

SB

127

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} here 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 narcissitic 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 107, 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 commission of murder, I submit that ^{the} lack in deterrent effect heretofore indicated results, ~~from~~ not from the punishment itself, but from a failure by the judiciary to impose and carry out capital punishment in a consistent and unswerving manner.

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

Signed:

CHARLES B. DEAN / C B D

Testifier

PRO SE

Representing (Optional)

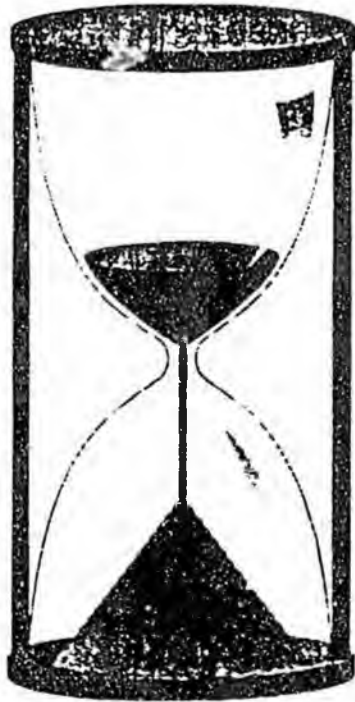
P.O. Box 2282, SITKA, AK 99835

Address

907-747-1072

Phone No.

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.

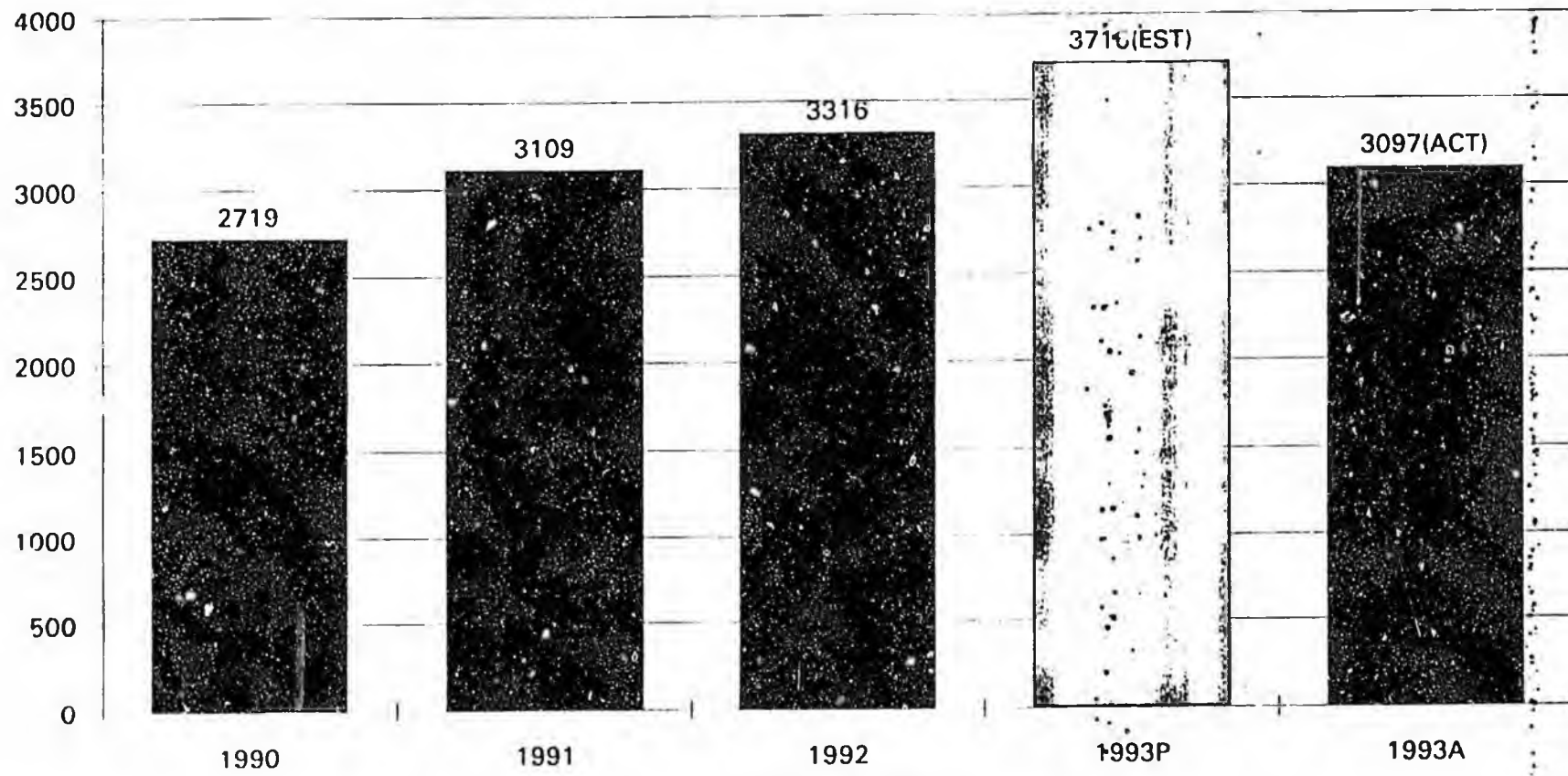
one
BURGLARY
every 1 hour 41 min.

one
LARCENY - THEFT
every 25 min. 38 sec.

one
MOTOR VEHICLE THEFT
every 3 hours 2 min.

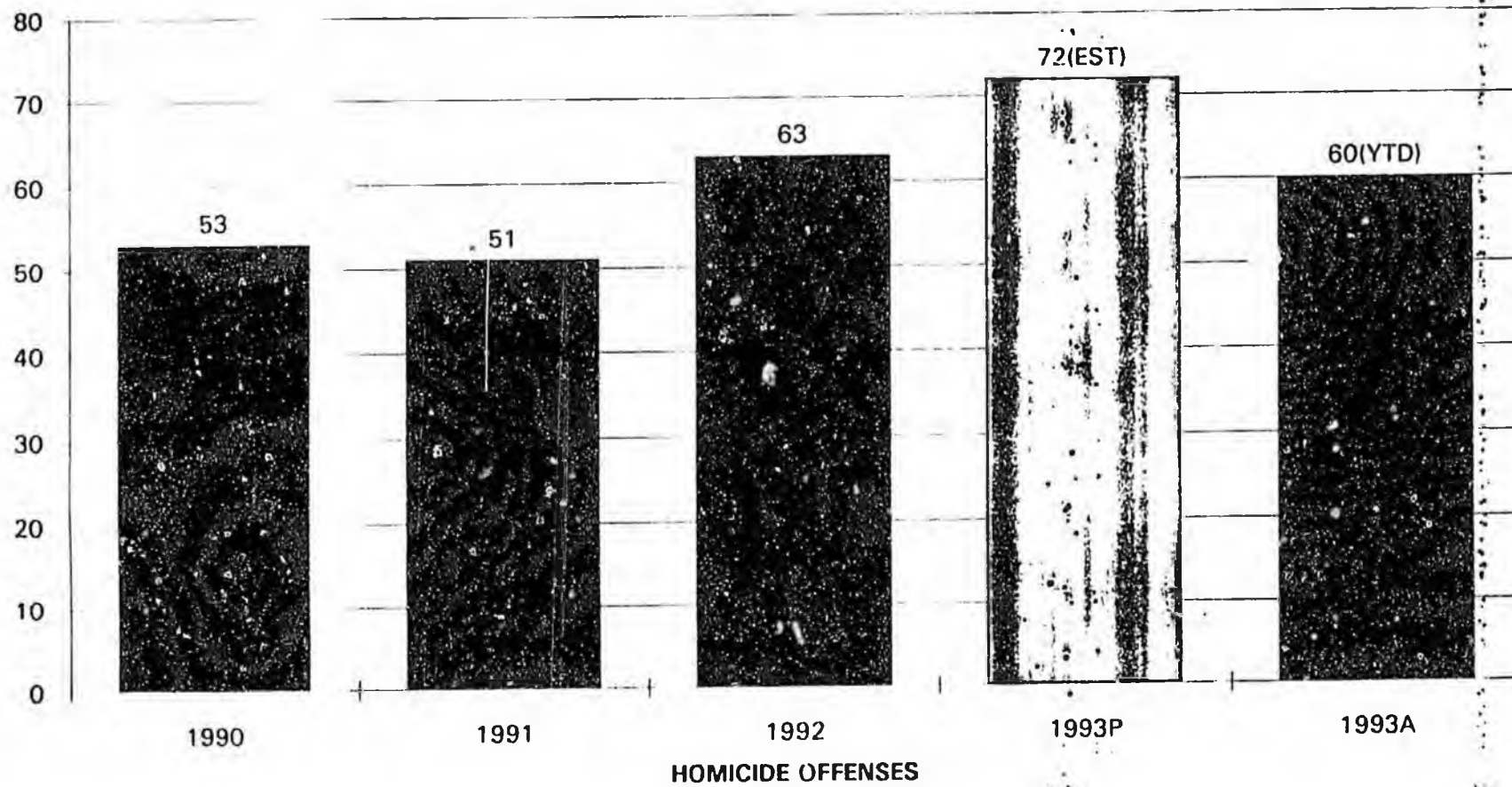
The crime clock should be viewed with care. Being the most aggregate representation of UCR data, it is designed to convey the annual reported crime experience by showing the relative frequency of occurrence of the Index Offenses. This mode of display should not be taken to imply a regularity in the commission of the Part I Offenses; rather, it represents the annual ratio of reported crime to fixed time intervals.

ALASKA STATE TROOPERS

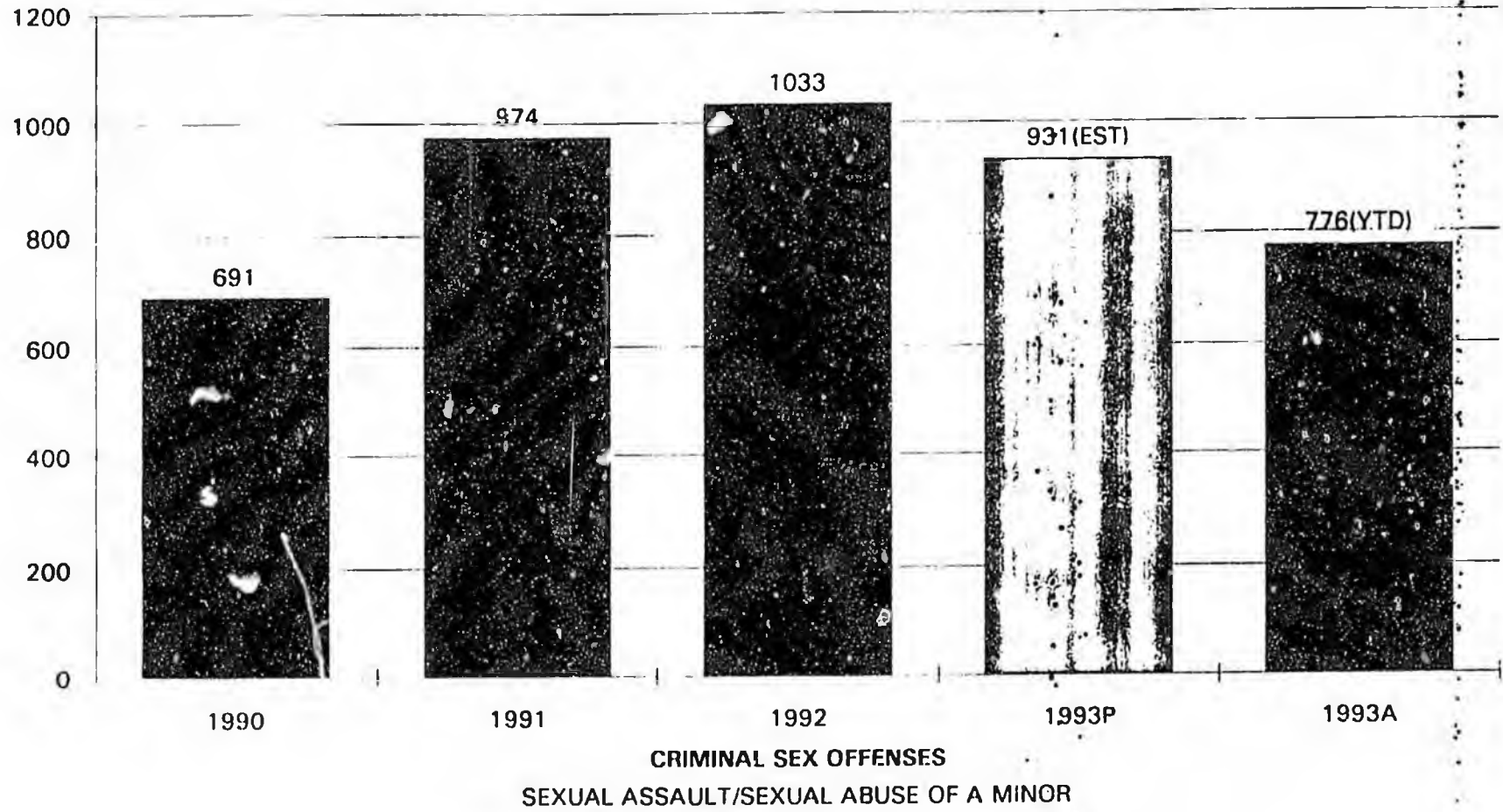


VIOLENT OFFENSES
HOMICIDE/ASSAULT/SEXUAL ASSAULT/ROBBERY

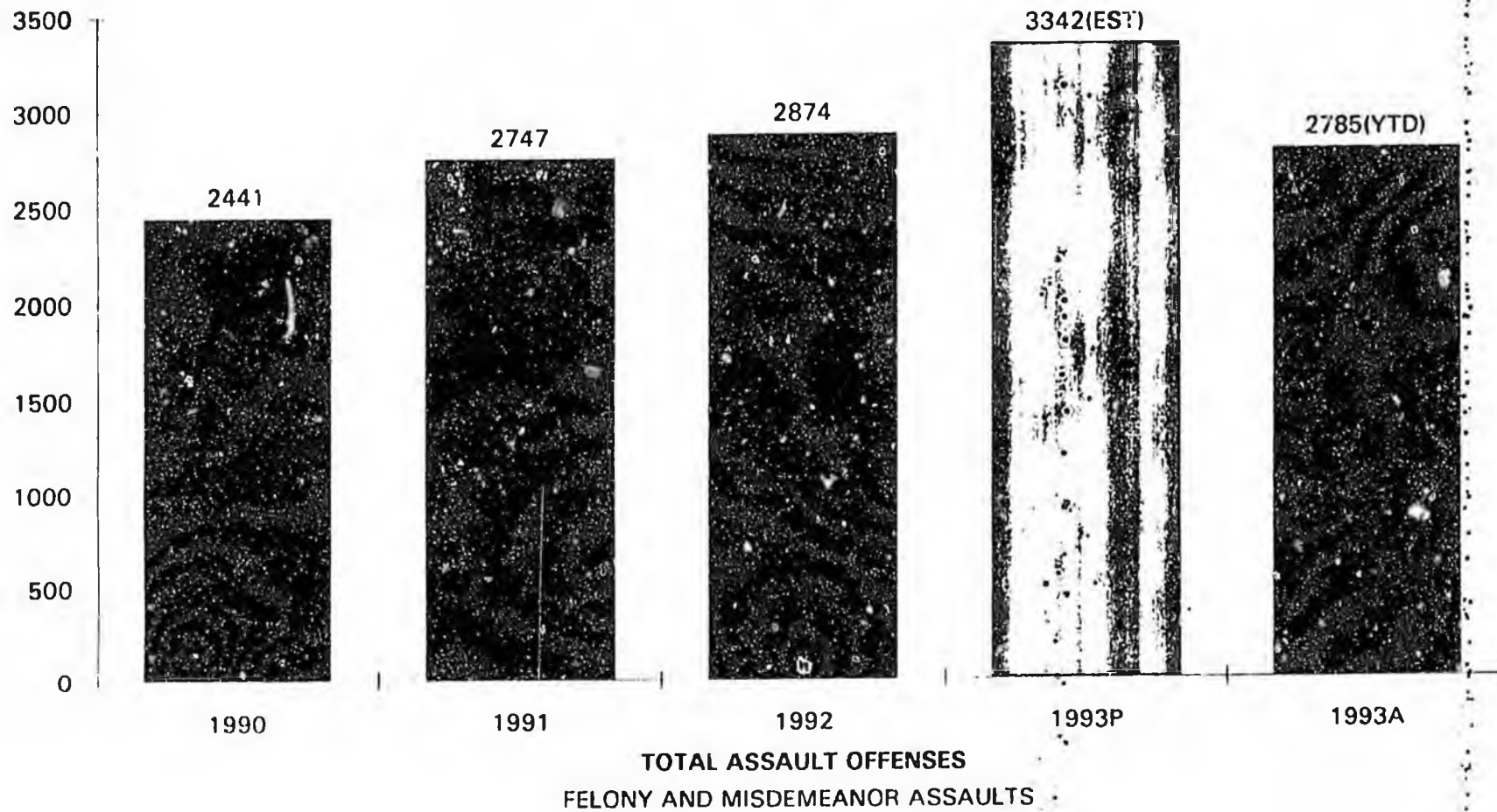
ALASKA STATE TROOPERS



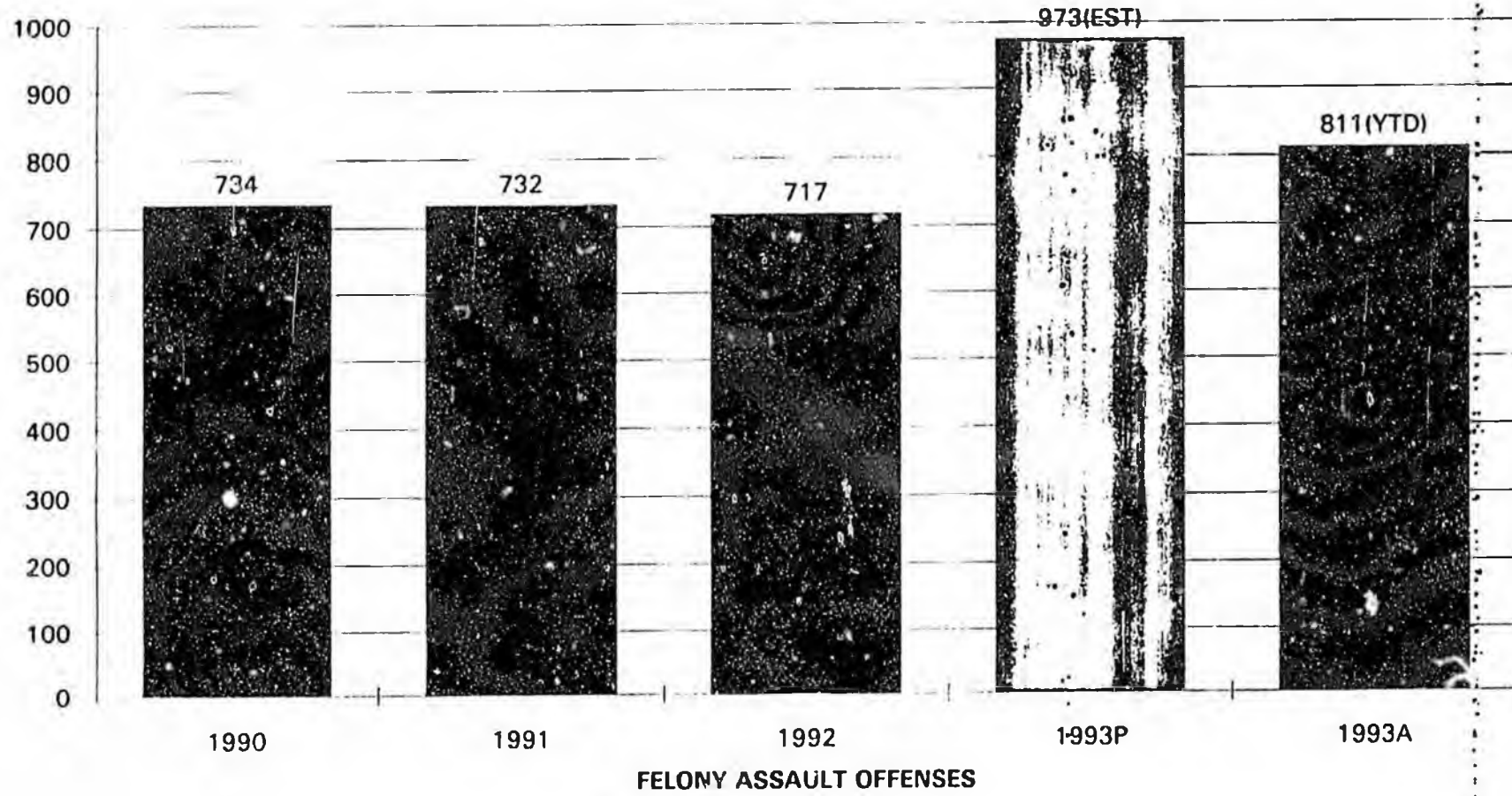
ALASKA STATE TROOPERS



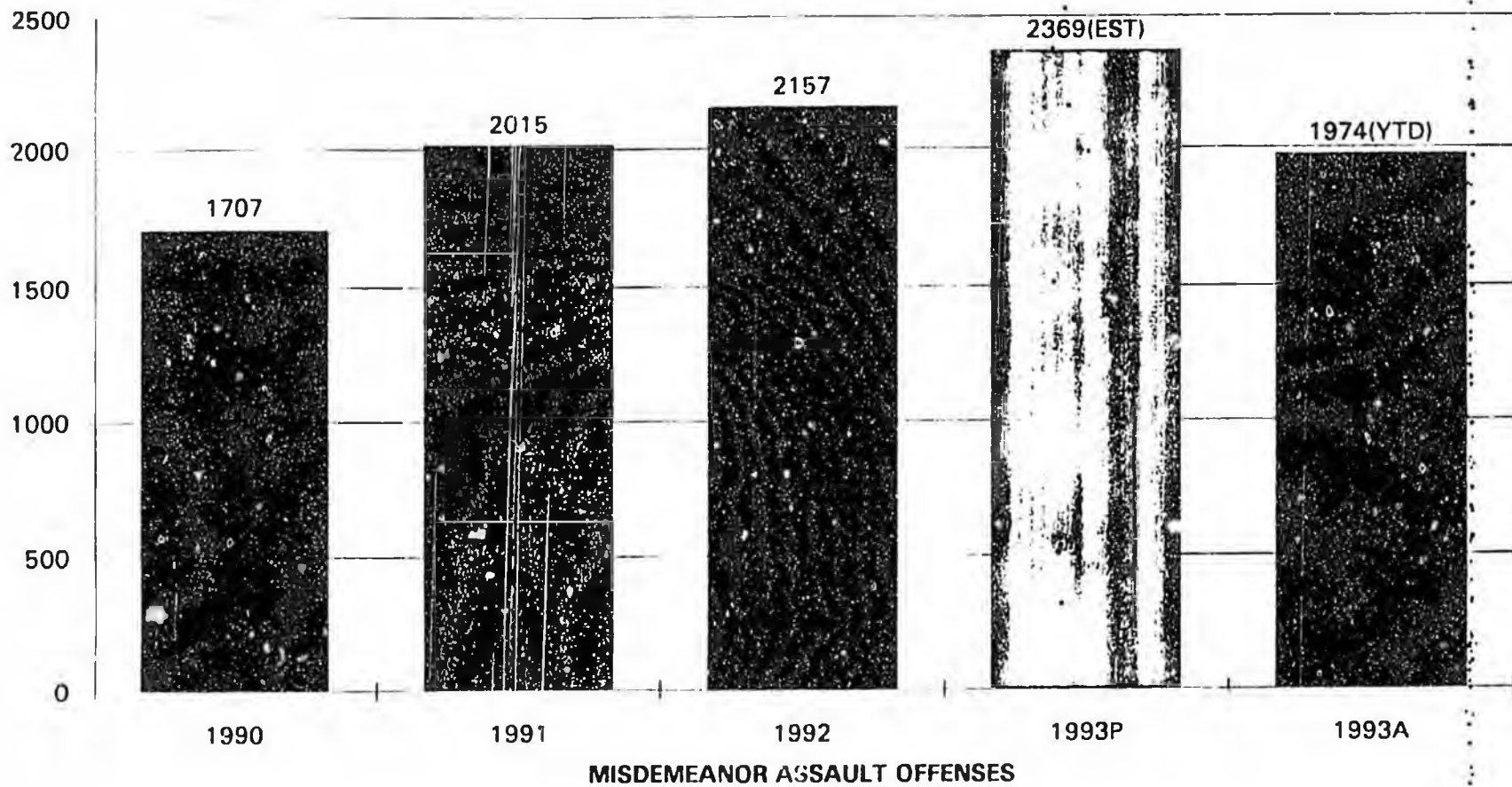
ALASKA STATE TROOPERS



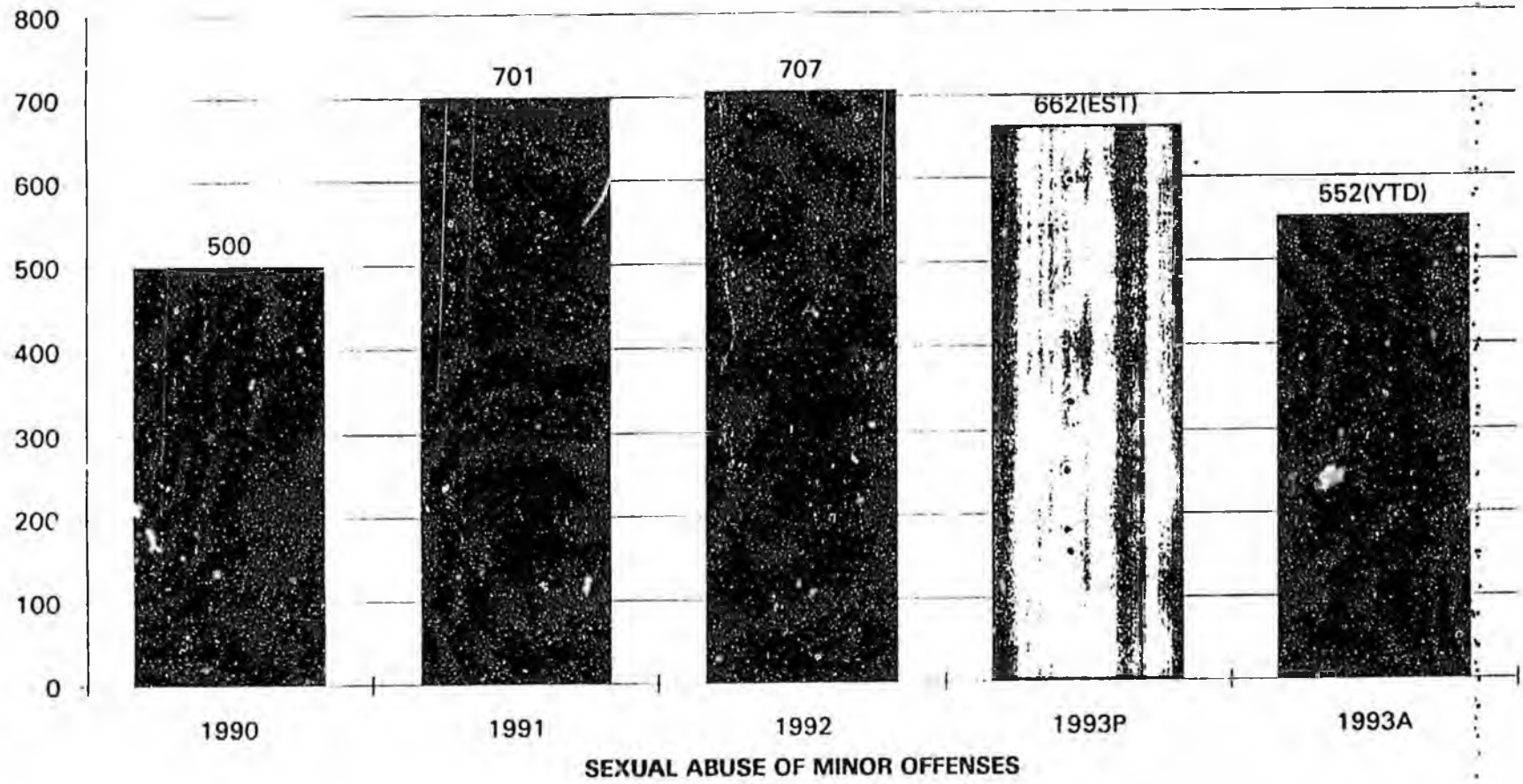
ALASKA STATE TROOPERS



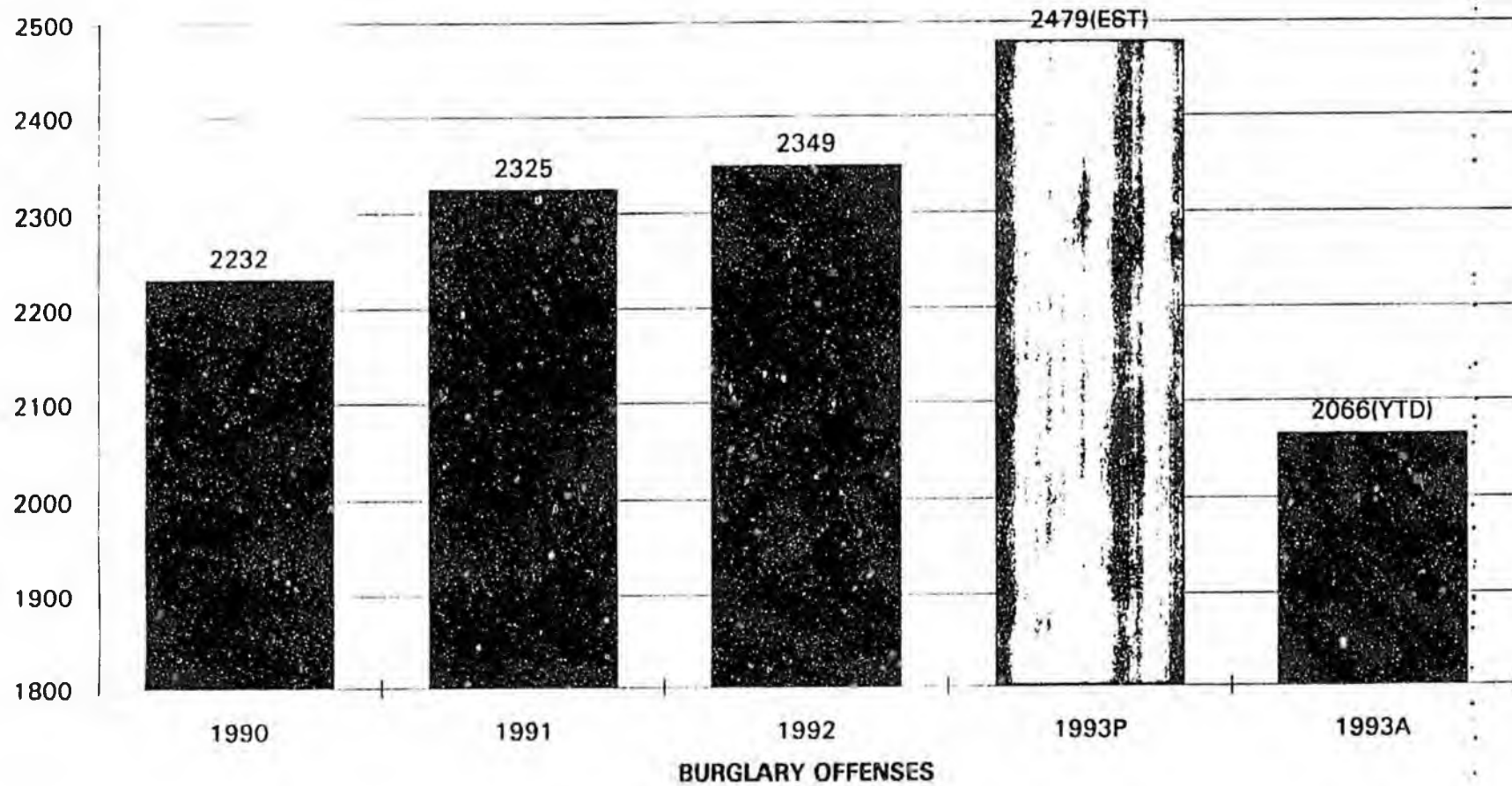
ALASKA STATE TROOPERS



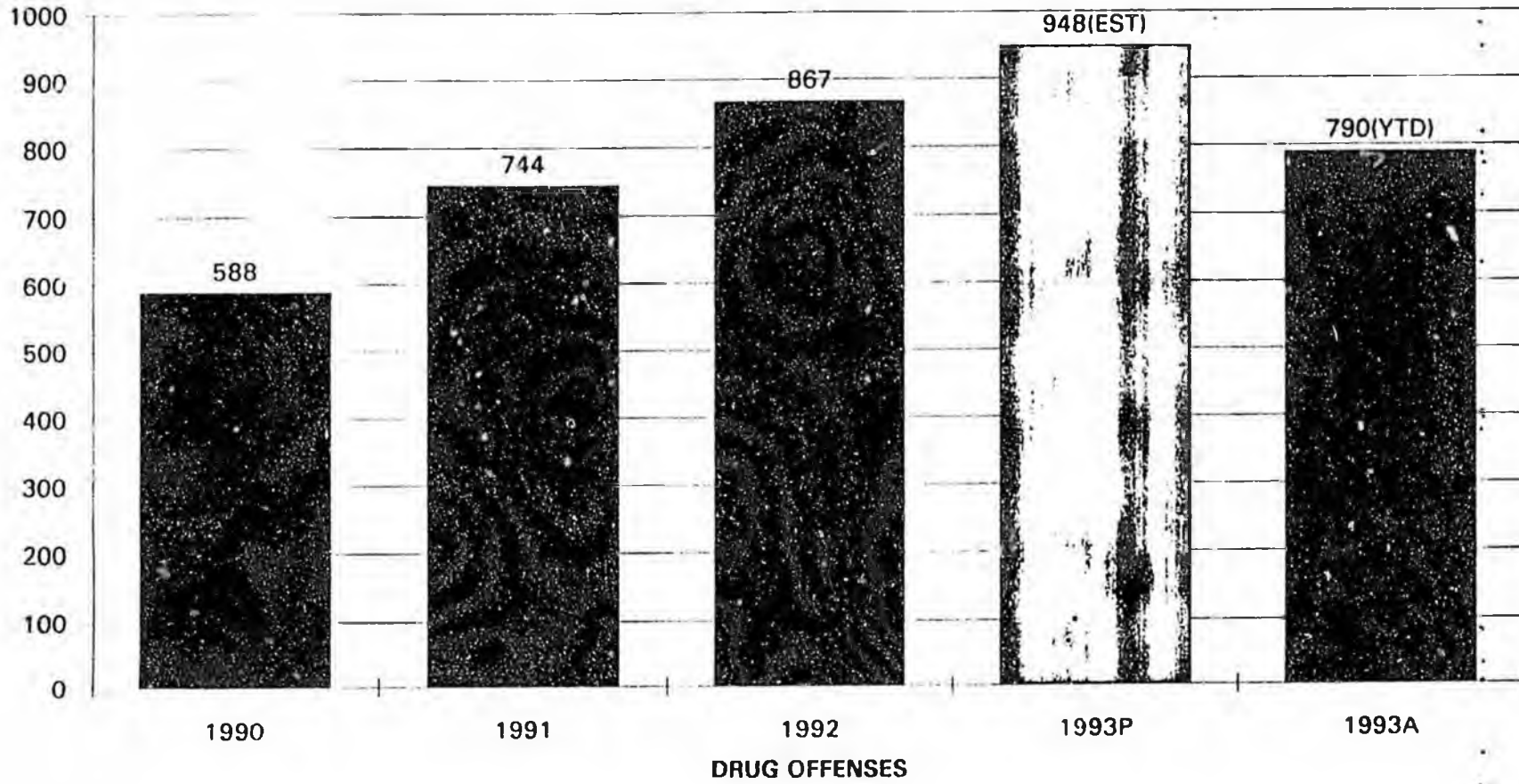
ALASKA STATE TROOPERS



ALASKA STATE TROOPERS



ALASKA STATE TROOPERS



1982

BOMBING INCIDENTS

1992

BY YEAR

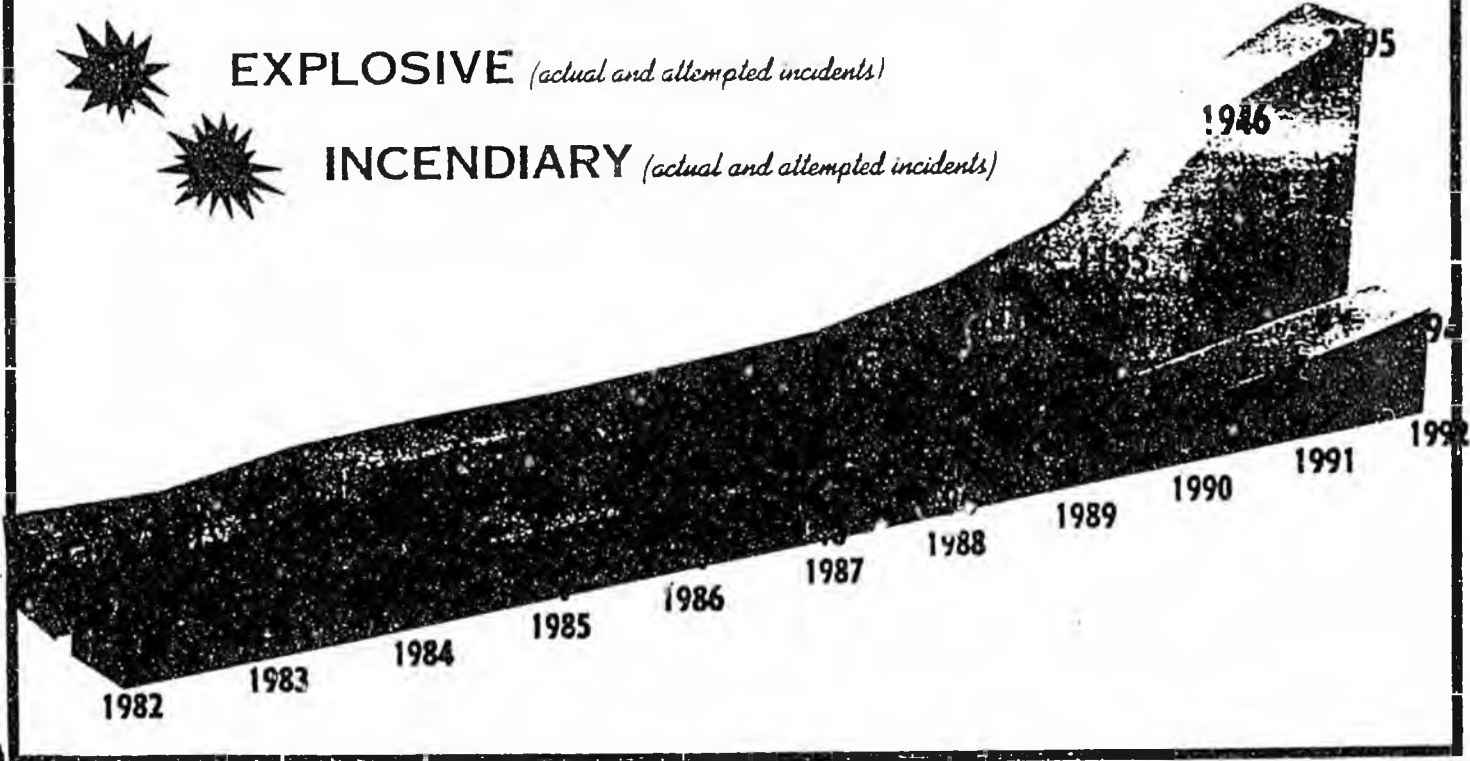
	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
TOTAL	795	687	803	847	858	848	977	1208	1582	2499	2989
EXPLOSIVE	485	442	518	575	580	600	593	641	931	1551	1911
INCENDIARY	194	127	127	102	129	104	156	203	267	423	582
EXPLOSIVE	77	77	118	113	101	102	161	243	254	395	384
INCENDIARY	39	41	40	57	48	42	40	91	130	130	112
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



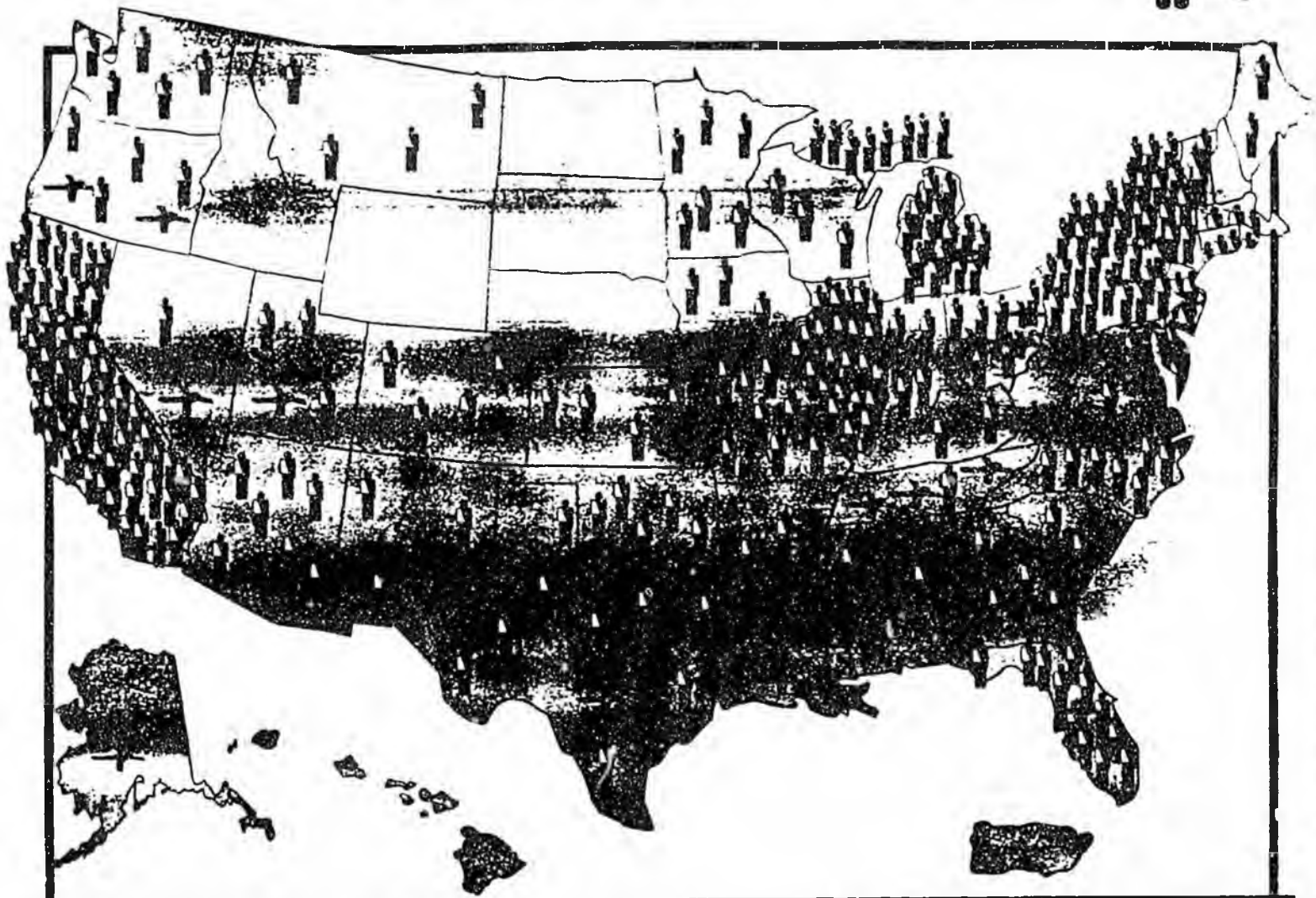
EXPLOSIVE (actual and attempted incidents)



INCENDIARY (actual and attempted incidents)



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	2	3	MA	3	-	PR	-	-
CO	56	3	MI	3	1	RI	3	-
CT	4	-	MN	28	1	SC	2	-
DE	3	-	MS	6	-	SD	2	-
DC	-	2	MO	1	-	TN	1	3
FL	2	2	MT	8	-	TX	9	1
GA	12	1	NE	4	-	UT	3	2
HI	4	-	NV	-	-	VT	3	-
ID	-	-	NH	1	1	VA	3	-
IL	-	-	NJ	1	1	WA	1	-
IN	39	1	NM	17	1	WV	5	-
IA	4	-	NY	3	1	WI	3	-
LA	4	-	NC	33	-	WY	3	-
KS	3	-	ND	7	-	TOTAL	349	26
	4	-		-	-			



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 ~~THAT~~ 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.

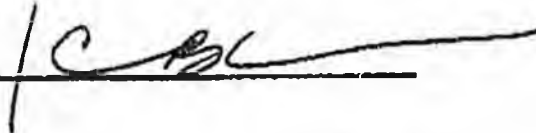


Alaska State Legislature

Please enter into the record my testimony to the 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 ~~that~~ lack in deterrent effect heretofore indicated results ~~from~~ not from the punishment itself, but from a failure by the judiciary to impose and carry out capital punishment in a consistent and unswerving manner.

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

Signed: Charles B. Deon / 
 Testifier
Pro SE

Representing (Optional)
P.O. Box 2282, Sitka, AK 99835
 Address
907-747-1272
 Phone No.



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 J. Soltis
Testifier

Representing (Optional)

615 DeGroff Sitka AK 99835

Address

(907) 747-5124

Phone No.

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 prevent 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 _____

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: Rinka Chana Zorea
Testifier

Representing (Optional)
7540 E. 17th Ave

Address
3334037

Phone No.

and somehow stop the killer before he becomes one.



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 just a deterrent (evidenced by 37 states usage), implementation of the proposal would serve to actually decrease the value of human life in Alaska. When 99 sentences (66 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 journey with the mind set of the offender is not a positive for Alaska nor will anyone be safer for it.

Signed: Moshe Caldera Zorea
 Testifier

Representing (Optional)
7540 E. 17th Ave - Anchorage 99505
 Address
337 7741
 Phone No.

Alaskans **AGAINST** the Death Penalty

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, surveys 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 argue. A torturous internal struggle to reconcile her urge for revenge with her religious beliefs left 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 so — 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 wrestling 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 fizzled.

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 16: Richmond, Ind., and Dayton, Ohio.

June 18: Meeting at Christian Theological Seminary, Indianapolis, 3 p.m., and at Martin University, 7:30 p.m.

June 19: March from the Indiana Women's Prison to the state Capitol at 10 a.m. Closing and concert at the United Auto Workers Hall, 8204 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 1985.

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 prayers 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 spartan 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 1966. 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 state-wide 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

FEDERAL PUBLIC DEFENDER
for
THE DISTRICT OF ALASKA

Nancy Shaw
Federal Public Defender

510 L Street, Suite 400
Anchorage, AK 99501

(907) 271-2277/FAX (907) 271-2271

November 16, 1993

Received

NOV 19 1993

L. J. SMITH & PORTER

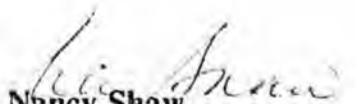
Honorable Brian Porter
3111 C Street
Anchorage, Alaska 99501

Dear Mr. Porter:

The Federal Defender was appointed in April 1992 to represent R.D. Cheely, one of several individuals charged in a case in which the death penalty is sought. I know that the Legislature is seriously considering a capital sentencing scheme this session, and I understand that you have expressed reservations about the cost of implementing a death penalty.

If you could spare me a few minutes, I would like to share with you a compilation of the expenses incurred to date in U.S.A. v. Cheely, et al. I will also provide you, if you like, with some information from death penalty states having to do with the cost of this sort of litigation.

Very truly yours,


Nancy Shaw
Federal Public Defender

NS:lmw

lynn\files\nancy\porter.ltr

5 Δ = 10 lawyers
3 plead
2 → Trial

Cost of Def. \$ 895,000 - to date
NO appeals yet

US courts
budget allot. 376K per client

Michael M

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.

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.

file

Kathy Kainer
311 Melody Place, Apt A
Anchorage, AK 99504

Received

NOV 19 1993

MAIL ROOM

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

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.

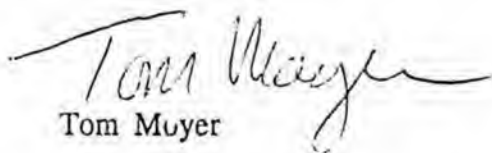
Admittedly, there is considerable support for the death penalty in our society. In far too many cases, the support for capital punishment stems from vengeance, anger and hate. Some advocates say it no longer matters whether it serves as a deterrence or not, that retribution alone justifies capital punishment, 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,



Tom Moyer

cc: Chairs, House and Senate
Judiciary Committees

November 18, 1993

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

Received

NOV 28 1993

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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 boundaries, 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 discussed at the hearing this past Tuesday when I look at her. I know that if someone 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 innocence, 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.

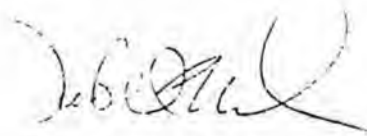
If this law were to include a section stating that if it were found . . . after the execution of the sentence was carried out that there was reasonable evidence that the accused had, in fact, not committed the alleged crime, that the judge, jury members, law enforcement officers, and prosecutors all 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*

THOM F. BPSHMAN
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

U.S. MAIL

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.

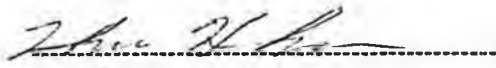
There are those that say that the killing of a police officer is more serious because the policeman is an agent of the government and therefore killing him or her is to attack our government and

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 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 capital 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



ARTHUR H. SNOWDEN II
Administrative Director

Alaska Court System

303 K STREET
ANCHORAGE, ALASKA
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November 12, 1993

The Honorable Robin L. Taylor, Chair
Senate Judiciary Committee
The Honorable Brian Forter, 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.

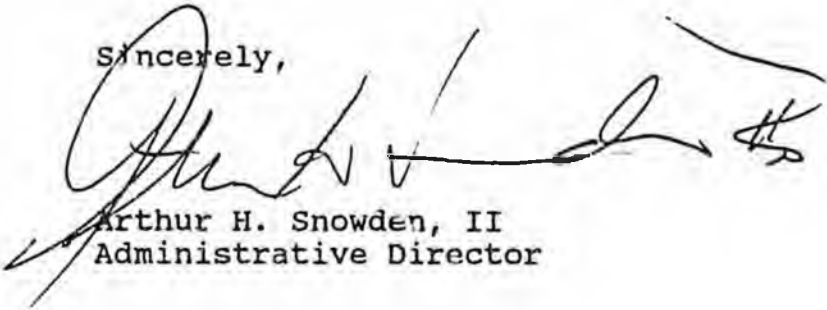
I brought your request to the attention of the supreme court. Because our constitution leaves matters of public policy such as this to the judgment of the legislature, the court believes that it would not be proper for it to express an opinion regarding the enactment of capital punishment legislation. 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", with a stylized flourish at the end.

Arthur H. Snowden, II
Administrative Director

cc: The Honorable Jerry Sanders

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.

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.

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. Yours may be a check or a deposit slip. Standard commercial 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 would be 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. Statisticans 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.

Senator Taylor:

11-15-74

Our neighborhood, at Community Council Meeting, agreed our most urgent priority is to stem the ever increasing Crime. To protect the neighborhood.

I'm here to support Senate Bill 162 or a Combination of Senate and House Bills, whichever can be made most direct, least amount of time for appeals, and still meet the Criteria of the U.S. Supreme Court for just procedures. Please don't let this die in Geneva. Let there be an advisory vote and Capital Punishment Law effective Jan. 1, 1975 at the latest.

Lethal Injection with a Choice to the murderer as Hanging as an alternate. This can be a deterrent, but I emphasize just punishment for justice's sake. I am pleased to agree with Ed Valley and the fact that Gov. Wickle supports Death Penalty.

I am not a Victim of Crime. 33 years ago, in Anchorage, you didn't even lock your door! We didn't need this then, but a Full Range of Punishment is absolutely mandatory now. Please don't Curtsey to Rights Mongering while our Police and Children suffer from, (or our neighborhoods), are undergoing needless heinous death. Let's treat the Death Penalty with the same urgency as going to War. It's a strange Society that will take our young men, put a gun in their hand, and send them to kill for Civil rights or Land Disputes or

Political dissention and yet there are some
who would "fight for their Country" and
will not fight for the rights of innocent victims
I trust this Committee will ignore A.C.L.U.
and give Alaskans the opportunity of an
advisory vote on a good Capital Felony Law.

Thank you,

Ferry Burrell.

Old Bill

* 8-LS0414VA
Co-sponsors added 11/1/93

Replaced with
SSHB 162

HOUSE BILL NO. 162

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES SANDERS, Olberg, Bunde, Kott, Vezey, James *

Introduced: 2/18/93

Referred: Judiciary, Finance

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;
3 authorizing an advisory vote on instituting capital punishment; amending Alaska
4 Rules of Criminal Procedure 32, 32.1, and 32.3 and Alaska Rules of Appellate
5 Procedure 204, 209, 210, and 212; and providing for an effective date."

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

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

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

12 (2) is consistent with the criminal sentencing goal of community condemnation
13 in that, by its use, the state affirms society's norms and condemns most severely the

1 premeditative taking of human life or the taking of life under circumstances manifesting
2 extreme indifference to its value;

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

5 (4) conforms to contemporary standards of decency in that there is no evidence
6 that Alaska's tradition and history suggest a significantly different attitude toward capital
7 punishment in this state from those that prevail nationwide, and there is a widely held belief
8 in the society that capital punishment is an appropriate penalty for murder in the first degree;

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

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

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

18 * Sec. 2. AS 11.41.100(b) is amended to read:

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

21 * Sec. 3. AS 12.30.020(a) is amended to read:

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

1 appearance bond will not reasonably assure the appearance of the person, or will pose
2 a danger to other persons and the community.

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

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

8 * Sec. 5. AS 12.47.110(b) is amended to read:

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

30 * Sec. 6. AS 12.55.025(i) is amended to read:

31 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d),

1 12.55.155(f), and 12.55.165, or in determining if a sentence of death should be
2 imposed under AS 12.58, the preponderance of the evidence standard of proof applies
3 to sentencing proceedings.

4 * Sec. 7. AS 12.55.125(a) is amended to read:

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

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

13 (2) the defendant has been previously convicted of

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

16 (B) murder in the second degree under AS 11.41.110 or former
17 AS 11.15.030; or

18 (C) homicide under the laws of another jurisdiction when the
19 offense of which the defendant was convicted contains elements similar to first
20 degree murder under AS 11.41.100 or second degree murder under
21 AS 11.41.110; or

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

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

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

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

28 (2) imposition of sentence may not be suspended under AS 12.55.085;

29 (3) imprisonment for the prescribed minimum term may not be
30 otherwise reduced;

31 (4) a sentence of death may not be suspended under AS 12.55.080.

1 * Sec. 9. AS 12.55.145(a) is amended to read:

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

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

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

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

17 * Sec. 10. AS 12.55.155(f) is amended to read:

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

24 All findings must be set out with specificity.

25 * Sec. 11. AS 12 is amended by adding a new chapter to read:

26 CHAPTER 58. CAPITAL PUNISHMENT.

27 ARTICLE 1. ELECTION TO SEEK DEATH PENALTY.

28 Sec. 12.58.010. PROSECUTOR'S ELECTION TO SEEK DEATH PENALTY.

29 The district attorney assigned to the prosecution of a capital felony shall determine
30 whether to seek the death penalty against the defendant. If the prosecutor elects to
31 seek the death penalty, the prosecutor shall give notice of election to the court, the

1 defendant, and the defendant's attorney within 10 days of arraignment of the defendant
2 on the capital felony indictment, or within 10 days of arraignment of the defendant if
3 indictment has been waived.

4 ARTICLE 2. IMPOSITION OF SENTENCE.

5 Sec. 12.58.100. SENTENCING PROCEDURE FOR A CAPITAL FELONY.

6 (a) If, after a trial by jury, a defendant is convicted of a capital felony for which the
7 district attorney has elected under AS 12.58.010 to seek the death penalty, the court
8 shall conduct a separate sentencing proceeding before the trial jury as soon as
9 practicable. If a jury trial has been waived or if the defendant has pled guilty, the
10 sentencing proceeding shall be held before a jury impaneled for the purpose.

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

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

22 (1) unanimously beyond a reasonable doubt that a statutory aggravating
23 factor or factors exist to justify the death sentence;

24 (2) unanimously by a preponderance of the evidence that the
25 aggravating factor or factors outweigh any mitigating factors found to exist by a
26 preponderance of the evidence by one or more of the jurors; and

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

28 Sec. 12.58.110. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
29 After considering the evidence and the recommended sentence, the court shall enter
30 a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).
31 The court may not impose the death sentence unless the jury (1) finds beyond a

1 reasonable doubt at least one statutory aggravating factor, (2) finds by a preponderance
2 of the evidence that that factor or those factors are not outweighed by any mitigating
3 factors found to exist by a preponderance of the evidence, and (3) recommends that
4 the defendant be sentenced to death. If the jury findings include a statutory
5 aggravating factor or factors that are not outweighed by one or more of the mitigating
6 factors and if the jury recommends a sentence of death, the court shall sentence the
7 defendant to death. If a sentence of death is not recommended by the jury, the court
8 shall sentence the defendant to a term of imprisonment under AS 12.55.125(a).

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

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

12 (2) mitigating factors considered but found insufficient to outweigh the
13 aggravating factors.

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

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

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

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

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

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

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

31 (6) the defendant knowingly directed the conduct constituting the

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

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

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

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

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

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

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

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

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

22 ARTICLE 3. SENTENCE REVIEW.

23 Sec. 12.58.200. REVIEW OF JUDGMENT OF CONVICTION OF A
24 CAPITAL FELONY. (a) A judgment of conviction of a capital felony for which a
25 sentence of death is imposed shall automatically be reviewed by the supreme court
26 within 60 days after imposition of the sentence. This time limit may be extended by
27 the supreme court for good cause.

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

31 (1) the sentence was imposed under the influence of passion, prejudice,

1 or other arbitrary factor;

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

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

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

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

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

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

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

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

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

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

24 ARTICLE 4. ADMINISTRATION OF THE DEATH PENALTY.

25 Sec. 12.58.300. ADMINISTRATION OF THE DEATH PENALTY. The
26 commissioner shall establish a procedure for the execution of a sentence of death
27 ordered by the state supreme court at the time and place legally appointed.

28 Sec. 12.58.310. EXECUTION UNDER SUPREME COURT DEATH
29 WARRANT. After receiving a supreme court warrant issued under AS 12.58.210, the
30 commissioner shall specify the time and place of execution.

31 Sec. 12.58.320. MANNER OF EXECUTION. (a) The punishment of death

1 shall be inflicted

2 (1) by hanging by the neck until death is pronounced by a licensed
3 physician; or

4 (2) at the election of the defendant, by continuous, intravenous
5 administration of a lethal dose of sodium thiopental until death is pronounced by a
6 licensed physician.

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

8 Sec. 12.58.330. RETURN OF DEATH WARRANT. After the execution the
9 commissioner shall make a return upon the death warrant showing the time and place
10 in which the defendant was executed.

11 ARTICLE 5. STAY OF EXECUTION.

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

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

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

28 (c) If the sentencing court finds that the defendant is competent, the court shall
29 immediately certify the finding to the supreme court and the commissioner. The
30 supreme court shall issue and deliver another warrant to the commissioner under
31 AS 12.58.210, together with a copy of the certified finding. Unless the sentencing

1 court's finding is appealed in accordance with applicable court rule, the warrant shall
2 specify a date of execution that is not less than 30 days nor more than 60 days after
3 the date of the warrant.

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

8 (b) When the defendant is no longer pregnant, the sentencing court shall
9 immediately certify the finding to the supreme court and the commissioner. The
10 supreme court shall issue and deliver another warrant under AS 12.58.210, together
11 with a copy of the certified finding. Unless the sentencing court's finding is appealed
12 under applicable court rule, the warrant shall specify a date of execution not less than
13 30 days nor more than 60 days after the date of the warrant.

14 ARTICLE 6. GENERAL PROVISIONS.

15 Sec. 12.58.900. DEFINITIONS. In this chapter,

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

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

18 * Sec. 12. AS 22.07.020(a) is amended to read:

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

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

23 (2) post-conviction relief;

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

26 (4) extradition;

27 (5) habeas corpus;

28 (6) probation and parole; and

29 (7) bail.

30 * Sec. 13. AS 22.07.020(b) is amended to read:

31 (b) Except for appeals of a death sentence, the [THE] court of appeals has

1 jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court
2 on the grounds that the sentence is excessive or too lenient and, in the exercise of this
3 jurisdiction, may modify the sentence as provided by law and the state constitution.

4 * Sec. 14. The lieutenant governor shall place before the qualified voters of the state at the
5 November 1994 general election a question advisory to the legislature of whether capital
6 punishment should be an authorized sentence for murder in the first degree. The question
7 shall appear on the ballot in the following form:

8 Q U E S T I O N

9 Should capital punishment for murder in the first degree as now
10 authorized by law go into effect June 1, 1995?

11 Yes [] No []

12 * Sec. 15. APPLICABILITY TO CRIMINAL RULES. AS 12.58. added by sec. 11 of this
13 Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska
14 Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death
15 sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska
16 Supreme Court.

17 * Sec. 16. APPLICABILITY TO APPELLATE RULES. AS 12.58.200, added by sec. 11
18 of this Act, has the effect of amending Rules 204, 209, 210, and 212, Alaska Rules of
19 Appellate Procedure, by establishing procedures and limitations on procedures relating to the
20 filing and disposition of appeals of sentences in cases in which the death penalty is imposed.

21 * Sec. 17. Section 14 of this Act takes effect immediately under AS 01.10.070(c).

22 * Sec. 18. Except for sec. 14 of this Act, this Act takes effect June 1, 1995.



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.

Jerry Sander



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ARTHUR H. SNOWDEN II
Administrative Director

Alaska Court System

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.

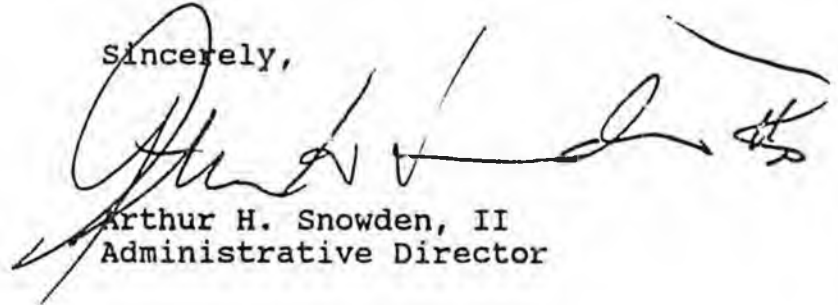
I brought your request to the attention of the supreme court. Because our constitution leaves matters of public policy such as this to the judgment of the legislature, the court believes that it would not be proper for it to express an opinion regarding the enactment of capital punishment legislation. 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 small marks at the end of the signature, possibly initials or a flourish.

Arthur H. Snowden, II
Administrative Director

cc: The Honorable Jerry Sanders

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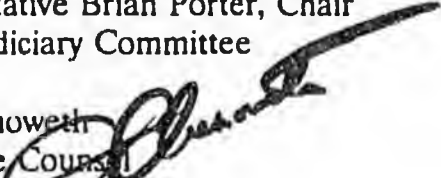
MEMORANDUM

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, . . .

Representative Brian Porter

October 27, 1993

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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. Zettlemoyer, 454 A.2d 937 (Pa. 1982), cert. den., 461 U.S. 970, 103 S.Ct. 2444, 77 L.Ed.2d 1327 (1983); State v. Austin, 618 S.W.2d 738 (Tenn. 1981); Ex parte Granviel, 561 S.W.2d 503 (Tex. Crim. App. 1978); Stamper v. Commonwealth, 357 S.E.2d 808 (Va. 1979), cert. den. 445 U.S. 972, 100 S.Ct. 1666, 94 L.Ed.2d 239 (1980); State v. Rupe, 683 P.2d 571 (Wash. 1984); Hopkinson v. State, 632 P.2d 79 (Wyo. 1981).

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

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

The Alaska Constitution Convention twice took up consideration of this provision, once in preliminary discussion of language recommended by its Committee on the Preamble and Bill of Rights, and again in consideration of a delegate's amendment to that language. In each instance, the colloquy among the delegates strongly implied that the language being adopted was not intended to preclude imposition of capital punishment.

When first offered, the proposed language in question read:

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

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

PRESIDENT EGAN: . . . Mr. Emberg.

DELEGATE EMBERG: I would like to ask a question in regard to the last sentence of Section 10, page 4, lines 3, 4, and 5. It reads, "The administration of criminal justice shall be founded on principles of reformation, and not vindictiveness." Now, I have no quarrel with the thought expressed here, except as it relates to the establishment of a code which might provide forfeiture of life, capital punishment, in other words. Is there any relation between the two?

DELEGATE AWES (chair of the Com. 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.

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 these 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' E.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 Awcs 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.

^{5/}(...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.

McCutcheon 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. ^{7/}

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

^{8/}(...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.

Rupp, 683 P.2d at 593 - 594.

^{7/} 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...)

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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

X

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	Orc. 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.]

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 3, 1994

SUBJECT: Sectional Summary of SB 127 (Work Order No. 8-LS(353\E))

TO: Senator Robin Taylor
Attn: Kevin Sullivan

FROM: Jerry Luckhaupt *JLB*
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.

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 finds 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 hanging or, at the option of the defendant, 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.

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.

GPL:gc
94-088.glc

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: December 21, 1993
 Title: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony..."
 Sponsor: Senate Judiciary Committee
 Requestor: Governor's Office

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						
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REVENUE						
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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. Pegues, Director
 Division: Administrative Services/Division

Phone: 465-3672
 Date: December 21, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

December 21, 1993

PREPARER TO PROV
 For further

FISCAL NOTE
 DEPT OF LAW

GVERNOR'S LEGISLATIVE OFFICE
 or's Legislative Office

FISCAL NOTE

BILL NO. SB 127

STATE OF ALASKA
1994 LEGISLATIVE SESSION

ANALYSIS CONTINUATION:

SB 127, like its House of Representatives' counterpart HB 162, would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. Unlike the House version, however, the Senate version does not grant prosecutors the discretion whether to seek the death penalty against a defendant. SB 127 would therefore appear to require the Department of Law to seek a death sentence whenever one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by one or more specified mitigating factors.

However, the Alaska Supreme Court has long held that, under the common law, an Attorney General is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). Consequently, based upon this consideration and the factors more fully explained below, we do not believe that there will be a significant difference in the number of capital felony trials that the department handles under either version of the bill.

The department's criminal division currently has fifteen active murder cases where aggravating factors are present that would justify the death penalty, had the bill already been the law. Likewise, the department's Office of Special Prosecutions and Appeals is currently handling four first degree murder appeals where these factors are also present. However, because the number of murders committed in Alaska varies somewhat from year-to-year, the department believes that the realistic approach is to use assumptions that are as conservative as possible. Therefore, we are projecting that it will be necessary to prosecute six capital offenses each year. During the past five years the number of first degree murders where prosecution has occurred has averaged 25 per year.

Overview

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

Consequently, the Department of Law estimates that four capital felony convictions, with aggravating factors sufficient to justify a death sentence (and where a sentence of death is imposed) will occur each year. The department also estimates that it will attempt to seek the death penalty

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ANALYSIS CONTINUATION:

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

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

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

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defense's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. In a recent California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it

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ANALYSIS CONTINUATION:

appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for many of the capital murder trials. For example, a fivefold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases.

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out.

Implementation

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

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

The "super" due process required by the courts in death penalty cases, and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with noncapital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could

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not readily be undertaken in any of the department's offices, except for Anchorage and Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even at Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

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

During the third year, the number of bifurcated trials should equal the number of new capital offenses, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. Post-conviction capital felony appeals will have reached six by year three, and they will continue to increase at the rate of four new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year.

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

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

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

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

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

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ANALYSIS CONTINUATION:

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

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

7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs of a bifurcated capital felony case has been projected to be \$298,000 or about one-half of the \$597,000 cost for the first Peel trial.

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

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

Capital Felony Trials

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

Death Sentence Appellate Review

- Staff Travel, \$3,500 per attorney, \$2,500 per senior paraprofessional, per annum.

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ANALYSIS CONTINUATION:

- Expert Witness Fees, legal scholars for years two and three only, \$30,000, each year. Socio-psychiatric experts, \$25,000, per annum.
- Deposition/court reporter costs, \$20,000 per case.

Fiscal Analysis SB 127

Cost Summary (First Year - FY 96 - Capital Trials)

ANALYSIS CONTINUATION:

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FISCAL NOTE

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Object	Atty V	Atty IV	Atty IV	Assoc. Atty I	P/A II	Sec I	Sec I	TOTAL
<u>100</u> - Salaries & Benefits	<u>86.8</u>	<u>81.7</u>	<u>81.7</u>	<u>52.7</u>	<u>51.0</u>	<u>36.8</u>	<u>36.8</u>	<u>427.5</u>
	86.8	81.7	81.7	52.7	51.0	36.8	36.8	427.5
<u>200</u> - Travel								
Witness Travel & Subsist	20.0	20.0	20.0	20.0	20.0	0.0	0.0	100.0
Staff Travel and Per Diem	<u>7.5</u>	<u>7.5</u>	<u>7.5</u>	<u>5.0</u>	<u>5.0</u>	<u>3.0</u>	<u>3.0</u>	<u>38.5</u>
	27.5	27.5	27.5	25.0	25.0	3.0	3.0	138.5
<u>300</u> - Contractual								
Communications, Copy,	3.6	3.6	3.6	2.4	2.4	2.4	2.4	20.4
Document Production,	24.0	24.0	24.0	24.0	24.0	0.0	0.0	120.0
Expert Witness	2.4	2.4	2.4	2.4	2.4	0.0	0.0	12.0
Witness Fees	8.0	8.0	8.0	8.0	8.0	0.0	0.0	40.0
Depositions	4.0	4.0	4.0	3.5	3.1	2.1	2.1	22.8
Office Space Leases	0.0	0.0	0.0	0.0	0.0	1.5	1.5	3.0
WP Maintenance	<u>1.2</u>	<u>1.2</u>	<u>1.2</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>0.0</u>	<u>6.0</u>
Westlaw	43.2	43.2	43.2	41.5	41.1	6.0	6.0	224.2
<u>400</u> - Supplies								
Office Consumables	1.8	1.8	1.8	1.8	1.8	1.2	1.2	11.4
Law Library	1.2	1.2	1.2	1.2	1.2	0.0	0.0	6.0
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>10.5</u>
	4.5	4.5	4.5	4.5	4.5	2.7	2.7	27.9
<u>500</u> - Equipment								
New Position Equipment	2.5	2.5	2.5	2.5	2.5	2.0	2.0	16.5
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>6.5</u>	<u>33.0</u>
	6.5	6.5	6.5	6.5	6.5	8.5	8.5	49.5
TOTAL	168.5	163.4	163.4	130.2	128.1	57.0	57.0	867.6

Fiscal Analysis SB 127

Cost Summary (Second and Third Years Additions - FY 97 and FY 98 - Capital Trials)

ANALYSIS CONTINUATION

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

Object	Second Year				Third Year			
	Attv V	Assoc Attv I	Legal Sec I	TOTAL	Attv IV	P/A II	Legal Sec I	TOTAL
<u>100</u> - Salaries & Benefits	<u>86.8</u>	<u>52.7</u>	<u>36.8</u>	<u>176.3</u>	<u>81.7</u>	<u>51.0</u>	<u>36.8</u>	<u>169.5</u>
	86.8	52.7	36.8	176.3	81.7	51.0	36.8	169.5
<u>200</u> - Travel								
Witness Travel & Subsist	50.0	50.0	0.0	100.0	50.0	50.0	0.0	100.0
Staff Travel and Per Diem	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	57.5	55.0	3.0	115.5	57.5	55.0	3.0	115.5
<u>300</u> - Contractual								
Communications, Copy,								
Document Production,	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Expert Witness	60.0	60.0	0.0	120.0	60.0	60.0	0.0	120.0
Witness Fees	6.0	6.0	0.0	12.0	6.0	6.0	0.0	12.0
Depositions	20.0	20.0	0.0	40.0	20.0	20.0	0.0	40.0
Office Space Leases	4.0	3.5	2.1	9.6	4.0	3.1	2.1	9.2
WP Maintenance	0.0	0.0	1.5	1.5	0.0	0.0	1.5	1.5
Westlaw	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	94.8	94.3	6.0	195.1	94.8	93.9	6.0	194.7
<u>400</u> - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
<u>500</u> - Equipment								
New Position Equipment	2.5	2.5	2.0	7.0	2.5	2.5	2.0	7.0
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5	6.5	6.5	8.5	21.5
TOTAL	250.1	213.0	57.0	520.1	245.0	210.9	57.0	512.9

BILL NO. SB 127

Fiscal Analysis SB 127

Cost Summary (Second and Third Years Additions - FY 97 and FY 98 - Appellate Review Process)

Object	Second Year				Third Year			
	Atty V	Assoc Atty I	Legal Sec I	TOTAL	Atty IV	P/A II	Legal Sec I	TOTAL
<u>100 - Salaries & Benefits</u>	<u>86.8</u>	<u>52.7</u>	<u>36.8</u>	<u>176.3</u>	<u>81.7</u>	<u>51.0</u>	<u>36.8</u>	<u>169.5</u>
	86.8	52.7	36.8	176.3	81.7	51.0	36.8	169.5
<u>200 - Travel</u>								
Staff Travel & Per Diem	<u>3.5</u>	<u>2.5</u>	<u>0.0</u>	<u>6.0</u>	<u>3.5</u>	<u>0.0</u>	<u>0.0</u>	<u>3.5</u>
	3.5	2.5	0.0	6.0	3.5	0.0	0.0	3.5
<u>300 - Contractual</u>								
Communications, Copy,	22.4	22.4	2.4	47.2	22.4	22.4	2.4	47.2
Document Production,	30.0	25.0	0.0	55.0	0.0	0.0	0.0	0.0
Expert Witness	5.0	5.0	0.0	10.0	0.0	0.0	0.0	0.0
Depositions	4.0	3.5	2.1	9.6	4.0	3.1	2.1	9.2
Office Space Leases	0.0	0.0	1.5	1.5	0.0	0.0	1.5	1.5
WP Maintenance		<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>2.4</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>
Westlaw	<u>6.3</u>	<u>58.3</u>	<u>6.0</u>	<u>128.1</u>	<u>28.8</u>	<u>27.9</u>	<u>6.0</u>	<u>62.7</u>
	6.3	58.3	6.0	128.1	28.8	27.9	6.0	62.7
<u>400 - Supplies</u>								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
<u>500 - Equipment</u>								
New Position Equipment	2.5	2.5	2.0	7.0	2.5	2.5	2.0	7.0
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5	6.5	6.5	8.5	21.5
TOTAL	165.1	124.5	54.0	343.6	125.2	89.9	54.0	268.9

ANALYSIS CONTINUATION:

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO. SB 127

Fiscal Analysis SB 127
Cumulative Implementation Cost by Year

<u>Costs</u>	<u>Prosecution Costs</u>				<u>Appellate Review</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
<u>100</u> - Personal Services	427.5	603.8	773.3	773.3	0.0	176.3	345.8	345.8
<u>200</u> - Travel	138.5	254.0	369.5	369.5	0.0	6.0	9.5	9.5
<u>300</u> - Contractual	224.2	419.3	614.0	614.0	0.0	128.1	190.8	190.8
<u>400</u> - Supplies	27.9	29.1	36.3	31.8	0.0	11.7	18.9	14.4
<u>500</u> - Equipment	49.5	21.5	21.5	0.0	0.0	21.5	21.5	0.0
TOTAL	867.6	1,327.7	1,814.6	1,788.6	0.0	343.6	586.5	560.5

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B C U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#020		ATTORNEY V	F	ANCHORAGE	A	XE	AA 25A	12	65352	0	21470	86822.32	

**** JUSTIFICATION:

This senior level Attorney V position will be needed to oversee and head capital felony prosecutions, during the first year that capital felony law goes into effect. The substantial due process protections accorded to defendants by the U.S. Supreme Court, will require a three-fold increase in the prosecution effort in order to obtain death penalty convictions. Legal expertise at the highest level will be required to handle these prosecutions, allocation to the Attorney V level is therefore recommended. This position will be required in FY 1996.

TRAVEL COSTS	27500.00	
CONTRACTUAL COSTS	43200.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	168522.32	86822.32

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 86822.32

TOTAL FUNDING 86822.32

03#021		ATTORNEY IV	F	ANCHORAGE	A	XE	AA 24A	12	61008	0	20660	81668.60	
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**** JUSTIFICATION:

This Attorney IV position will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial consideration and sentencing proceedings are expected to more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full working level prosecutor classification of Attorney IV. This attorney will be needed for the bifurcated capital trials, beginning in FY 1996.

TRAVEL COSTS	27500.00	
CONTRACTUAL COSTS	43200.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	163368.60	81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

TOTAL FUNDING 81668.60

03#022		ATTORNEY IV	F	ANCHORAGE	A	XE	AA 24A	12	61008	0	20660	81668.60	
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**** JUSTIFICATION:

This Attorney IV position will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial considerations and sentencing proceedings are expected to more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full working level prosecutor classification of Attorney IV. This attorney will be needed for the bifurcated capital trials, beginning in FY 1996.

TRAVEL COSTS	27500.00	
CONTRACTUAL COSTS	43200.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	163368.60	81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

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10:26:12.0

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R P C U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT	
TOTAL FUNDING												81668.60		
03//023		ASSOC ATTORNEY I		F ANCHORAGE	A	XE	AA	17A	12	37872	0	14863	52735.32	
**** JUSTIFICATION:														
This advanced paraprofessional position will be required, during the first year that the capital felony law goes into effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The heightened due process protections accorded defendants, in these cases, causes a far more severe burden of proof standard for prosecution. Allocation to the Associate Attorney I paraprofessional level is therefore recommended. This position will be required in FY 1996.														
												TRAVEL COSTS	25000.00	
												CONTRACTUAL COSTS	41500.00	
												SUPPLIES COSTS	4500.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												=====		
												TOTAL COSTS	130235.32	52735.32
												**** FUNDING DETAIL:		
												1004 GENERAL FUND RECEIPTS	52735.32	
												=====		
												TOTAL FUNDING	52735.32	
03//024		PARALEGAL ASST II		F ANCHORAGE	A	GG	2A	16A	12	36444	0	14558	51002.32	
**** JUSTIFICATION:														
This paralegal assistant position will be needed during the first year after the capital felony law goes into effect to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. The position will be responsible for witness assistance and coordination, an assist with trial logistics. Allocation to the full working paraprofessional level of Paralegal Assistant II is recommended. This position will be required in FY 1996.														
												TRAVEL COSTS	25000.00	
												CONTRACTUAL COSTS	41100.00	
												SUPPLIES COSTS	4500.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												=====		
												TOTAL COSTS	128102.32	51002.32
												**** FUNDING DETAIL:		
												1004 GENERAL FUND RECEIPTS	51002.32	
												=====		
												TOTAL FUNDING	51002.32	
03//025		LEGAL SECRETARY I		F ANCHORAGE	A	GG	2A	10A	12	25140	0	11645	36785.28	
**** JUSTIFICATION:														
This is one of two legal secretaries needed to provide office services support for the three attorneys and two paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position will be required in FY 1996.														
												TRAVEL COSTS	3000.00	
												CONTRACTUAL COSTS	6000.00	
												SUPPLIES COSTS	2700.00	
												EQUIPMENT COSTS	8500.00	
												OTHER COSTS	0.00	
												=====		
												TOTAL COSTS	56985.28	36785.28
												**** FUNDING DETAIL:		
												1004 GENERAL FUND RECEIPTS	36785.28	
												=====		
												TOTAL FUNDING	36785.28	

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTII PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT	
03#026		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A 10A	12	25140	0	11645	36785.28		
**** JUSTIFICATION:												
This is one of two legal secretaries needed to provide office services support for the three attorneys and two paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position is required in FY 1996.												
										TRAVEL COSTS	3000.00	
										CONTRACTUAL COSTS	6000.00	
										SUPPLIES COSTS	2700.00	
										EQUIPMENT COSTS	8500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	56985.28	36785.28
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	36785.28	
										TOTAL FUNDING	36785.28	
03#027		ATTORNEY V	F	ANCHORAGE	A XE AA 25A	12	65352	0	21470	86822.32		
**** JUSTIFICATION:												
This senior level Attorney V position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year four additional trials should be underway and six additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases, necessitate the highest level of legal expertise. Allocation to the Attorney V level is therefore recommended. This position will be required in FY 1997.												
										TRAVEL COSTS	57500.00	
										CONTRACTUAL COSTS	94800.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	250122.32	86822.32
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	86822.32	
										TOTAL FUNDING	86822.32	
03#028		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA 17A	12	37872	0	14863	52735.32		
**** JUSTIFICATION:												
This advanced paraprofessional position will be required, during the second year the capital felony law is in effect, to handle the growing number of capital trials. Four new trials are expected to commence during the second year, and six new offenses will have been committed. This position will help organize and examine evidence, and assist attorneys with legal research. Allocation to the Associate Attorney I level is therefore recommended. This position is required in FY 1997.												
										TRAVEL COSTS	55000.00	
										CONTRACTUAL COSTS	94300.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	213035.32	52735.32
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	52735.32	
										TOTAL FUNDING	52735.32	

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS DRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S	R&S	MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
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03//029		LEGAL SECRETARY I	F	ANCHORAGE	A	GG	2A	10A	12	25140	0	11645	36785.28	
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**** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the growing caseload. Four new capital felony trials are expected to commence, and six new offenses will be committed during the year. Legal documentation for those trials will be intense. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1997.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	6000.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	56985.28	36785.28

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36785.28
TOTAL FUNDING	36785.28

03//030		ATTORNEY V	F	ANCHORAGE	A	XE	AA	25A	12	65352	0	21170	86822.32	
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**** JUSTIFICATION:

This Attorney V position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. It is anticipated that two defendants' convictions will be on appeal during the second year. Up to ten years or more may pass before those appeals are finally resolved. Initially, legal attacks on the law itself will go to the Alaska Supreme Court. If upheld, appeals will go to the federal court system, including the U.S. Supreme Court, the U.S. District Court of Appeals and the U.S. District Court. The highest level of legal expertise will be required to handle these appeals. Allocation to the Attorney V level is therefore recommended. This position will be needed in FY 1997.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	63800.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	165122.32	86822.32

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	86822.32
TOTAL FUNDING	86822.32

03//031		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE	AA	17A	12	37872	0	14863	52735.32	
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**** JUSTIFICATION:

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

TRAVEL COSTS	2500.00	
CONTRACTUAL COSTS	50300.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	124535.32	52735.32

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
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This position will be needed in FY 1997.

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 52735.32

TOTAL FUNDING 52735.32

03/032		LEGAL SECRETARY I	F	ANCHORAGE	A	GG 2A 10A 12	25140	0	11645	36785.28	
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**** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the post-conviction appellate review process. This process is expected to begin during the second year, when the first two convictions should be on appeal. This process is document intensive and full-spectrum secretarial services will be required. Allocation to the Legal Secretary I level is therefore recommended. This position is needed in FY 1997.

TRAVEL COSTS 0.00

CONTRACTUAL COSTS 6000.00

SUPPLIES COSTS 2700.00

EQUIPMENT COSTS 8500.00

OTHER COSTS 0.00

TOTAL COSTS 53985.28 36785.28

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36785.28

TOTAL FUNDING 36785.28

03/033		ATTORNEY IV	F	ANCHORAGE	A	XE AA 24A 12	61008	0	20660	81668.60	
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**** JUSTIFICATION:

This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that six of these trials will be underway in the third year, and six new offenses will have been committed. An enormous amount of attorney time is required to handle these trials because of the heightened due process standards that are mandated for capital prosecutions. These trials require highly skilled prosecutors. Allocation to the full-working level of Attorney IV, is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS 57500.00

CONTRACTUAL COSTS 94800.00

SUPPLIES COSTS 4500.00

EQUIPMENT COSTS 6500.00

OTHER COSTS 0.00

TOTAL COSTS 244968.60 81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

TOTAL FUNDING 81668.60

03/034		PARALEGAL ASST II	F	ANCHORAGE	A	GG 2A 16A 12	36444	0	14558	51002.32	
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**** JUSTIFICATION:

This Paralegal Assistant position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that six trials will be underway at this point, and six new offenses will have been committed. This position will assist witnesses and coordinate witness schedules and trial logistics. Allocation to the Paralegal

TRAVEL COSTS 55000.00

CONTRACTUAL COSTS 93900.00

SUPPLIES COSTS 4500.00

EQUIPMENT COSTS 6500.00

OTHER COSTS 0.00

TOTAL COSTS 210902.32 51002.32

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R G	B U	S	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
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Assistant II level is therefore recommended. This position will be required in FY 1998.

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 51002.32

TOTAL FUNDING 51002.32

03#035		LEGAL SECRETARY I		F ANCHORAGE	A	GG	2A	10A	12	25140	0	11645	36785.28
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**** JUSTIFICATION:

This Legal Secretary position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felonies. It is anticipated that six capital trials will be underway at this point, and six new offenses will have been committed. The work generated by attorneys will require substantial secretarial assistance. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS 3000.00

CONTRACTUAL COSTS 6000.00

SUPPLIES COSTS 2700.00

EQUIPMENT COSTS 8500.00

OTHER COSTS 0.00

TOTAL COSTS 56985.28 36785.28

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36785.28

TOTAL FUNDING 36785.28

03#036		ATTORNEY IV		F ANCHORAGE	A	XE	AA	24A	12	61008	0	20660	81668.60
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**** JUSTIFICATION:

This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle post-conviction appeals. It is anticipated that four new convictions will be on appeal by the third year, bringing the total cases on appeal to six. Capital penalty appeals have an average span of ten years. These appeals are heard in the Alaska Supreme Court, the U.S. District Court, the U.S. Circuit Court of Appeals and the U.S. Supreme Court. These appeals often move up and down, through the systems, as each separate issue is argued. Full-working level legal expertise is necessary to handle this work, and allocation to Attorney IV is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS 3500.00

CONTRACTUAL COSTS 28800.00

SUPPLIES COSTS 4500.00

EQUIPMENT COSTS 6500.00

OTHER COSTS 0.00

TOTAL COSTS 124968.60 81668.60

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 81668.60

TOTAL FUNDING 81668.60

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	P&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#037		PARALEGAL ASST II	F	ANCHORAGE	A GG 2A 16A	12	36444	0	14558	51002.32	

**** JUSTIFICATION:

This Paralegal Assistant II position will be required, during the third year of the capital felony law, to assist the preparation of appellate documentation and research. Four new appeals are expected in the third year, bringing the total to be handled to six. These appeals have an average time span of ten years.

Enormous amounts of time must be spent researching the law, examining trial records, and preparing legal arguments and briefs. A substantial documents and research effort will be required. Allocation to the Paralegal Assistant II level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	27900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	89902.32	51002.32

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	51002.32
TOTAL FUNDING	51002.32

03#038		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A 10A	12	25140	0	11645	36785.28	
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**** JUSTIFICATION:

This Legal Secretary I will be required, during the third year the capital felony law is in effect, to handle the growing number of post-conviction appellate reviews. It is anticipated that a total of six reviews will be underway at this time, and this number will grow by four reviews, each year, thereafter. Each review lasts about ten years and involves numerous courts, and many court proceedings. Substantial secretarial assistance will be needed to handle this work. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	6000.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	53985.28	36785.28

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36785.28
TOTAL FUNDING	36785.28

12/21/93

10:26:12.1

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 11

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

==== COMPONENT TOTALS:

FULL TIME NEW POSITIONS	19	TOTAL PERSONAL SERVICES	1119065.96
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	2513065.96
OTHER.....	0		

====

NUMBER OF NEW POSITIONS IN COMPONENT:

19

FUNDING DATA: G.F. & G.F. MATCH: 1119065.96

OTHER FUNDS: 0.00

=====

TOTAL FUNDING: 1119065.96

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: _____
Title: An Act authorizing capital punishment,
classifying murder . . .
Sponsor: Senate Judiciary
Requestor: Senate 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	814.0	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	1,442.0	1,753.1	1,964.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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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	1442.0	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	1,442.0	1,753.1	1,964.0

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

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 Usala
Agency: Department of Administration

Date: 1/7/94

PREPARER TO F
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FISCAL NOTE
ADMIN. PUBLIC ADVOCACY

GOVERNOR'S LEGISLATIVE OFFICE
Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

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 case, 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. SB 127

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>28.0</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
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Equipment

Office furniture and equipment for three professional positions at \$3,635 each and one legal secretary at \$7,369 + 3%.	<u>18.8</u>
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Total FY 96 \$868.8

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

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 \$1,196.7

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

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

\$ 814.0

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

\$1,442.0

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

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. SB 127

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/leg94/13/35009c.kp/1

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		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.
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				

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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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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		
Benefits		17.9		
Premium Pay				
Other				
Total Personal Services		62.9	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				
<p>Justification</p> <p>This position will perform all investigative duties in death penalty cases. Extensive experience in all areas of criminal investigation will be required to assure that defendants facing execution receive a thorough and effective investigation. This position will interview witnesses, examine the crime scene and all physical evidence, arrange transportation, serve subpoenas, follow-up and review the prosecution investigation and coordinate witness testimony.</p> <p>The Office of Public Advocacy contracts out investigation work. It is anticipated that this position will work full-time on death penalty cases.</p>				

19/LEG94/13/35006A.WP

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 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			
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				

19/LEG94/13/35006B.WP

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	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					

19/LEG94/13/35006C.WP

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 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					

2/LEG94/13/35007.wp

Request For New Position

AGENCY ADMINISTRATION
BRIJ OFFICE OF PUBLIC ADVOCACY
COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 95

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Revised Date: _____

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			
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				

2. FY91/13/35007a.wp

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	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	1001	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

Page 15 of 19
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	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					

2/LEG94/13/35007c.wp

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 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.				

I/Leg94/13/35008a.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 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			
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				
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.				

I/Leg94/13/35008b.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 21/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			
C.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.				

1/Leg94/13/35008c.kp

Request For New Position

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

FY 95

Page 19 of 19
 Revised Date: _____

A Summary of Arguments
Against Instituting a Death Penalty

compiled

by

Justice Center
University of Alaska, Anchorage

February 1986

JC 8631.01

DEATH PENALTY
OPPOSITION ARGUMENTS

There is extensive literature related to the death penalty. Public opinion over a period of time on the issue seems to be somewhat volatile having fluctuated back and forth over the past fifty years between a majority opposed to use of the death penalty and a majority in favor of it. A 1981 national poll by ABC News - Washington Post (ABC News, 6-8-81) provides the following explanations which are given as a basis for their positions by the opponents and supporters of the use of capital punishment.

1. Why do you favor the death penalty?

- | | |
|---|-----|
| ° Revenge - eye for eye | 42% |
| ° It deters crime | 35% |
| ° Prison does not rehabilitate -- murderer
may get out and do it again | 22% |
| ° Criminals get off too much | 9% |
| ° Other | 11% |
| ° Don't know | 4% |

2. Why don't you favor the death penalty?

- | | |
|---|-----|
| ° Taking another life won't solve anything | 38% |
| ° Moral-religious reasons | 33% |
| ° Legal system is not equitable | 11% |
| ° Life in prison with no parole is more effective | 10% |
| ° Death penalty not a deterrent to murders | 10% |
| ° People can be rehabilitated | 8% |
| ° Other | 25% |
| ° Don't know | 2% |

The arguments frequently used to oppose the death penalty include:

- ° Capital punishment is wasteful of public funds and resources. It requires a disproportionate expenditure of time and energy

by courts, prosecutors, defense attorneys, juries, courtrooms, correctional personnel and institutions. Special detention facilities are required for those facing a death penalty charge; unique security and surveillance methods require additional correctional staff; special facilities, equipment and correctional personnel are needed to perform executions.

Prisoners sentenced to death are encouraged to and facilitated in exhausting every imaginable avenue of relief and the state must foot both the appellant actions and the government's response. Procedural, substantive, and sentence appeals are made in state courts; habeas corpus petitions are filed in federal courts, multiple appeals are made for U. S. Supreme Court review, more post conviction requests for review are filed in state and federal courts, and various requests are made for sentence commutation. Such actions are far more extensive than for a person sentenced to life and those accused of murder are accorded especially conscientious, time consuming scrutiny by all involved. Consequently, based on research elsewhere, the costs per execution exceed the costs of maintaining a convicted person in an institution for life.

Since those facing execution automatically receive higher priority handling by prosecutors, courts and corrections, other work by these agencies is postponed. The prosecution of other laws will suffer and the civil matters in courts are delayed. Hence the death sentence unduly burdens the criminal justice system.

- ° Capital punishment may actually stimulate intentional murder because it provides incentives for (1) deranged publicity seekers such as John Hinckley or terrorists who seek wide public attention, (2) suicidally-inclined persons who will commit murder in an effort to obtain state assistance with self-destruction, and (3) happenstance murderers who will be tempted to eliminate police officers and witnesses who can bring about their arrests and subsequent convictions and executions.
- ° Imprisonment for life is as effective as the death penalty in deterring capital crimes. The theory that the death penalty is more effective is founded on wish, not fact. The country's best researchers have failed to find substantive evidence of a deterrence advantage for capital punishment. The one researcher, an economist, who has claimed to have found evidence of a minor deterrent resulting from capital punishment, has been discredited by major flaws in his research design and statistical methods. One possible reason the death penalty is not an effective deterrent may lie with the necessary procedural safeguards and inherent discrepancies in conviction and sentencing processes. Under the American system of justice, death sentences cannot be consistently and promptly employed. It is not uncommon for two accomplices in a capital offense to receive different sentences if they are tried separately. In Texas recently a

murderer who actually committed the homicide received a life sentence while his accomplice who personally killed no one was executed. Consequently, only a small proportion of all murderers is sentenced to death and even fewer executed.

- ° Most homicides are the result of impulsive acts committed by people who either cannot or do not care about the consequences to themselves. In fact, research supports a conclusion that the same circumstances which precede the commission of suicide also surround many homicides. Those who actually plan homicides expect to, and usually do, escape detection. It is difficult to imagine how people in either of these groups will be deterred any more by threat of death than by threat of life in prison.
- ° Juries are often more reluctant to arrive at a guilty verdict in a case involving the death penalty than in a case in which the maximum penalty is life in prison.
- ° Despite its safeguards the criminal justice system regularly makes mistakes. On occasion, such as with Johnny Ross, the Louisiana 16-year-old who was awaiting execution in the early 1980s when a private investigator found his blood type did not match that of the murderer, some innocent people who are sentenced to death are released before execution; however, frequently they are not. One study has purported to document 75 instances in America since the turn of the century when innocent people have been executed.
- ° The death penalty tends to be an instrument of totalitarian, despotic governments rather than democratic societies. The trend among the most respected countries in the free world has been toward the abolition of capital punishment. Some claim that imposition of the death penalty is inconsistent with the fundamental values of American democracy, and the state should not arrogate unto itself the power to ceremoniously, with premeditation, kill a citizen in the names of all other citizens.
- ° Capital punishment is an unnecessary penalty. It is a barbaric relic of more primitive days when slavery, branding and mutilation were commonplace. It receives its greatest support from the uneducated. Alternative, less cruel penalties which effectively satisfy the legitimate goals and needs of the society are available in place of the death penalty.
- ° The worst and most dangerous criminals are rarely the ones executed. The death penalty is applied discriminately at best and randomly at worst. It is imposed almost exclusively on racial minorities, the poor and the uneducated. Those who receive it normally have had long histories of being abused children, having mental disorders, and having been socially rejected and economically deprived. The socially connected and economically well-heeled are almost never awarded a death penalty. Despite the frequently discussed instances of

planned mob murders, no members of organized crime have been executed and none are on death row. No one has ever been charged or prosecuted for the planned murder of Neil MacKay's former spouse. If Alaska had the death penalty and if Mr. MacKay were responsible for the death of his former brother-in-law as charged, the probability of his receiving the death penalty is very low because he is not likely to be convicted. In fact, few of those who have been responsible for killings in Alaska would be subject to the death penalty because they cannot be identified and charged or because of barriers such as the mental state of the offender.

- ° The death penalty denies due process in that it forever deprives the executed person of the benefits of new evidence or a new law that might affect a conviction. It is impossible, given the arbitrariness of the criminal justice processes and the criminal procedure where death is a possible penalty, to repair moral and constitutional defects in death penalty laws by shifting between mandatory and discretionary sentences and unfettered and guided judicial discretion. Some accused will still be deprived of their lives as a result of denial of equal protection of the law and unequal provision of due process.
- ° Executions by government give citizens the unmistakable message that human life is not sacred and that violence is legitimate when it is thought justified by pragmatic concerns. The beer parties and cheering crowds organized to celebrate at the time of executions in Texas, Florida and other states where executions have occurred in recent years document the consequence of this message. Some people are not only accepting the legitimacy of the intentional taking of human life, killing, they consider executions to be occasions for enjoyable merrymaking.
- ° Attention focused on the death penalty detracts from a concern with the causes of interpersonal violence and reduces the efforts of society to control it. Enactment of a death penalty gives the populace and legislators a sense of security in the belief that the problems of violent crime have been effectively addressed. This false security diverts attention away from efforts to identify the fundamental causes of crime and to prevent violent crime. Society will consequently suffer the burdens of violence longer.
- ° The social value of those who have been convicted of murder is lost. For example, the Bird Man of Alcatraz was a convicted Alaskan. If he had been executed rather than sentenced to life his contributions to ornithology would not have been made.

In addition to the preceding, the existence of the death penalty does not result in a reduction in fear of crime among citizens in jurisdictions where it is a legal punishment. In fact, it appears citizen fear of crime is heightened in areas

where executions occur with some regularity. Consequently, one can anticipate that once a death penalty is enacted, public anxiety about violent crime will increase and there will be greater public pressure to widen the range of criminal deviancy for which the punishment will be the death penalty. Such a pattern can be found throughout history.

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FAX COVER SHEET

DATE: February 23, 1994

TO: (NAME) Representative Jerry Sanders
(COMPANY)
(ADDRESS) _____
(PHONE #) _____
(FAX #) 465-3476

FROM: (NAME) David L. Dittman
(OPERATOR) _____

TOTAL PAGES TO FOLLOW COVER SHEET: 0

COMMENTS:

Rep. Sanders,

Here are the results for the "Death Penalty" question. The sample size was n=259, in Anchorage. A page of statistics will be available later this week that will show the demographic break-outs on the question. Please call if you have any further questions. Mr. Dittman will be available after 2:00 pm today.

Do you support or oppose the State of Alaska having the option of applying the death penalty for criminals convicted of first degree murder?

Support	73%
Oppose	18%
Unsure	9%



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.



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.

Jerry Sander

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: 11/15/93 Dept. Affected: Corrections
 Title: An Act authorizing capital BRU: Statewide Operations
punishment... Component: Institutions
 Sponsor: Senator Taylor
 Requestor: Senate Judiciary COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	50.0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	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	50.0	0	0	0	0

CAPITAL EXPENDITURES	0	300.0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0	350.0	0	0	0	0
1006 GF/MHTIA						
Other						
TOTAL	0	350.0	0	0	0	0

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

ANALYSIS: (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant
 Division: Commissioner's Office
 Approved by Commissioner: [Signature]
 Agency: Department of

Phone: 561-4426
 Date: 11/15/93
 Date: 11/15/93

PREPARED BY
For

FISCAL NOTE
DEPT OF CORRECTIONS

IMDR'S LEGISLATIVE OFFICE
Legislative Office

FY95-00 Expenses:

It is assumed that offenders who would be sentenced to death under this bill would, under present law, be incarcerated for the rest of their lives. Since the department is currently operating over its emergency capacity, there is presently no room for such offenders, whether sentenced to death or life imprisonment. Incarceration of the most serious types of offenders will likely require construction of an additional maximum housing unit. It is assumed that such a unit would be constructed at Spring Creek Correctional Center. The costs of construction and operating expenses are not reflected on the fiscal note because both will be necessary with or without the bill.

The bill provides that the commissioner shall establish a procedure for the execution of a death sentence. The department will contract with a consultant to draft regulations and department policies and procedures for carrying out executions. Current regulations and policies and procedures governing classification of inmates will require revision since they are based upon an inmate's release date.

* The bill further provides for the election by the offender of either death by lethal injection or by hanging. The Spring Creek facility is already equipped with an infirmary area, part of which could be utilized to administer a lethal injection. However, a separate area would have to be constructed to contain the gallows required by the bill. The cost is estimated at \$300 per square foot, for a 25' X 20' room (\$150,000), with additional money for planning and research, gallows, special plumbing, and a partitioned observation area (\$150,000). It is assumed that such an area could not be used for any other activities or purposes. If the provision authorizing death by hanging were eliminated from the bill, the capital expense for planning and constructing the gallows and gallows room would be eliminated and FY96 capital expense reduced to \$0.

Long-term expenses not reflected on page 1 of the fiscal note:

Executions would be expected to begin in FY2006. The cost of supplies for lethal injection is unknown at this time and will be provided upon request after contacting other states using this method. Executioners for lethal injection are generally Physicians Assistants and generally charge approximately \$200 plus travel, room, and board. A physician must certify the death. Contractual expenses are estimated at roughly \$1,000 to \$1,500 per execution based upon current prices.

The cost for an executioner to conduct death by hanging is expected to be higher because fewer Physicians Assistants are willing to perform the act. Additional contractual expenses for hanging will include hiring persons to clean up the execution area and/or to provide counseling for any staff involved in the process. Contractual expenses for execution by hanging are estimated at roughly \$5,000 per execution based upon current prices.

Long-term savings not reflected on page 1 of the fiscal note: Accepting the estimates from the Department of Law that four offenders per year would be sentenced to death, and that execution would be delayed for 10 years due to appeals, approximately 40 offenders would be on "death row" by the time executions began. The number would remain static if four were added and four executed every year thereafter.

Assuming that the department constructed a 40-cell unit to accommodate the 40 offenders sentenced to either death under this bill, or "life" under current law, the unit would be filled in 10 years. Without the passage of this bill, the department would have to construct another such unit in FY2006 to house the next 40 offenders sentenced to 99+ year terms. The average cost of construction for a maximum security bed is \$160,000, so a total cost avoidance of 40 additional beds would be \$6,400,000.

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 for an American male by the year 2000 is expected to be 73.5 years. Without the death penalty, each offender sentenced to 99 years would need to be incarcerated for 42.5 years. Subtracting the 10 years the inmate would have been incarcerated pending appeals, the department would save 32.5 years of incarceration costs per inmate. The estimated operating cost for each Spring Creek bed is \$106 per day, or \$38,690 per year. The total expected cost avoidance attributable to the death penalty would be $\$38,690 \times 32.5$ years = \$1,257,425 over the expected life of each inmate. The total estimated cost avoidance for the first 40 offenders sentenced to death instead of lifelong incarceration would be \$50,297,000.

Alternatively, during the five year period between FY06 and FY10, the following costs would be avoided:

FY06 =	\$6,400,000 for construction of 40 additional maximum beds
	\$ 154,760 for 4 additional inmates (\$38,690 per year per inmate)
FY07-	\$ 309,520 for 8 additional inmates
FY08=	\$ 464,280 for 12 additional inmates
FY09-	\$ 619,040 for 16 additional inmates
FY10=	\$ 773,800 for 20 additional inmates
TOTAL=	<u>\$8,721,400</u> capital/operating cost avoidance between FY06-10.

Impact on Local Governments:

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

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: SB 127

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act authorizing capital punishment
classifying murder one as a capital felony" BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Senate Judiciary
 Requestor: Senate 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)

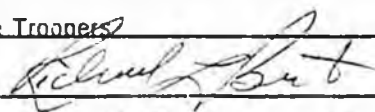
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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: 01/10/94
 Approved by Commissioner:  Date: 01/10/94
 Agency: _____

PREPARER TO PRO
For fur

FISCAL NOTE
DEPT OF PUBLIC SAFETY

GOVERNOR'S LEGISLATIVE OFFICE
Trooper's Legislative Office

BILL NO: SB 127

DATE: March 17, 1993

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

CONTACT: C.E. Swackhammer
Deputy Commissioner
465-4322

Section one amends AS 11.41.100, Murder in the First Degree, paragraph (b), to make murder in the first degree a capital felony from its current status as an unclassified felony.

Sections two, three and four amend AS 12.30.020, Release Before Trial, paragraph (a); AS 12.30.040, Release After Conviction, paragraph (b); and AS 12.47.110, Commitment on Finding of Incompetency, paragraph (b), respectively, by adding "Capital Felony" to each section.

Section five amends AS 12.55.025, Sentencing Procedures, paragraph (i), which states that the preponderance of the evidence standard of proof applies to sentencing proceedings, except as provided in listed AS 12 statutes, and adds as an additional exception, cases where the determination of death should be imposed.

Section six amends AS 12.55.125, Sentence of Imprisonment for Felonies, paragraph (a), by adding language which includes the addition of the death penalty and provides for sentencing for murder in the first degree when the death sentence is not imposed.

Section seven amends AS 12.55.125, paragraph (f), by prohibiting the suspension of the sentence of death.

Section eight amends AS 12.55.145, Prior Convictions, paragraph (a), by adding capital felony to those felonies which must be considered as prior convictions in imposing sentence.

Section nine amends AS 12.55.155, Factors in Aggravation and Mitigation, paragraph (f), by adding a minor language addition "Under this section, if" to the first paragraph of this section.

Section ten amends AS 12 to add a new chapter, Chapter 58, Capital Punishment.

Article one addresses Imposition of Sentences page 5, page 6 and page 7, lines 1-17.

Article two addresses Sentence Review, page 7 lines 18-31, and page 8 lines 1-19.

Article three addresses Administration of the Death Penalty, page 8 lines 20-31 and page 9, lines 1-6.

Article four addresses Stay of Execution, page 9 lines 7-31 and page 10 lines 1-9.

Article five addresses General Provisions, page 10 line 10-13.

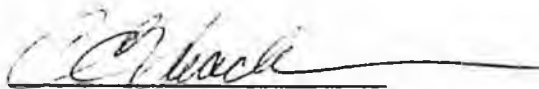
Section 11 amends AS 22.07.020, Jurisdiction, paragraph (a), by excluding from the appellant jurisdiction of the court of appeals, prosecution for capital felony for which the death sentence is imposed.

Section 12 amends AS 22.07.020, paragraph (b), by prohibiting the court of appeals from hearing an appeal of a death sentence.

Section 13 provides for a question to be advisory to the legislature on whether capital punishment for murder in the first degree should go into effect June 1, 1995, to be placed on the general election ballot in November of 1994.

Section 14 and Section 15 provide for date of effect.

This legislation will not impact the degree, intensity or quality of the investigations performed by the Department of Public Safety, and will not impact the Department of Public Safety fiscally.



Richard L. Burton
Commissioner

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 127

Revision Date: _____
Title: Amendment to the Constitution RE:
Capital punishment for murder.
Sponsor: Senate Judiciary
Requestor: _____

Department Affected: Office of the Governor
BRU: Division of Elections
Component: General and Primary Elections
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
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REVENUE						
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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 L. 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: 2/5/94

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