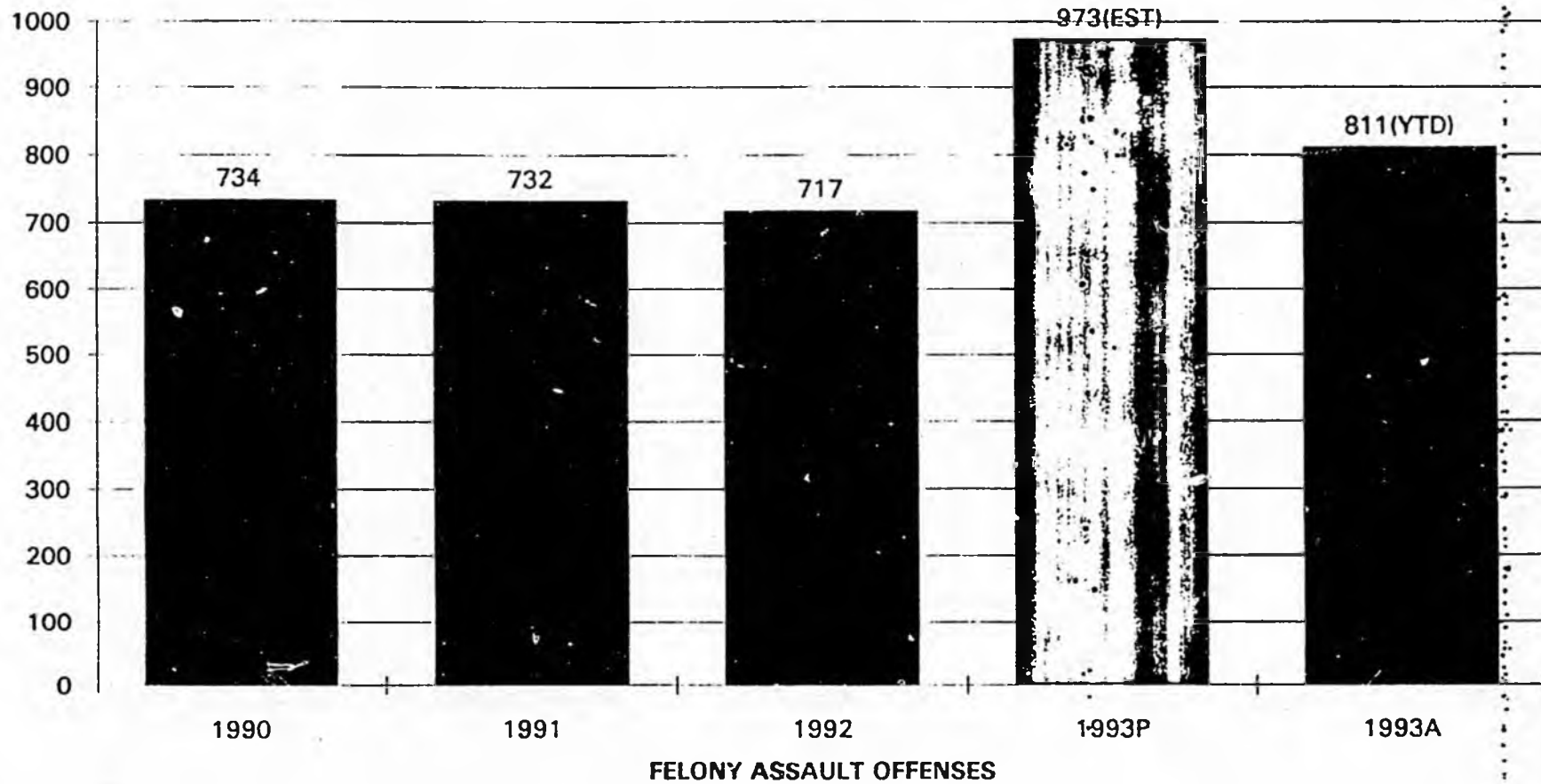
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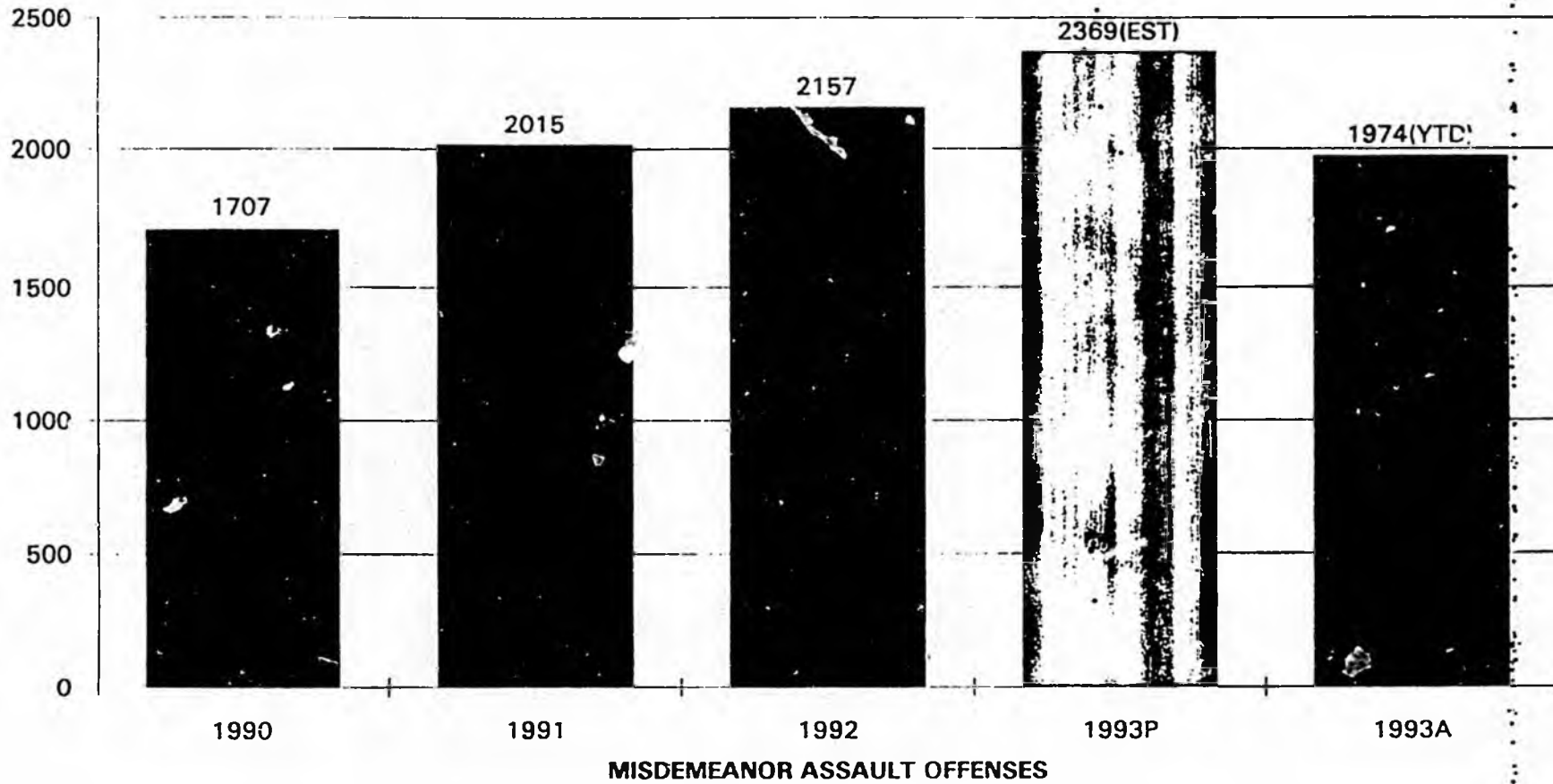
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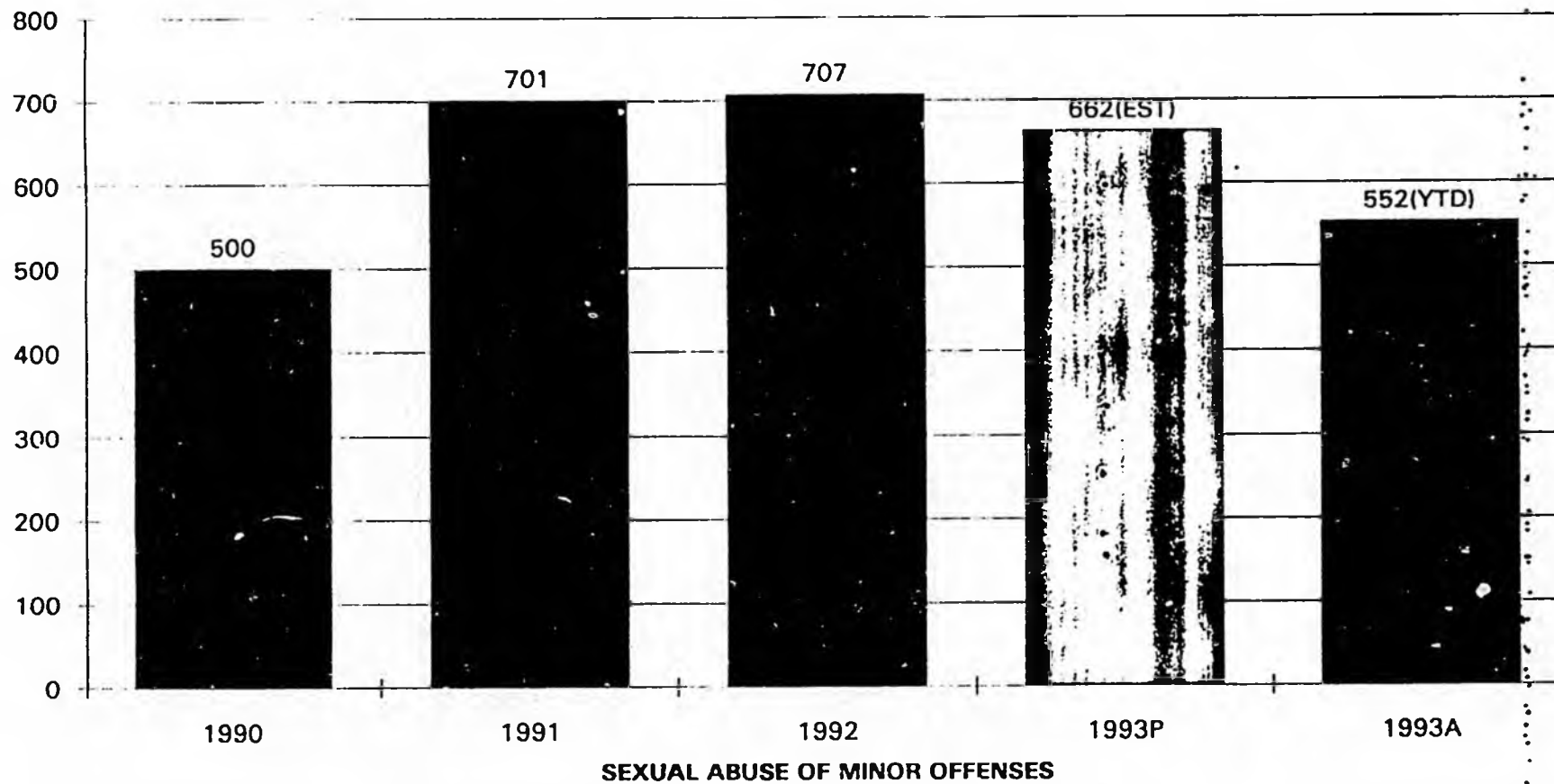
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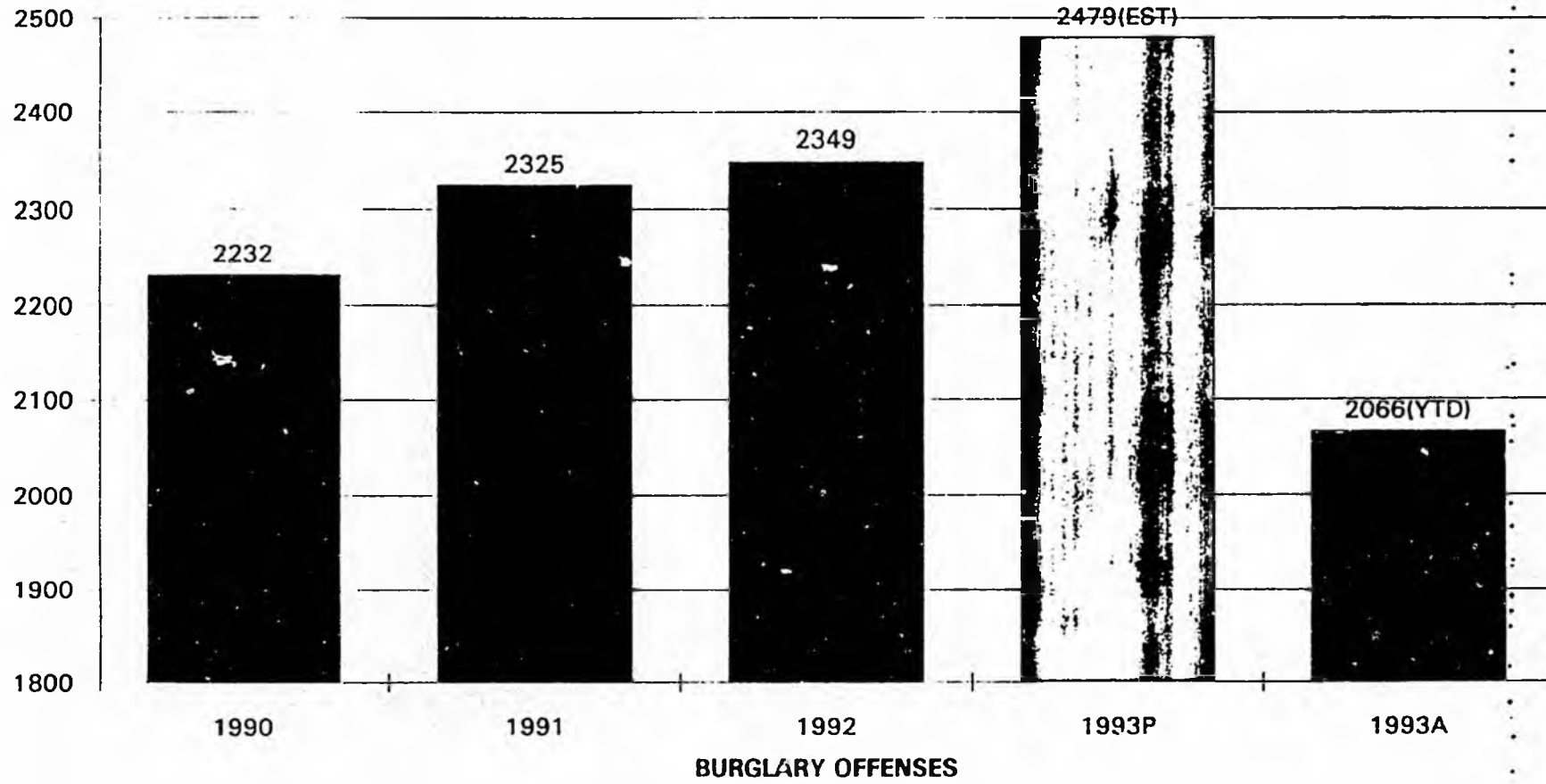
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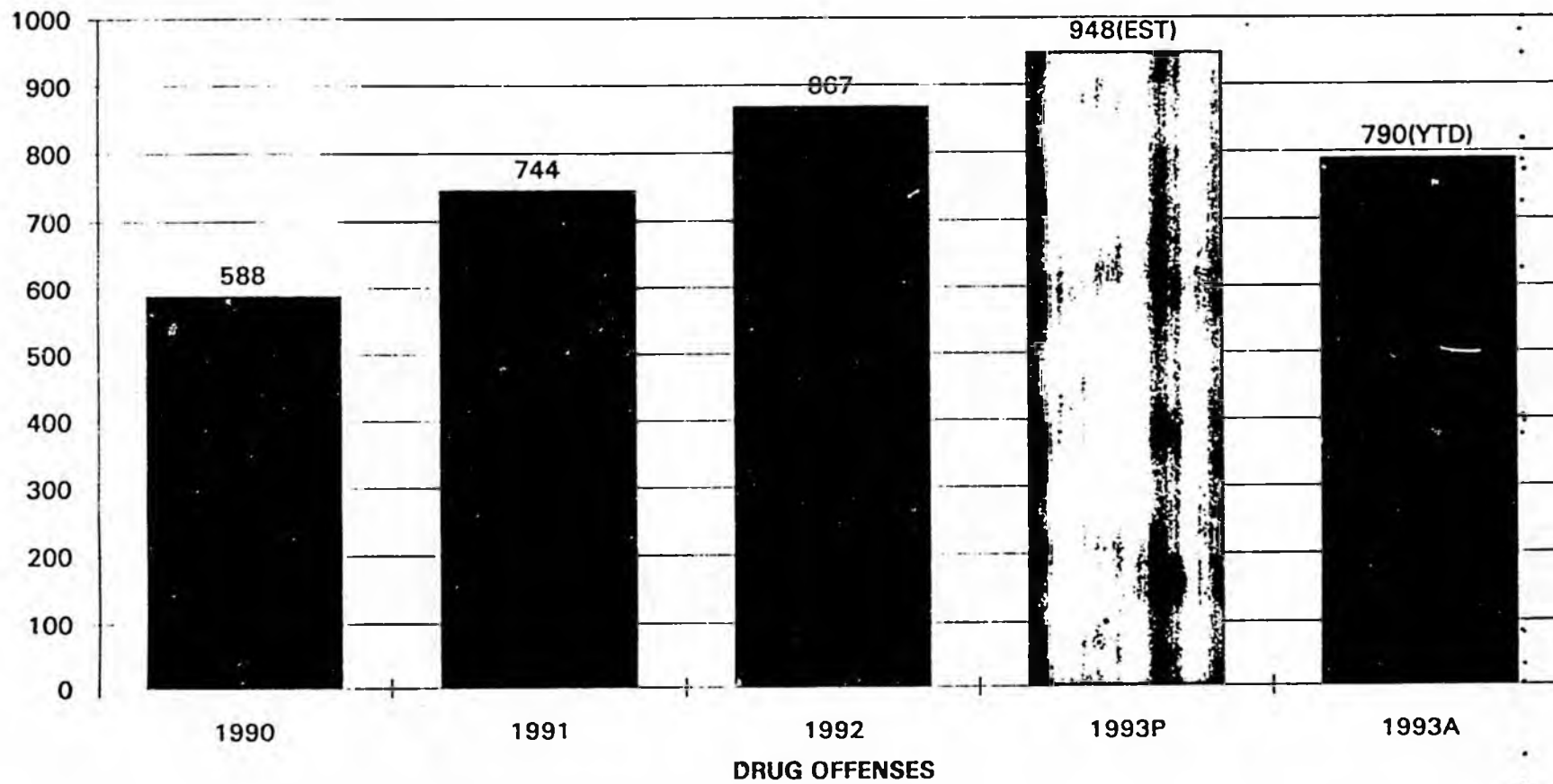
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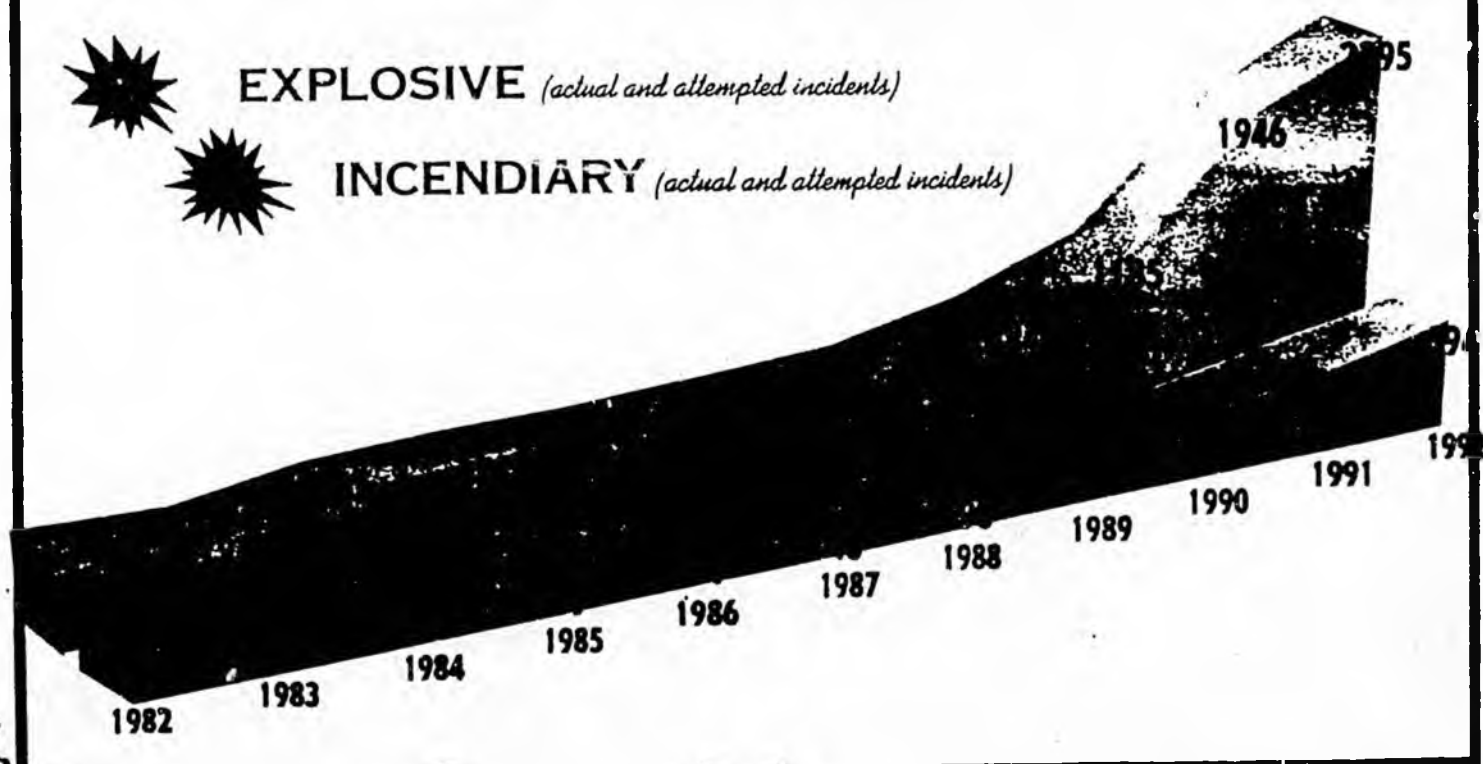
1992

BOMBING INCIDENTS

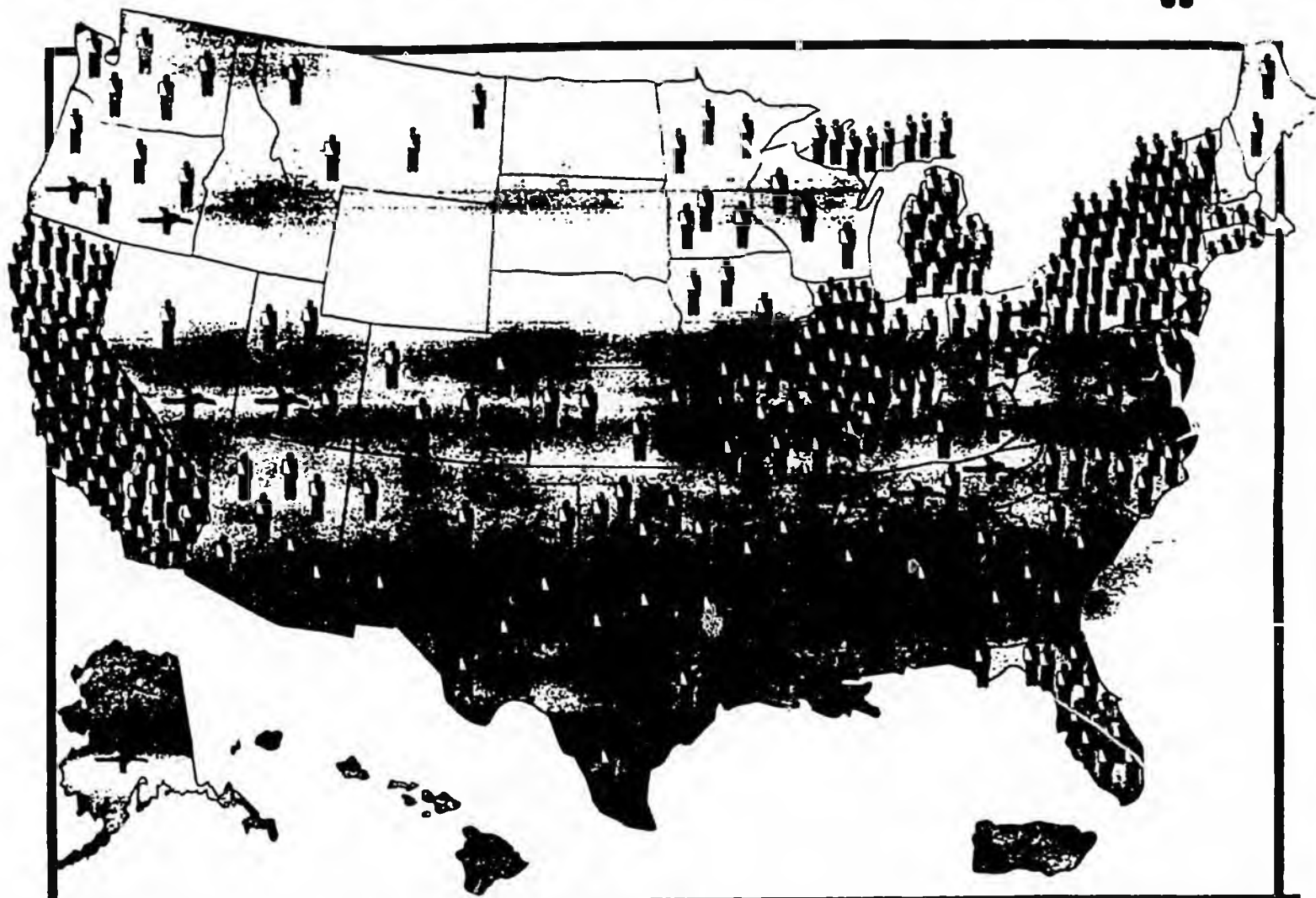
1992



| | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 |
|------------------------|------|------|------|------|------|------|------|------|------|------|-------|
| TOTAL | 795 | 687 | 803 | 847 | 858 | 848 | 977 | 1208 | 1582 | 2499 | 2989 |
| EXPLOSIVE | 485 | 442 | 518 | 575 | 580 | 600 | 593 | 641 | 931 | 1551 | 1911 |
| INCENDIARY | 194 | 127 | 127 | 102 | 129 | 104 | 156 | 203 | 267 | 423 | 582 |
| EXPLOSIVE | 77 | 77 | 118 | 113 | 101 | 102 | 161 | 243 | 254 | 395 | 384 |
| INCENDIARY | 39 | 41 | 40 | 57 | 48 | 42 | 40 | 91 | 130 | 130 | 12 |
| PROPERTY DAMAGE | 7.20 | 6.34 | 5.61 | 6.35 | 3.40 | 4.20 | 2.26 | 5.00 | 9.60 | 6.44 | 12.50 |
| PERSONS INJURED | 99 | 100 | 112 | 144 | 185 | 107 | 145 | 202 | 222 | 230 | 349 |
| DEATHS | 16 | 12 | 6 | 28 | 14 | 21 | 20 | 11 | 27 | 29 | 26 |



1992 INJURIES AND DEATHS



| STATE | INJURIES | DEATHS | STATE | INJURIES | DEATHS | STATE | INJURIES | DEATHS |
|-------|----------|--------|-------|----------|--------|--------------|------------|-----------|
| AL | 1 | - | KY | 2 | - | OH | 6 | 3 |
| AK | - | 1 | LA | - | 1 | OK | 5 | - |
| AZ | 7 | - | ME | 2 | - | OR | 4 | 2 |
| AR | 2 | - | MD | 2 | 2 | PA | 46 | - |
| CA | 56 | 3 | MA | 3 | - | PR | - | - |
| CO | 4 | - | MI | 28 | 1 | RI | 3 | - |
| CT | 3 | - | MN | 6 | - | SC | 2 | - |
| DE | - | - | MS | 1 | - | SD | - | - |
| DC | 2 | 2 | MO | 8 | - | TN | 1 | 3 |
| FL | 12 | 1 | MT | 4 | - | TX | 9 | 1 |
| GA | 4 | - | NE | - | - | UT | 3 | 2 |
| HI | - | - | NV | 1 | 1 | VT | 3 | - |
| ID | - | - | NH | - | - | VA | 1 | - |
| IL | 39 | 1 | NJ | 17 | 1 | WA | 5 | - |
| IN | 4 | - | NM | 3 | 1 | WV | - | - |
| IA | 3 | - | NY | 33 | - | WI | 3 | - |
| KS | 4 | - | NC | 7 | - | WY | - | - |
| | | | ND | - | - | TOTAL | 349 | 26 |

thirty-five

FORUM / LETTERS

Mail-bomb survivor backs capital punishment for Alaska

By MICHELLE KERR

Many readers may recognize my name. I survived the mail-bombing in Chugiak in September of 1991. My husband, Dave, was killed instantly and I was critically injured.

I am a lifelong Alaskan and, like most people, I felt immune to violent crime. It is something you see happening in L.A. and Miami, not Anchorage and Chugiak. My safe, secure world blew up on Sept. 17, 1991. I now realize that violent crime can happen to anyone. We envision violent crime taking place in dark alleys and involving drug dealers. For me, "the wrong place at the wrong time" was my kitchen on a Tuesday afternoon.

I attended the public hearing of the House and Senate Judiciary Committees on Nov. 16. I felt compelled to share my thoughts regarding House Bill 162 re-establishing the death penalty in Alaska. I also feel I must respond to Kathy Kainer's arguments against the bill published in a Daily News Compass.

Our case involves federal charges and is being handled in the federal court system. Under different circumstance, it could have easily fallen into state jurisdiction. Since the bombing, I have met many families of Alaska victims whose murderers could not face the death penalty. All Alaskans deserve to see the system work when our loved ones are brutally murdered.

Ms. Kainer argues that the



death penalty is not a deterrent. I believe it is. The opposition says crime rates continue to rise, even in states enforcing the death penalty. Their argument is based on the lack of "studies" showing decreased crime rates in those states. No study can accurately predict how much further the crime rate may have skyrocketed had the death penalty not been in force. Even murderers have a basic survival instinct which could deter them from committing a heinous crime.

Capital punishment will deter repeat offenders. The average time served nationally for a life sentence is only 7½ years. Often, once released, the criminal murders again. The life sentence is not a deterrent. Incarcerated criminals have nothing to lose. They may conspire to kill from the inside or even escape to kill again. Had they been executed, this would be impossible.

Even criminals realize that imprisonment alone may not stop further crime. For example, Craig Gustafson (who assisted in building the bomb) requested and received witness protection. He fears that his brother Doug and R.D. Cheely will retaliate from prison. He wants protection from people like himself who will kill at the request of inmates. These crimi-

nals have proved that prison is not always enough. We need capital punishment to stop them.

Opponents of the bill say it would unjustly punish poor, minority and mentally retarded members of society. This is not true. The district attorney does not simply decide who is sentenced to death. The bill specifically states the defendant must first be convicted of murder in the first degree and a jury determines the sentence. The jury can impose capital punishment only if they unanimously agree that one or more of the aggravating factors exist, the aggravating factors must outweigh the mitigating factors, and that the defendant be sentenced to death.

Aggravating factors that must exist are as follows: 1) defendant's conduct involved torture; 2) defendant's conduct caused the death of two or more persons; 3) defendant's conduct risked injury to three or more persons; 4) defendant has prior felony conviction involving violence or murder; 5) defendant directed offense at the president of the United States or the governor; 6) the crime was directed at a law enforcement officer, prosecuting attorney, firefighter, judge or corrections officer; 7) defendant had an agreement to either pay or be paid for the offense; 8) defendant was on release for another felony assault charge or conviction; or 9) defendant was a member of an organized group of five or more persons and the offense was committed to further the criminal objectives of the group.

Obviously, this would not apply

For me, "the wrong place at the wrong time" was my kitchen on a Tuesday afternoon.

to the typical alcohol-related crime of passion in Alaska. In fact, the mitigating factors that must be considered include: 1) defendant was under duress, coercion, threatened or felt compulsion that significantly affected his conduct; 2) youthful defendant was influenced by a person more mature; 3) defendant was seriously provoked by the victim; and 4) defendant assisted authorities in the apprehension of other involved criminals. All of these factors are in place to protect criminals from unjust punishment. Therefore, capital punishment will not discriminate based on race, education or financial status.

In her article, Ms. Kainer states that defendants on death row are there because they cannot afford high-powered attorneys. I argue that they are there because they have committed a violent crime. I have seen that there are plenty of high-powered attorneys willing to defend violent murderers. Doug, Craig and Peggy Gustafson and R.D. Cheely had two each at taxpayers' expense.

Ms. Kainer also quoted a classic argument, "In other words, we are going to teach that it is wrong to kill by killing the killers." The obvious point omitted is the difference between a society legally determining punishment for a specific crime versus a violent murder.

The goal is not "to teach," it is to punish. Our current system attempts to "rehabilitate" murderers rather than protect society. It is time to say enough is enough. People must suffer the consequences of their own actions. If the law states that the penalty may be death, so be it.

The weakest argument opposing capital punishment is cost. How can a price tag be put on the safety and protection of our citizens? If capital punishment deters one person from taking a life, it's worth the expense. How can a person who values human life argue otherwise? The major expense of capital punishment is not "the hangman" but rather the defense and ridiculously lengthy appeal process afforded to the convicted murderers.

If you agree that the death penalty should be re-established in Alaska, don't sit back and wait. You need to contact your legislator and voice your opinion. Even if 99 percent of Alaska residents favor the death penalty, our legislators will ultimately decide. Make sure they represent you. Don't wait until you are a victim. Please help me to stop violent crime in memory of all victims, including David Kerr.

Michelle Kerr lives in Anchorage.

A Report by the
Death Penalty Information Center
October 1992

MILLIONS MISSPENT

What Politicians Don't Say
About the High Costs
of the Death Penalty

MILLIONS MISSPENT:

What Politicians Don't Say About the High Costs of the Death Penalty

*"Whether you're for it or against
it, I think the fact is that Oregon
simply can't afford it."*

*—James Ellis,
Chief Criminal Judge Oregon*

A Report by
The Death Penalty Information Center
Written by Richard C. Dieter, Executive Director
1606 20th Street, NW
Washington, DC 20009
(202) 347-2531

Executive Summary

Across the country, police are being laid off, prisoners are being released early, the courts are clogged, and crime continues to rise. The economic recession has caused cutbacks in the backbone of the criminal justice system. In Florida, the budget crisis resulted in the early release of 3,000 prisoners. In Texas, prisoners are serving only 20% of their time and rearrests are common. Georgia is laying off 900 correctional personnel and New Jersey has had to dismiss 500 police officers. Yet these same states, and many others like them, are pouring millions of dollars into the death penalty with no resultant reduction in crime.

The exorbitant costs of capital punishment are actually making America less safe because badly needed financial and legal resources are being diverted from effective crime fighting strategies. Before the Los Angeles riots, for example, California had little money for innovations like community policing, but was managing to spend an extra \$90 million per year on capital punishment. Texas, with over 300 people on death row, is spending an estimated \$2.3 million per case, but its murder rate remains one of the highest in the country.

The death penalty is escaping the decisive cost-benefit analysis to which every other program is being put in times of austerity. Rather than being posed as a single, but costly, alternative in a spectrum of approaches to crime, the death penalty operates at the extremes of political rhetoric. Candidates use the death penalty as a facile solution to crime which allows them to distinguish themselves by

the toughness of their position rather than its effectiveness.

The death penalty is much more expensive than its closest alternative—life imprisonment with no parole. Capital trials are longer and more expensive at every step than other murder trials. Pre-trial motions, expert witness investigations, jury selection, and the necessity for two trials—one on guilt and one on sentencing—make capital cases extremely costly, even before the appeals process begins. Guilty pleas are almost unheard of when the punishment is death. In addition, many of these trials result in a life sentence rather than the death penalty, so the state pays the cost of life imprisonment on top of the expensive trial.

The high price of the death penalty is often most keenly felt in those counties responsible for both the prosecution and defense of capital defendants. A single trial can mean near bankruptcy, tax increases, and the laying off of vital personnel. Trials costing a small county \$100,000 from unbudgeted funds are common and some officials have even gone to jail in resisting payment.

Nevertheless, politicians from prosecutors to presidents choose symbol over substance in their support of the death penalty. Campaign rhetoric becomes legislative policy with no analysis of whether the expense will produce any good for the people. The death penalty, in short, has been given a free ride. The expansion of the death penalty in America is on a collision course with a shrinking budget for crime prevention. It is time for politicians and the public to give this costly punishment a hard look.

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“When politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime.”

Introduction

Over two-thirds of the states and the federal government have installed an exorbitantly expensive system of capital punishment which has been a failure by any measure of effectiveness. Literally hundreds of millions of dollars have already been spent on a response to crime which is calculated to be carried out on a few people each year and which has done nothing to stem the rise in violent crime.

For years, candidates have been using the death penalty to portray themselves as tough on crime. But when politicians offer voters the death penalty as a solution to violence, the people actually become worse off in their fight against crime. The public is left with fewer resources and little discussion about proven crime prevention programs which could benefit their entire community. In today's depressed economy, the criminal justice system is breaking down for lack of funds while states pour more money into the black hole of capital punishment expense.

Local governments often bear the brunt of capital punishment costs and are particularly burdened. A single death penalty trial can exhaust a county's resources. Politicians singing the praises of the death penalty rarely address the question of whether a government's resources might be more effectively put to use in other methods of fighting crime. A million dollars spent pursuing the execution of one defendant

could provide far more effective long-term crime reduction: many additional police officers; speedier trials; or drug rehabilitation programs. Instead, in today's political atmosphere, politicians worry about appearing soft on crime, even if soft means espousing proven methods of crime reduction. Thus, there is little debate about whether the death penalty accomplishes any good at all.

Meanwhile, the death penalty is reaching a critical stage in America. No longer isolated in the South, the death penalty has become a national phenomenon. There are more people on death row than at any time in the nation's history. The list of states actually carrying out executions has grown to 20, with 4 new states added this year. The number of executions in 1992 is likely to be the largest in 30 years and the costs of pursuing the death penalty continue to mount. At the same time, the United States has parted company from the other democratic countries of the world which have largely abandoned capital punishment.

In the 1990 elections, politicians were particularly blatant in their promotion of the death penalty. It was advanced at all levels of the political process as an answer to crime and was used by liberals and conservatives alike. This year, the death

penalty rhetoric, while not as blatant, continues the charade: vital crime fighting programs are being cut while the high-priced death penalty goes unchecked.

Like the emperor's cowering subjects who praised his invisible robes, many politicians extol the death penalty as if it were a solution to the problem of crime. It is a cynical manipulation of the public's legitimate fear of the growing tide of violence: a symbol without substance, a "solution" for politicians who know that no credible evidence exists linking the death penalty to a reduction of murder.

This report will focus first on the role the death penalty plays in the economic crisis facing states and local governments. As budgets everywhere are being tightened, the death penalty looms as an exorbitant and superfluous "luxury item." Some counties have been pushed to the brink of bankruptcy and have had to enact repeated tax increases to fund these extremely expensive cases. As money is spent on the death penalty, it is thereby less available for the very programs which are the backbone of the effort to reduce crime in this country.

Secondly, the report will illustrate how politicians have manipulated the death penalty issue and avoided debate on the real causes of crime. Their approach has been typically marked by a simplistic rhetoric of revenge which ignores the ineffectiveness and costs of capital punishment. This superficial treatment comes

precisely at a time when the economic crisis in criminal justice and crime prevention demands that the death penalty be given a harder look.

The Financial Costs of the Death Penalty

Death penalty cases are much more expensive than other criminal cases and cost more than imprisonment for life with no possibility of parole. In California, capital trials are six times more costly than other murder trials.¹ A study in Kansas indicated that a capital trial costs \$116,700 more than an ordinary murder trial.² Complex pre-trial motions, lengthy jury selections, and expenses for expert witnesses are all likely to add to the costs in death penalty cases. The irreversibility of the death sentence requires courts to follow heightened due process in the preparation and course of the trial. The separate sentencing phase of the trial can take even longer than the guilt or innocence phase of the trial. And defendants are much more likely to insist on a trial when they are facing a possible death sentence. After conviction, there are constitutionally mandated appeals which involve both prosecution and defense costs.

Most of these costs occur in every case for which capital punishment is sought, regardless of the outcome. Thus, the true cost of the death penalty includes all the added expenses of the "unsuccessful" trials in which the death penalty is sought but not achieved. Moreover, if a defendant is convicted but not given the death sentence, the

state will still incur the costs of life imprisonment, in addition to the increased trial expenses.

For the states which employ the death penalty, this luxury comes at a high price. In Texas, a death penalty case costs taxpayers an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.³ In Florida, each execution is costing the state \$3.2 million.⁴ In financially strapped California, one report estimated that the state could save \$90 million each year by abolishing capital punishment.⁵ The New York Department of Correctional Services estimated that implementing the death penalty would cost the state about \$118 million annually.⁶

The Recession and the Death Penalty

The effects of the present financial crisis on the criminal justice system vary widely, but the common thread has been cutbacks in critical areas. In a report released in August of this year, the American Bar Association found that "*the justice system in many parts of the United States is on the verge of collapse due to inadequate funding and unbalanced funding.*" The report went on to state that "*the very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries.*"⁷

"The very notion of justice in the United States is threatened by a lack of adequate resources to operate the very system which has protected our rights for more than two centuries."

-American Bar Association

“Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone.... In this context, the proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility”

—Scott Harshbarger,
Attorney General of
Massachusetts

New Jersey, for example, laid off more than 500 police officers in 1991.⁸ At the same time, it was implementing a death penalty which would cost an estimated \$16 million per year,⁹ more than enough to hire the same number of officers at a salary of \$30,000 per year.

In Florida, a mid-year budget cut of \$45 million for the Department of Corrections forced the early release of 3,000 inmates.¹⁰ Yet, by 1988 Florida had spent \$57.2 million to accomplish the execution of 18 people.¹¹ It costs six times more to execute a person in Florida than to incarcerate a prisoner for life with no parole.¹² In contrast, Professors Richard Moran and Joseph Ellis estimated that the money it would take to implement the death penalty in New York for just five years would be enough to fund 250 additional police officers and build prisons for 6,000 inmates.¹³

Ten other states also reported early release of prisoners because of overcrowding and underfunding.¹⁴ In Texas, the early release of prisoners has meant that inmates are serving only 20 percent of their sentences and re-arrests are common.¹⁵ On the other hand, Texas spent an estimated \$183.2 million in just six years on the death penalty.¹⁶

Illinois built new prisons but does not have the funds to open them.¹⁷ It does, however, have the fourth largest death row in the country. Georgia's Department of Corrections lost over 900 positions¹⁸ in the past year while

local counties have had to raise taxes to pay for death penalty trials.

Police officers on the beat, imprisonment of offenders, and a functioning criminal justice and correctional system form the heart of the nation's response to crime. Yet, in state after state, these programs are suffering drastic cuts while the death penalty absorbs time, money and political attention.

The Cost to Local Governments

An increasingly significant consequence of the death penalty in the United States is the crushing financial burden it places on local governments. The current economic recession has made it clear that there is no unlimited source of government largesse. Counties, which bear the brunt of the costs of death penalty trials, are also the primary deliverers of local health and human services in the public sector.¹⁹ Hard choices have to be made among the demands of providing essential services, creative crime reduction programs such as community policing, and the vigorous pursuit of a few death penalty cases.

As Scott Harshbarger, Attorney General of Massachusetts, put it: “Virtually every major program designed to address the underlying causes of violence and to support the poor, vulnerable, powerless victims of crime is being cut even further to the bone. . . . In this context, the

proposition that the death penalty is a needed addition to our arsenal of weapons lacks credibility and is, as a sheer matter of equity, morally irresponsible. If this is really the best we can do, then our public value system is bankrupt and we have truly lost our way."²⁰

While state and national politicians promote the death penalty, the county government is typically responsible for the costs of prosecution and the costs of the criminal trial. In some cases, the county is also responsible for the costs of defending the indigent. Georgia, Alabama and Arkansas, for example, provide little or no funding for indigent defense from the state treasury.²¹ In Lincoln County, Georgia, citizens have had to face repeated tax increases just to fund one capital case.

Even where the state provides some of the money for the counties to pursue the death penalty, the burden on the county can be crushing. California, for example, was spending \$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. (Now, even that reimbursement is being cut.) But many financially strapped smaller counties still could not afford to prosecute the complicated death-penalty cases. Some small counties have only one prosecutor with little or no

experience in death-penalty cases, no investigators, and only a single Superior Court judge.²²

In Sierra County, California authorities had to cut police salaries in 1988 to pick up the tab of pursuing death penalty prosecutions. The County's District Attorney, James Reichle, complained, "If we didn't have to pay \$500,000 a pop for Sacramento's murders, I'd have an investigator and the sheriff would have a couple of extra deputies and we could do some lasting good for Sierra County law enforcement. The sewage system at the courthouse is failing, a bridge collapsed, there's no county library, no county park, and we have volunteer fire and volunteer search and rescue." The county's auditor, Don Hemphill, said that if death penalty expenses kept piling up, the county would soon be broke.²³ Just recently, Mr. Hemphill indicated that another death penalty case would likely require the county to lay off 10 percent of its police and sheriff force.²⁴

In Imperial County, California, the county supervisors refused to pay the bill for the defense of a man facing the death penalty because the case would bankrupt the county. The county budget officer spent three days in jail for refusing to pay the bill. A judge reviewing the case took away the county's right to seek the death penalty, thus costing the county the partial reimbursement which the state provided for capital cases. The County took the challenge all the way to the California Supreme Court and

"Even though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed."

—Norman Kinne,
Dallas County
District Attorney

ended up costing the County half a million dollars.²⁵ In the criminal trial, the defendant was acquitted.

A similar incident occurred recently in Lincoln County, Georgia. The county commissioners also refused to pay the defense costs when the attorney won a new trial for a death row inmate Johnny Lee Jones. As in California, the commissioners were sent to jail. Walker Norman, chair of the County Commission explained: "We're a rural county of 7,500 people with a small tax base. We had to raise taxes once already for this case when it was originally tried, and now we are going to have to raise taxes again. It's not fair."²⁶ The first trial alone cost the county \$125,000.²⁷ The second trial was completed in September and the defendant received a life sentence.

In Meriwether County, Georgia, a county of 21,000 residents and a \$4 million annual budget, the prosecutor sought the death penalty three times for Eddie Lee Spraggins, a mentally retarded man. The case cost the county \$84,000, not including the defense attorney's bill for appealing, and the third conviction was again overturned by the Georgia Supreme Court.²⁸ Spraggins was finally granted a plea and received a life sentence.

In Mississippi, Kemper and Lauderdale Counties recently conducted a border survey battle to avoid responsibility for a capital murder trial. Faced with a case that could cost the county

\$100,000, Kemper County wanted to show that the scene of the murder was outside their border and conducted two surveys of the site. County Supervisor Mike Luke explained, "As much as we were talking about the taxpayers of Kemper County having to pay out, we believed we needed to be sure." Luke said that the decision to seek the death penalty was not his—he only had to come up with the money. Lauderdale County, where the trial was originally scheduled, has now sent a bill to Kemper County for expenses incurred while holding the defendant in jail for 19 months. Kemper County is considering how much it will have to raise taxes just to pay the initial costs of the prosecution.²⁹

In Yazoo City, Mississippi, the town is worried that it, too, might get stuck with an expensive death penalty case. "A capital murder trial is the worst financial nightmare any government body could envision," said the editor of the local paper.³⁰

With more death row inmates and more executions than any other state, Texas is also experiencing the high costs of executions. Norman Kinne, Dallas County District Attorney, expressed his frustration at the expense:

"[E]ven though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his

life . . . I think maybe we have to be satisfied with that as opposed to spending \$1 million to try and get them executed. . . . I think we could use (the money) better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education, (and) especially devote a lot of attention to juveniles."³¹

Vincent Perini of the Texas Bar Association, calls the death penalty a "luxury": "There's some things that a modern American city and state have got to have. You have to have police and fire and public safety protection. You have to have a criminal justice system. You do not have to have a death penalty. The death penalty in criminal justice is kind of a luxury item. It's an add-on; it's an optional item when you buy your criminal justice vehicle."³²

Chief Criminal Judge, James Ellis, came to a similar conclusion in Oregon: "Whether you're for it or against it, I think the fact is that Oregon simply can't afford it."³³ James Exum, Chief Justice of the North Carolina Supreme Court, agrees: "I think those of us involved in prosecuting these (death penalty) cases have this uneasy notion that . . . these cases are very time-consuming and very troublesome and take a lot of resources that might be better spent on other kinds of crimes. . . ."

Efforts are under way in both Congress and the Supreme Court to reduce the avenues of appeal available to death row inmates. But most of the costs

associated with the death penalty occur at the trial level.³⁴

Whatever effect cutting back on the writ of habeas corpus may have on the time from trial to execution, it is not clear that the changes will make the death penalty any less expensive, and they may result in the execution of innocent people. With the number of people on death row growing each year, the overall costs of the death penalty are likely to increase.

Some state appeals courts are overwhelmed with death penalty cases. The California Supreme Court, for example, spends more than half its time reviewing death cases.³⁵ The Florida Supreme Court also spends about half its time on death penalty cases.³⁶ Many governors spend a significant percentage of their time reviewing clemency petitions and more will face this task as executions spread. As John Dixon, Chief Justice (Retired) of the Louisiana Supreme Court, said: "The people have a constitutional right to the death penalty and we'll do our best to make it work rationally. But you can see what it's doing. Capital punishment is destroying the system."³⁷

Alternatives for Reducing Crime

New York does not have the death penalty. In the early 1980s, the N.Y. State Defenders Association conducted a study to estimate how much the death penalty would cost if it were to be implemented in New York. The estimates were that each case

"The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."

—Scott Harshbarger,
Attorney General of
Massachusetts

would cost the state \$1.8 million, just for the trial and the first stages of appeal.³⁸ The majority of those costs would be borne by the local governments. New Yorkers have consistently re-elected a governor whom they know will veto any death penalty legislation which comes across his desk. Now it appears that New York may be reaping the benefit of that choice.

Significantly, no city in New York State, without the death penalty, is among the nation's top twenty-five cities in homicide rates according to statistics recently released by the FBI.³⁹ In particular, New York City bucked the national trend and experienced a decline in every major category of crime last year.⁴⁰ In the first four months of 1992, crime is again down across the board in New York, compared to the same period two years ago, with murders decreasing by over 11 percent.⁴¹

While direct causes for a decrease in crime are difficult to pinpoint, many experts have attributed New York's success to an increasingly popular concept known as community policing. Two years ago, New York had 750 foot officers on the street. Today that number is 3,000.⁴² Community policing is a strategy for utilizing police officers not just as people who react to crime, but also as people who solve problems by becoming an integral part of the neighborhoods they serve.

Such programs do not come cheaply, but they do seem to be effective. In Prince George's County, Maryland, police Capt. Terry Evans said their community policing program is "the only thing I've seen in 23 years of law enforcement that's had an impact, actually turned it around."⁴³ Fully implemented, Prince George's community policing program will cost the county \$10 million per year.

The programs apparently work best where governments can afford to add officers, rather than taking from existing numbers, leaving other work unattended. This is borne out in cities like Boston where murders dropped 23 percent in 1991, partly because of a program that put more police officers on the beat.⁴⁴ The need for more police officers is supported by a survey of Chiefs of Police from around the country, 70 percent of whom said they could no longer provide the type of crime prevention activities they did ten years ago because of too few police officers.⁴⁵

Boston, like New York, is in a state without the death penalty, though Governor William Weld (R-Mass.) has been attempting to re-instate it. That proposal has met with opposition from the state's district attorneys. Judd Carhart, past president of the district attorneys' association said a majority of the state's district attorneys oppose capital

punishment partially on the grounds that it is a waste of money better spent on other areas of law enforcement and incarceration.⁴⁶ Attorney General Scott Harshbarger agreed: "We need major criminal justice and court reform now to address the crisis in our criminal justice system. The death penalty, however, has no place in this reform effort. It is a simplistic, arbitrary, misguided, ineffective and costly response, cloaked in the guise of a remedy to the brutalizing violence that angers and frustrates us all."⁴⁷

Compared to community policing and other successful programs, the death penalty, for all its cost, appears to have no effect on crime. A New York Times editorial noted recently that the number of executions in this country "constituted less than .001 percent of all murderers . . . and were only .000004 percent of all violent criminals. Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice." The public seems to agree: only 13 percent of those who support capital punishment believe it deters crime.⁴⁸

New York and Massachusetts can be contrasted with Texas which is the nation's leader in the use of the death penalty. Texas has the largest

death row and has executed almost twice as many people as the next leading state. Houston alone accounts for 10% of all people executed in the United States since 1976.⁴⁹ Yet, the murder rates in three of Texas' major cities rank among the nation's top 25 cities. In all three, Houston, Dallas and Fort Worth, the number of murders increased significantly last year.⁵⁰

Wherever the death penalty is in place, it siphons off resources which could be going to the front line in the war against crime: to police, to correctional systems, and to neighborhood programs which have proven effective. Instead, these essential services are repeatedly cut while the death penalty continues to expand. Politicians could address this crisis, but, for the most part, they either endorse executions or remain silent.

"Even if U.S. executions were multiplied by a factor of 10 they would still constitute an infinitesimal element of criminal justice."

—New York Times
editorial, 1992

Political Manipulation of the Death Penalty

What drives this high spending on such an ineffective program? The answer lies partly in the promotion by politicians who hope to benefit by advocating the death penalty. Even though it fails to meet the cost-benefit test applied to other government programs, many politicians use capital punishment to distinguish themselves from their opponents. Politicians have generally not posed the death penalty as one alternative among a limited number of crime fighting initiatives which the people must ultimately pay for. Rather, the death penalty is used to play on the public's fear of crime and to create an atmosphere in which the extreme view wins. The rhetoric then becomes policy and the people pay.

The Death Penalty in National Politics

Flush with his party's convincing victory in the 1988 Presidential elections, Republican National Chairman Lee Atwater urged his fellow Republicans to capitalize on the issue of crime because "almost every Democrat out there running is opposed to the death penalty."⁵¹ Apparently, the Democrats were listening as well since politicians of all stripes rushed to proclaim their support of capital punishment.

From Florida to California, the political races in 1990 were marked by excessive attempts by

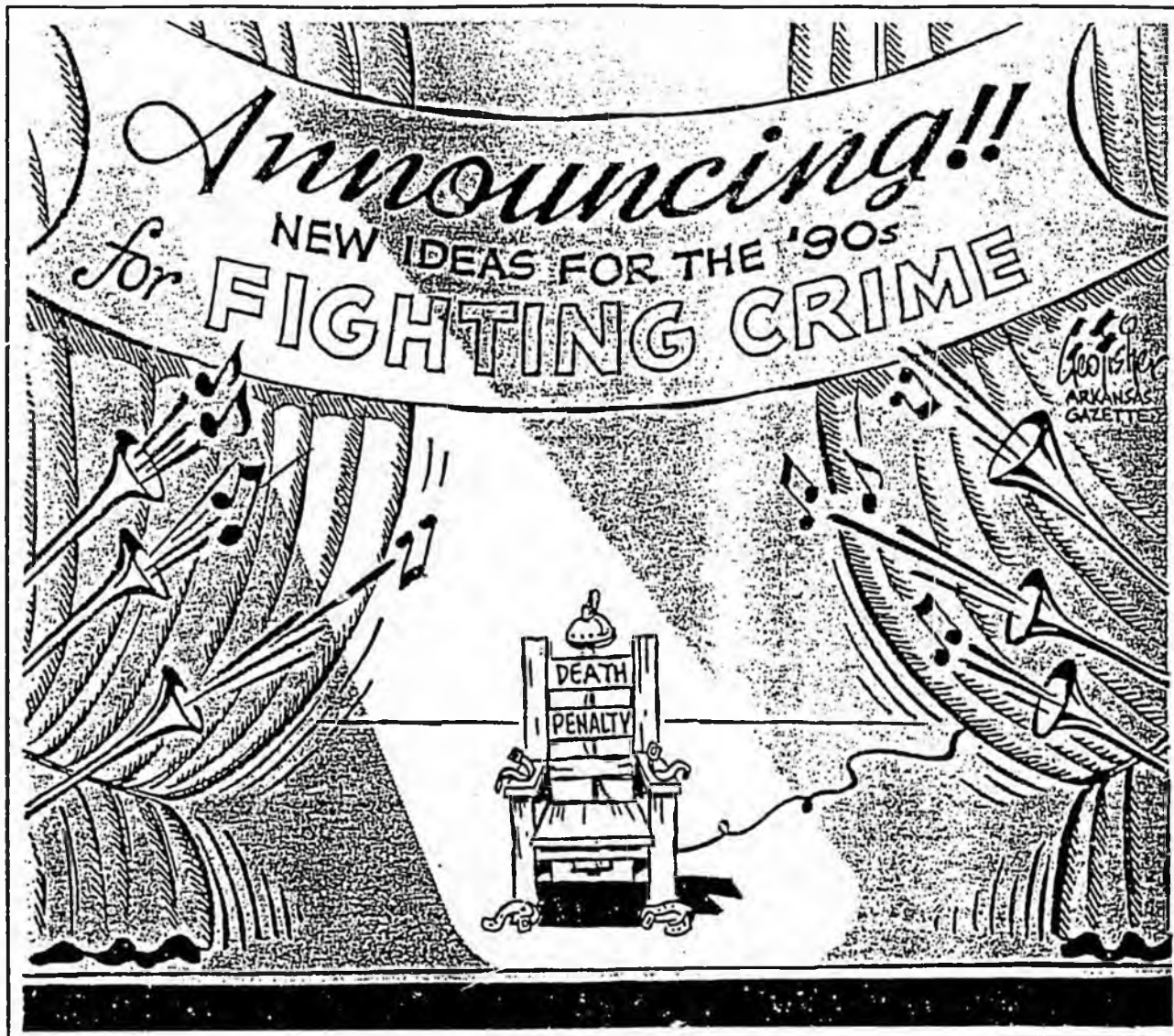
politicians to appear tougher on crime by their willingness to execute people. Ironically, those who were most demonstrative about the death penalty were defeated, though seldom by opponents of capital punishment.

In this election year, the national political debate on the death penalty is more conspicuous for its silence. The utility of the death penalty as a defining issue was lost when most of the Democratic Presidential candidates supported the death penalty. George Bush, Bill Clinton and Ross Perot are all in favor of the death penalty, though none has made it a major campaign issue.

George Bush: From Willie Horton to the Crime Bill

In the previous campaign, George Bush was able to link a furlough for convicted murderer Willie Horton with Michael Dukakis' position against the death penalty, thus portraying Dukakis as soft on crime. This time, President Bush has sought to convey a tough image by his support for a greatly expanded federal death penalty. When recent unemployment figures indicated that the economy was going to be a negative for the Bush campaign, his advisers called for a greater emphasis on crime to bolster the President's popularity.⁵²

In 1990, President Bush sought to identify the Republican Party as tough on crime. He introduced a crime bill whose



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centerpiece was an expansion of the federal death penalty to over 40 new crimes. Not to be outdone, the Democrats endorsed a bill allowing the death penalty in over 50 new crimes. Despite two years of debate and attempts to expand the death penalty even further, the bill remains in political gridlock. While the bill's death penalty provisions and restrictions on federal habeas corpus appeals have received the most notice, proposals for law enforcement, prison construction, boot camps

and other crime fighting provisions have received little attention.

Just prior to the last presidential election in 1988, the death penalty was also promoted as a way of appearing tough on drug crime. Legislation was passed imposing the death penalty in drug-related murders but that law has resulted in only seven prosecutions and one death sentence in almost four years. Bush's bill is designed to have a much broader application. However, some parts of the

"What they mean when they say they're 'getting tough' is simply that they are talking tough."

—Franklin Zimring,
Earl Warren Legal
Institute

current bill are also window dressing, having little to do with the public's concern about crime.

The crime bill would impose death sentences for such offenses as treason, espionage, murder in the act of destroying a maritime platform, murder of federal egg product inspectors, horse inspectors and poultry inspectors. These proposals will have no real impact on crime in the streets, which is the rationale for proposing such legislation. As one legal commentator put it: "What they mean when they say they're 'getting tough' is simply that they are talking tough."⁵³

An expanded federal death penalty could also prove to be enormously expensive. One amendment approved by the Senate would impose the death penalty for murders involving weapons used in interstate commerce. The Congressional Budget Office estimated that this proposal would cost as much as \$600 million over four years.⁵⁴

Senator Thomas Daschle (D.-SD) described much of the talk about the death penalty on Capitol Hill as political posturing: "We debate in codes, like the death penalty as a code for toughness on crime. The whole game is a rush to acquire the code: he who gets the code first wins. . . . It denigrates the national debate."⁵⁵

Bill Clinton: Insulating Himself from Attack

Although Clinton's pro-death penalty stance has partially neutralized Bush's use of this

tactic in the current campaign, or the death penalty one can never be tough enough. For example, Vice President Dan Quayle recently attacked Clinton for being soft on capital punishment (despite having presided over four executions as Arkansas Governor) because Clinton had suggested that Gov. Mario Cuomo (D-NY) might make a good Supreme Court Justice.⁵⁶

Bill Clinton has criticized Bush's manipulation of the death penalty issue: "President Bush has used an expansion of the death penalty as a cover for actually weakening the partnership of the federal government in the fight against crime."⁵⁷ However, Clinton bowed to the popular wisdom when he made a prominent demonstration of his support for the death penalty by leaving the primary campaign in January to preside over the execution of a brain damaged defendant in Arkansas.

Ever since he lost the Governor's race in Arkansas after serving only one term, Clinton has made clear his support for the death penalty. Clinton returned to office as Governor in 1983 and has granted no commutations to anyone on death row and has presided over all four of the state's executions in the modern era. However, as Arkansas was returning to executions, its murder rate was increasing: murders in Little Rock, alone, jumped 40 percent in the past year.⁵⁸

The Death Penalty in State Politics

The death penalty is almost the exclusive function of the states rather than the federal government. It is not surprising, then, that some of the most blatant attempts at political manipulation of the death penalty have occurred on the level of state politics.

Florida and Texas are two states with the largest death rows and most active execution chambers. They were also the scene of recent gubernatorial races featuring candidates boasting of their ability to secure more executions than their opponent. In 1990, Florida's Governor Bob Martinez campaigned with background shots of smirking serial killer Ted Bundy, while reminding the voters how many death warrants he had signed. Martinez was defeated by Democrat Lawton Chiles who also favors the death penalty.

The Texas Campaign: "Who Can Kill the Most Texans?"

The governor's race in Texas presented a variety of candidates vying to demonstrate their greater support of the death penalty. As populist Democrat Jim Hightower put it, the race boiled down to one issue: "Who can kill the most Texans?"⁵⁹

Former governor Mark White portrayed his toughness by walking through a display of large photos of the people executed during his term. Attorney General Jim Mattox

insisted that he was the one who should be given credit for the 32 executions carried out under his watch. Meanwhile, the Republican candidate, Clayton Williams showed pictures of a simulated kidnapping of young children from a school yard and then touted his backing of a separate law to impose the death penalty for killing children. His ad ended with the slogan: "That's the way to make Texas great again."⁶⁰

In the end, the campaigns succeeded only in gaining embarrassing notoriety for Texas as Democrat Ann Richards became the eventual winner. Richards has continued Texas' leadership in carrying out the most executions of any state. However, while Texas is spending hundreds of millions of dollars on the death penalty, it is having to release other prisoners early to avoid overcrowding. Inmates serve only an average of one-fifth of their sentences. In Harris County (Houston), arguably the death penalty capital of the country, 67 percent of those arrested are recidivists and crime is the people's number one concern.⁶¹

California Politics: A Case of Neglect

California's 1990 gubernatorial race also involved jockeying for the position of "death penalty candidate." Dianne Feinstein was the most outspoken, describing herself in commercials as "the only Democratic candidate for governor in favor of the death

penalty."⁶² This ploy caused her Democratic rival, John Van de Kamp, to respond with ads assuring the voters that he wouldn't let his conscience get in the way of carrying out executions. Although personally opposed to the death penalty, his ads proclaimed his record as attorney general of putting or keeping almost 300 people on California's death row and featured pictures of the condemned inmates in the background.

Van de Kamp lost to Feinstein and Feinstein then lost to Republican Pete Wilson, another strident pro-death penalty candidate. This year Feinstein is running for the Senate and all 11 of the major candidates for California's two Senate seats support the death penalty.⁶³

California is in the throes of an extreme financial crisis. The state paid its workers with IOUs for two months and most social services are facing major cuts. Los Angeles County alone is considering laying off 500 sheriff's deputies to cope with the loss of state funds. Such cuts are likely to have a direct effect on public safety. As one official remarked, "The public doesn't seem to have a heightened sense of urgency about this yet, and I don't think they ever will—until they become victims themselves."⁶⁴ Nevertheless, the state has been paying an estimated \$90 million per year over normal costs to carry out the death penalty.⁶⁵ With over 300

people condemned to death, California has the second largest death row in the country.

The Los Angeles riots were a stark reminder of the anger which simmers as a result of social neglect. Reforms like community policing were contemplated in L.A. but were viewed skeptically by former Police Chief Daryl Gates because no funds were available: "The first problem," Gates said in his new book, "is the need for more officers. But again, how much more can taxpayers be asked to pay?"⁶⁶ As a result, L.A.'s police force was described by one expert as "the antithesis of community policing. The department was cool, aloof, disconnected from the community."⁶⁷ The city burned.

New York Politics: Grandstanding on the Death Penalty

New York illustrates that voters are not monolithic when it comes to the death penalty. Although more executions have been carried out in New York since 1900 than in any other state, it does not have the death penalty now and has not executed anyone since 1963. For ten straight years, the state legislature has passed death penalty legislation and for ten years Governor Cuomo has vetoed the bills, continuing the tradition of Governor Hugh Carey before him. Although the majority of New Yorkers appears to support capital punishment, Cuomo has been re-elected

repeatedly. Cuomo's 1990 Republican opponent, Pierre Rinfret, built a campaign around the death penalty but failed to win voter support. Even fellow Republican and death penalty supporter Jack Kemp rejected such blatant manipulation:

"He's running on the death penalty for drug pushers. I mean, goodness gracious, if . . . that's what politics has descended into in the 1990s—who can get to the far right on the death penalty—it is a sad day. . . . I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."⁶⁸

The New York legislature has often come close to overriding Cuomo's veto. Lately, however, that movement has been losing steam. The controversy demonstrates that switching one's allegiance on the death penalty issue to join the mainstream is not always a ticket to electoral success. In the 1990 elections, three Assemblymen who once opposed the death penalty, but who had lately switched their votes, were all defeated.⁶⁹ As a result, the vote to override Cuomo's veto lost by a larger margin in the next session.

The New York Daily News, long a supporter of the death penalty with such subtle

headlines as FRY HIM!, has apparently become frustrated with the political games-playing surrounding the issue and now rejects the death penalty. In an editorial earlier this year, the News took particular aim at those pro-death penalty politicians who vote against the alternative sentence of life-without-parole because it would make their own death penalty bill harder to pass: "Why won't the Legislature adopt the obvious alternative—life without parole? Because pols would rather grandstand on the death penalty. It is cheap political expedience, not wise public policy."⁷⁰

The death penalty's chief proponent in the New York Assembly, Vincent Graber from Buffalo, acknowledged the kind of manipulation the News criticized. Graber admitted that the life-without-parole bill was rejected because it interfered with the quest for capital punishment: "This being an election year," Graber said in 1990, "I don't think the Senate is in the mood to go with mandatory life, no parole. The death penalty would become less of a campaign issue and I don't think they want to do that."⁷¹

Politics in Other Places

Politicians are quick to capitalize on an opportunity to promote the death penalty. Massachusetts does not have the death penalty, but when Carol Stuart, a young white, pregnant woman, was brutally murdered in 1989, the city of Boston reacted in angry shock. The media and

"I don't want to be in the Republican Party of New York if that's all they can talk about, the death penalty. I am for the death penalty, but that pales in significance to the need for a healthy economic and opportunity-oriented state, whether it is New York or the state of the economy nationally."

—Jack Kemp,
Secretary of HUD

the public were misled to believe that a young black man was the attacker and the Republican Party called a press conference within hours of Stuart's death demanding a return to capital punishment.⁷² After the embarrassing truth came out that Stuart was probably murdered by her own husband, the campaign fizzled.

In Arizona, state Representative Leslie Johnson (R-Mesa) called for the death penalty for child molesters after a particularly horrendous crime in Yuma. On the floor of the House, Johnson proposed the quick fix: "If we do away with these people, if we do have the death penalty and if you are a sex offender, you're just out of here — dead, gone. And if we get a few innocent people, fine and dandy with me. I'll take the percentage, folks, because I don't want to put my children at risk anymore."⁷³

And in the District of Columbia, Senator Richard Shelby (D-Ala.) proposed that the death penalty be enacted for the city by Congress after one of his aides was killed on Capitol Hill. Congress responded by cutting out the Mayor's \$25 million youth and anti-crime initiative while imposing a referendum on the death penalty. The hidden but inevitable costs resulting from having capital punishment were not addressed in the appropriations bill. But if the experience of other states is any indication, it will be years before any execution is carried out, after

an expenditure of as much as \$100 million, either from federal or DC funds.

Finally, the death penalty is manipulated by those politicians who are closest to it: the elected state attorneys and prosecutors who make the decisions on which cases to pursue the ultimate punishment. A campaign advertisement for district attorney Bob Roberts of North Carolina, for example, lists all the defendants for whom he won a death sentence. His slogan: "If one of your loved ones is murdered, who do you want to try the accused? Bob Roberts with his splendid record and experience or his inexperienced opponent."⁷⁴

As a public defender, attorney general Grant Woods of Arizona had argued before a judge that it would be murder if the judge sentenced his innocent client to death. Now, as chief prosecutor and staunch defender of the death penalty, Woods turned on his client, Murray Hooper, saying he is guilty and deserves the death penalty. Since Hooper is still on death row, such a representation has raised questions of legal ethics and client loyalty. Woods claims he is just doing his job.⁷⁵

A district attorney in Georgia, Joseph Briley, was also charged with numerous breaches of legal ethics in a Supreme Court amicus brief signed by 12 legal ethics professors from around the country. When the conviction of Tony Amadeo was overturned, Briley first announced that he would again

seek the death penalty. However, he later allowed the defendant to plead guilty in exchange for a life sentence after the defense proffered three expert witnesses to testify that his ethical violations should disqualify him from retrying the case. Briley's frustration at having to take the plea was summed up in his comment to one of the defense attorneys: "You've probably made me unelectable."⁷⁶

In Kentucky, Commonwealth Attorney Ernest Jasmin made a name for himself by obtaining a death sentence against the killer of two teenagers from Trinity High School. He then campaigned as the Trinity Prosecutor, taking ads in the high school newspaper and campaigning with one of the victims' parents frequently at his side.⁷⁷

In Nebraska, attorney general Don Stenberg took the unusual step of attaching a personal letter to his Supreme Court brief urging the execution of Harold Otey, whom he described as a "vicious killer" who "still smirks at the family of the victim...."⁷⁸ While pushing publicly for Otey's death, Stenberg also sat as one of three decision makers at Otey's clemency hearing and two of his staff presented gruesome details of the murder.

In sum, there has been a steady stream of politicians attempting to capitalize on the death penalty issue in recent years. Real solutions to crime get overshadowed in the tough

talk of capital punishment. When some of these politicians are successful, the death penalty gets implemented or expanded and the people begin to pay the high costs. Somewhere down the road there may be an execution, but the crime rate continues to increase. Politicians do the people a disservice by avoiding the hard economic choices that have to be made between the death penalty and more credible methods of reducing violence.

Conclusion

The death penalty is parading through the streets of America as if it were clothed in the finest robes of criminal justice. Most politicians applaud its finery; others stare in silence, too timid to proclaim that the emperor has no clothes. Instead of confronting the twin crises of the economy and violence, politicians offer the death penalty as if it were a meaningful solution to crime. At the same time, more effective and vital services to the community are being sacrificed. Voters should be told the truth about the death penalty. They should understand that there are programs that do work in reducing crime, but the resources to pay for such programs are being diverted into show executions. Being sensible about crime is not being soft on crime. Too much is at stake to allow political manipulation to silence the truth about the death penalty in America.

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