

**HB**

**481**



**Alaska State Legislature**  
**HOUSE OF REPRESENTATIVES**  
**Beverly Masek**

Official Business

State Capitol  
Juneau, AK 99801-118  
465-2679

**MEMORANDUM OF REQUEST**

**TO: REP. BRIAN PORTER / CHAIR HOUSE JUDICIARY**  
**FROM: REP. BEVERLY MASEK** *2/5 to BM*  
**DATE: MARCH 5, 1996**  
**RE: HB-481**

\*\*\*\*\*

Please find attached a memo from Legal Services which clearly indicates HB-481 is not particularly vulnerable to an equal protection challenge.

The narrowness of the bill and the fact that it requires court rule changes alleviates many of the criticisms brought up in other broad based approaches to capital punishment.

I hope this relieves some of the concerns you may have had and that you will schedule HB-481 ASAP.

Thank you.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

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

## MEMORANDUM

March 4, 1996

**SUBJECT:** Classification of Child Murderers as Only Murderers Eligible for Death Penalty - HB 481 (Work Order No. 9LS1615\A)

**TO:** Representative Beverly Masek  
Attn: Dave Stancliff

**FROM:** Gerald P. Luckhaupt *JEL*  
Legislative Counsel

You have asked if HB 481's classification of child murderers as the only murderers eligible to receive the death penalty makes the death penalty scheme more open to attack than another death penalty scheme, such as SSSB 52, that subjects a broader range of murderers to the death penalty? While it is often difficult to gauge how much litigation will result from, and what issues will be raised concerning, a particular piece of legislation, suffice it to say that a death penalty scheme will result in litigation concerning every aspect of the legislation and every conceivable issue will probably be raised. In this regard, I do not believe that HB 481 will cause or otherwise result in any more litigation than another death penalty bill. Nor do I believe that HB 481's identification of child murderers as subject to the death penalty (through the use of aggravating factors) will make it any more susceptible to a legal challenge than SSSB 52.

While it is true that HB 481 does create a class of murderers who are eligible for a punishment that other murderers are not this classification does not appear arbitrary or unreasonable so as to result in its being struck down as cruel and unusual punishment or on equal protection grounds. Indeed creating classifications of offenders that are subject to the death penalty is essentially what is required to have a death penalty system that meets the requisites set forth by the United States Supreme Court. In order to pass constitutional muster a death penalty system and a sentence of death must impose the death penalty only when the nature of the crime merits the death penalty and the system must enable the jury (or other sentencer) to narrow the death eligible class and reasonably justify death for the selected offender compared to others by the use of a narrow definition of capital offenses or by the use of aggravating factors that allow the jury to narrow the class. By narrowing the class the risk of arbitrary and capricious imposition of the death penalty is thereby narrowed so as to make a death penalty system constitutional. Here, I believe HB 481 sufficiently meets these requirements and is not somehow more subject to a successful constitutional challenge than SSSB 52 because of its classification of those eligible for the death penalty.

GPL:pl  
96-066.plm



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

### Beverly Masek

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Juneau, AK 99801-118  
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Legislative Counsel

*No more susceptible to legal challenge*

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GPL:pl  
96-066.plm

KAWERAK INCORPORATED

Resolution 94-19

OPPOSITION TO REINSTATEMENT OF THE DEATH PENALTY IN ALASKA

WHEREAS, the Kawerak, Inc. is concerned with equitable treatment of Alaska Natives within the criminal justice system; and

WHEREAS, Alaska Natives account for only 13.5% of the state's prison-age population, yet 32% of the jail population is comprised of Alaska Natives; and

WHEREAS, there is significant evidence of racial bias toward economically disadvantaged members of ethnic minorities in administration of the death penalty in other jurisdictions; and

WHEREAS, there is substantial concern among the Native community, and no evidence to the contrary, that in all likelihood the Alaska system of criminal jurisprudence is not capable of avoiding racial bias in the trial process; and

WHEREAS, the majority of Alaska Natives and people residing in rural areas of the state do not have the means to acquire adequate legal defense counsel when charged with serious crimes; and

WHEREAS, establishing a death penalty law and implementing it will cost millions of dollars and thereby deprive Alaska Natives and their communities of critical resources for service programs that focus on crime prevention; and

WHEREAS, Alaska Native tribes and organizations have historically opposed the death penalty as demonstrated by past actions to defeat federal death penalty legislation;

NOW THEREFORE BE IT RESOLVED, that Kawerak, Inc. is opposed to reinstatement of the death penalty in Alaska; and

BE IT FURTHER RESOLVED, that Kawerak, Inc. urges rural and urban legislators alike to oppose any effort to reinstate a death penalty in Alaska.

*James O'Leary*  
Chairman of the Board

*Luci [unclear]*  
Board Secretary

4/2/94  
Date

4-2-94  
Date

The foregoing resolution was adopted at a duly convened meeting of the Kawerak Board of Directors, a quorum being present this 3rd day of April, 1994.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: ...authorizing capital punishment...allowing...the BRU: Criminal Division  
death penalty...murders committed against children... Component: Criminal Division  
 Sponsor: Representative Masek  
 Requester: Representative Masek COMPONENT SERIAL NO. 2085

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	176.6	347.9	517.4	694.0	694.0	694.0
TRAVEL	65.5	181.0	196.5	202.5	202.5	202.5
CONTRACTUAL	118.1	438.4	501.7	575.0	545.0	545.0
SUPPLIES	11.7	18.9	26.1	33.3	28.8	28.8
EQUIPMENT	21.5	21.5	21.5	21.5	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>393.4</b>	<b>1,007.7</b>	<b>1,263.2</b>	<b>1,526.3</b>	<b>1,470.3</b>	<b>1,470.3</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	393.4	1,007.7	1,263.2	1,526.3	1,470.3	1,470.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>393.4</b>	<b>1,007.7</b>	<b>1,263.2</b>	<b>1,526.3</b>	<b>1,470.3</b>	<b>1,470.3</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	3.0	6.0	9.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would authorize capital punishment, classify murder in the first degree as a capital felony when certain murders are committed against children, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. In order to be considered a capital offense the defendant's conduct must have caused the death of a child under 18 years of age, the defendant at the time of the offense, must have been at least two years older than the child and the defendant was: (1) kidnapping, assaulting, or sexually assaulting, or attempting to kidnap, assault or sexually assault the child; or (2) had kidnapped, assaulted or sexually assaulted the child. Child deaths resulting from this conduct are usually associated with sexual assaults, but they also include egregious cases of physical assault against younger children.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 4/12/96  
 Approved by Commissioner: Eruce M. Botelho, Attorney General Date: 4/12/96  
 Agency: Department of Law

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## FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

### ANALYSIS CONTINUATION:

#### 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. Based on current data, where death penalty aggravators occur, the department would probably seek the death penalty in three cases, annually. The department expects that two capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed once each year.

Thus, the department must be prepared to prosecute capital felonies on three 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 one case 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 counter part 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

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STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

### ANALYSIS CONTINUATION:

date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for many of the capital murder trials. For example, a five-fold 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. Current information indicates that nationally an average of 9.5 years elapses from the time a death penalty sentence is imposed and the time the sentence is 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 one bifurcated trial 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 one attorney, one paraprofessional, and one legal secretary to handle capital felony prosecutions. Although only one bifurcated trial 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 three capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

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

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

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, three or more additional capital felonies are expected to go to trial and three 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 and to help with the first capital felony appeal.

During the third year, the number of bifurcated trials (3) 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 two or three by year three, and they will continue to increase at the rate of one new case each year thereafter. During the fourth year it will also be necessary to establish a capital felony appeals staff when the number of appeals reaches six. One attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

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 three first degree murder offenses, at a minimum.
- 2) The time required for a bifurcated trial will probably vary between two months and six months although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- 3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- 4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- 5) Witness travel and subsistence will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.
- 6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.
- 7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate

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BILL NO. HB 481

### ANALYSIS CONTINUATION:

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 about \$360,000 or substantially less than of the \$597,000 cost for the *first Peel* trial.

8) The cost for appeals is shown only through the fourth 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 nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of 10 or more capital felony defendants annually, within 10 years.

9) Therefore, 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 paraprofessional, per annum.
- Expert witness fees, legal scholars for years two and three only, \$30,000, each year.
- Socio-psychiatric experts, \$25,000 each year.
- Transcription/court reporter costs, \$30,000 per case.

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

Fiscal Analysis HB 481  
Cost Summary (First Year - FY 97 - Capital Trials)

<u>OBJECT</u>	<u>Atty V</u>	<u>Assoc Atty I</u>	<u>Sec I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u>	<u>52.9</u>	<u>36.4</u>	<u>176.6</u>
	87.3	52.9	36.4	176.6
200- Travel				
Staff Travel & Per Diem	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	7.5	5.0	3.0	15.5
300 - Contractual				
Communications, Copy	3.6	2.4	2.4	8.4
Office Space Leases	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5
Westlaw	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	11.9	10.7	9.5	32.1
400 - Supplies				
Office Consumables	1.8	1.8	1.2	4.8
Law Library	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>
	4.5	4.5	2.7	11.7
500 - Equipment				
New Position Equipment	2.5	2.5	2.0	5.0
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5
<b>TOTAL</b>	<b>117.7</b>	<b>79.6</b>	<b>60.1</b>	<b>257.4</b>

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

Fiscal Analysis HB 481  
Cost Summary (Second and Third Years Additions -  
FY 98 and 99 - Capital Trials)

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	<u>Atty IV</u>	<u>Assoc Atty I</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>	<u>Atty IV</u>	<u>P/A II</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>82.0</u>	<u>52.9</u>	<u>36.4</u>	<u>171.3</u>	<u>82.0</u>	<u>51.1</u>	<u>36.4</u>	<u>169.5</u>
	82.0	52.9	36.4	171.3	82.0	51.1	36.4	169.5
200- Travel								
Staff Travel & 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>
	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
300 - Contractual								
Communications, Copy	<u>3.6</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>	<u>3.6</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>
Office Space Leases	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>16.8</u>	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>16.8</u>
PC Network Maintenance	<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>
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>
	11.9	11.9	9.5	33.3	11.9	11.9	9.5	33.3
400 - Supplies								
Office Consumables	<u>1.8</u>	<u>1.8</u>	<u>1.2</u>	<u>4.8</u>	<u>1.8</u>	<u>1.8</u>	<u>1.2</u>	<u>4.8</u>
Law Library	<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>
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
500 - Equipment								
New Position Equipment	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>	<u>7.0</u>	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>	<u>7.0</u>
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
<b>TOTAL</b>	<b>112.4</b>	<b>80.8</b>	<b>60.1</b>	<b>253.3</b>	<b>112.4</b>	<b>79.0</b>	<b>60.1</b>	<b>251.5</b>

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

Fiscal Analysis HB 481  
Cost Summary (Fourth Year Additions -  
FY 00+ - Appellate Review Process)

Fourth Year

<u>OBJECT</u>	<u>Atty V</u>	<u>Assoc Atty I</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u> 87.3	<u>52.9</u> 52.9	<u>36.4</u> 36.4	<u>176.6</u> 176.6
200- Travel				
Staff Travel & Per Diem	<u>3.5</u> 3.5	<u>2.5</u> 2.5	<u>0.0</u> 0.0	<u>6.0</u> 6.0
300 - Contractual				
Communications, Copy	22.4	22.4	2.4	47.2
Office Space Leases	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5
Westlaw	<u>2.4</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>
	31.9	31.9	9.5	73.3
400 - Supplies				
Office Consumables	1.8	1.8	1.2	4.8
Law Library	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>
	4.5	4.5	2.7	11.7
500 - Equipment				
New Position Equipment	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>
	6.5	6.5	8.5	21.5
<b>TOTAL</b>	<b>133.7</b>	<b>98.8</b>	<b>57.1</b>	<b>289.1</b>

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

Fiscal Analysis HB 481  
Cumulative Implementation Cost by Year

<u>OBJECT</u>	<u>Criminal Felony Trial</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>Year 5+</u>
100 - Personal Services	176.6	347.9	517.4	517.4	0.0	0.0	0.0	176.6	176.6
200- Travel - Staff	15.5	31.0	46.5	46.5	0.0	0.0	0.0	6.0	6.0
Travel - Witness	50.0	150.0	150.0	150.0	0.0	0.0	0.0	0.0	0.0
300 - Contractual	32.1	65.4	98.7	98.7	0.0	0.0	0.0	73.3	73.3
Contractual - Outside Svc	86.0	258.0	258.0	258.0	0.0	85.0	145.0	145.0	115.0
400 - Supplies	11.7	18.9	26.1	21.6	0.0	0.0	0.0	11.7	7.2
500 - Equipment	<u>21.5</u>	<u>21.5</u>	<u>21.5</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>21.5</u>	<u>0.0</u>
<b>TOTAL</b>	<b>393.4</b>	<b>892.7</b>	<b>1,118.2</b>	<b>1,092.2</b>	<b>0.0</b>	<b>85.0</b>	<b>145.0</b>	<b>434.1</b>	<b>378.1</b>

FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

Out-of-Pocket Costs - Capital Felony Trials

Year One (1 cases underway) (FY 97)

Witness travel and subsistence \$50,000 per case Xs 1 case =	\$50,000
Expert witness fees \$60,000 per case Xs 1 case =	\$60,000
Witness fees (witnesses of fact) \$6,000 per case Xs 1 case =	\$6,000
Deposition/court reporter charges \$20,000 per case Xs 1 case =	\$20,000

Year Two (3 cases underway) (FY 98)

Witness travel and subsistence \$50,000 per case Xs 3 cases =	\$150,000
Expert witness fees \$60,000 per case Xs 3 cases =	\$180,000
Witness fees (witnesses of fact) \$6,000 per case Xs 3 cases =	\$18,000
Deposition/court reporter charges \$20,000 per case Xs 3 cases =	\$60,000

Third Year (3 cases underway) (FY 99)

Witness travel and subsistence \$50,000 per case Xs 3 cases =	\$150,000
Expert witness fees \$60,000 per case Xs 3 cases =	\$180,000
Witness fees (witness of fact) \$6,000 per case Xs 3 cases =	\$18,000
Deposition/court reporter charges \$20,000 per case Xs 3 cases =	\$60,000

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

Capital Felony Appeals

Year Two (1 case underway) (FY 98)

Expert witness/legal scholars to uphold death penalty law (year two and three only) \$30,000 per year Xs 1 =	\$30,000
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Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 1 case =	\$30,000
--	----------

Year Three (3 cases underway) (FY 99)

Expert witness/legal scholars to uphold death penalty law (year two and three only) \$30,000 per year Xs 1 =	\$30,000
---	----------

Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 3 cases =	\$90,000
---	----------

Year Four (6 cases underway) (FY 00)

Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 3 cases =	\$90,000
---	----------

Year Five (9 cases underway) (FY 01)

Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 3 cases =	\$90,000
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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 0501020600 NAME: CRIMINAL APPEALS &amp; SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

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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03#011		ATTORNEY V	F	ANCHORAGE	A XE AA	25A 12	66266	0	20921	87188.49	
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## \*\*\*\* 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 prosecution effort in order to obtain death penalty convictions. Legal expertise at the highest level will be required to handle these prosecutions, allocations to the Attorney V level is therefore recommended. This position will be required in FY 1997.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	117588.49	87188.49

## \*\*\* FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87188.49
TOTAL FUNDING	87188.49

03#016		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA	17A 12	38402	0	14403	52805.85	
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## \*\*\*\* 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 protection 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 1997.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	79505.85	52805.85

## \*\*\* FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52805.85
TOTAL FUNDING	52805.85

03#016		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A	10A 12	25102	0	11278	36381.04	
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## \*\*\*\* JUSTIFICATION:

This is one legal secretaries needed to provide office services support for three attorneys and three 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 1997.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60081.04	36381.04

## \*\*\* FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36381.04
TOTAL FUNDING	36381.04

04/12/96

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 4

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS &amp; SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R A	B X	S E	R&S AA	MOS 17A	SALARY 12	PREM BUDG	BENES PAY	PER.SERV. COSTS	G. F. AMOUNT
03#019		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE	AA	17A	12	38402	0	14403	52805.85	

## \*\*\*\* 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. Three new trials are expected to commence during the second year, and three 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 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	80705.85	52805.85

## \*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 52805.85

TOTAL FUNDING 52805.85

03#020		LEGAL SECRETARY I	F	ANCHORAGE	A	GG	2A	10A	12	25102	0	11278	36381.04	
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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. Three new capital felony trials are expected to commence, and three new offenses will be committed during the year. Legal documentation for these trials will be intense. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	60081.04	36381.04

## \*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 36381.04

TOTAL FUNDING 36381.04

03#021		ATTORNEY V	F	ANCHORAGE	A	XE	AA	25A	12	66266	0	20921	87188.49	
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## \*\*\*\* JUSTIFICATION:

This Attorney V position will be required, during the fourth year the capital felony law is in effect, to handle the post-conviction appellate review process. It is anticipated that six defendants' convictions will be on appeal during the fourth 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. District Court. The highest level of legal expertise will be required to handle those appeals. Allocation to the Attorney V level is therefore recommended. This position will be needed in FY 2000.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	133588.49	87188.49

## \*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 87188.49

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS &amp; SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B \$ C U	R&S MOS BUDG	SALARY	PREM PAY	BENEF PAY	PER.SERV. COSTS	G. F. AMOUNT	
TOTAL FUNDING										87188.49		
03/022		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA 17A	12	38402	0	14403	52805.85		
**** JUSTIFICATION:												
This Associate Attorney paraprofessional position will be required, during the fourth year the capital felony law is in effect, to assist handling legal research for post-conviction appellate review process. It is anticipated that six defendants' convictions will be on appeal during the fourth year. Legal attacks on the law itself will be before the Alaska Supreme Court, as will appeals of 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	31900.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	98205.85	52805.85
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	52805.85	
TOTAL FUNDING										52805.85		
03/023		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A 10A	12	25102	0	11278	36381.04		
**** JUSTIFICATION:												
This Legal Secretary I position will be required, during the fourth year the capital felony law is in effect, to handle the post-conviction appellant review process. This process is expected to begin during the fourth year, when the first six 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 2000.										TRAVEL COSTS	0.00	
										CONTRACTUAL COSTS	9500.00	
										SUPPLIES COSTS	2700.00	
										EQUIPMENT COSTS	8500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	57081.04	36381.04
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	36381.04	
TOTAL FUNDING										36381.04		
03/025		ATTORNEY IV	F	ANCHORAGE	A XE AA 24A	12	61862	0	20085	81947.73		
**** 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 three of these trials will be underway in the third year, and three new offenses will have been committed. An enormous amount of attorney time is required to handle these 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										TRAVEL COSTS	7500.00	
										CONTRACTUAL COSTS	11900.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	112347.73	81947.73

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS	SALARY BUDG	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
recommneded. This position will be needed in FY 1999.											
*** FUNDING DETAIL:											
100% GENERAL FUND RECEIPTS										81947.73	
TOTAL FUNDING										81947.73	
03#026		PARALEGAL ASST II	F	ANCHORAGE	A	CG 2A 16A 12	36954	0	14148	51103.16	
**** 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 three trials will be underway at this point, and three new offenses will have been committed. This position will assist witnesses and coordinate witness schedules and trial logistics. Allocation to the Paralegal Assistant II level is therefore recommended. This position will be required in FY 1999.											
TRAVEL COSTS										5000.00	
CONTRACTUAL COSTS										11900.00	
SUPPLIES COSTS										4500.00	
EQUIPMENT COSTS										6500.00	
OTHER COSTS										0.00	
TOTAL COSTS										79000.00	51103.16
*** FUNDING DETAIL:											
100% GENERAL FUND RECEIPTS										51103.16	
TOTAL FUNDING										51103.16	
03#027		LEGAL SECRETARY I	F	ANCHORAGE	A	CG 2A 10A 12	25102	0	11278	36381.04	
**** 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 three capital trials will be underway at this point, and three 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 1999.											
TRAVEL COSTS										3000.00	
CONTRACTUAL COSTS										9500.00	
SUPPLIES COSTS										2700.00	
EQUIPMENT COSTS										8500.00	
OTHER COSTS										0.00	
TOTAL COSTS										60081.04	36381.04
*** FUNDING DETAIL:											
100% GENERAL FUND RECEIPTS										36381.04	
TOTAL FUNDING										36381.04	
03#035		ATTORNEY IV	F	ANCHORAGE	A	XE AA 24A 12	61862	0	20045	81947.73	
**** JUSTIFICATION:											
This Attorney IV 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 three additional trials should be underway and three additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases necessitate the full working level of legal expertise. Allocation to the Attorney IV level is therefore recommended. This											
TRAVEL COSTS										7500.00	
CONTRACTUAL COSTS										11900.00	
SUPPLIES COSTS										4500.00	
EQUIPMENT COSTS										6500.00	
OTHER COSTS										0.00	
TOTAL COSTS										112347.73	81947.73

04/12/96

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 7

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS URU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B C U	\$	R&S MOS BUDG	SALARY	PREM PAY	BERES	PER.SERV. COSTS	G. F. AMOUNT
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position will be required in FY 1990.

\*\*\* FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	81947.73
TOTAL FUNDING	81947.73

\*\*\*\* COMPONENT TOTALS:

FULL TIME NEW POSITIONS	12	TOTAL PERSONAL SERVICES	693317.31
PART TIME/SEASONAL NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	1050617.31
NON PERMANENT NEW POSITIONS	0		
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT: 12

FUNDING DATA: G.F. & G.F. MATCH:	693317.31
OTHER FUNDS:	0.00
TOTAL FUNDING:	693317.31

**FISCAL NOTE**

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. HB 481**

Revision Date: \_\_\_\_\_  
 Title: "An Act authorizing capital punishment..."  
 Sponsor: Representatives Masek, Kohring, Ogan  
 Requestor: House Judiciary

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

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	270.7	354.3	590.3	590.3	763.0	846.6
TRAVEL	35.0	35.0	70.0	70.0	105.0	105.0
CONTRACTUAL	72.9	76.3	89.3	89.3	98.8	102.2
SUPPLIES	4.0	5.0	9.0	9.0	12.0	13.0
EQUIPMENT	15.7	3.6	15.8	0.0	12.1	3.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>398.3</b>	<b>474.2</b>	<b>774.4</b>	<b>758.6</b>	<b>990.9</b>	<b>1,070.4</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	398.3	474.2	774.4	758.6	990.9	1070.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>398.3</b>	<b>474.2</b>	<b>774.4</b>	<b>758.6</b>	<b>990.9</b>	<b>1,070.4</b>

Estimate of any current year (FY 96) cost: \$ 0

**POSITIONS:**

FULL-TIME	4.0	1.0	4.0	0.0	3.0	1.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

The passage of even this limited 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 three cases annually. Therefore, OPA anticipates it would be responsible for one capital case in FY97 and one more in each of the following years.

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

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer *M. Boyer*  
 Agency: Administration

Date: 4/18/96

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FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS: (continued)

Because almost no one in Alaska could afford the cost of defending a capital case, it is assumed the Public Defender Agency and 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 requirements--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 appellate stages. The New York Defender Association has estimated expert witness fees at \$60,000.00 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 at least some death penalty cases. It is not possible to predict how many such cases might arise in FY97 or in ensuing years. Therefore, this fiscal note assumes that all cases that are made an OPA responsibility will have staff representation and none will be forced out of the agency through a conflict of interest. None of the contractual costs associated with this representation are therefore devoted to the cost of attorney compensation in conflict of interest cases.

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 nine to ten years.

In FY98, the first year in which an actual death penalty trial will probably occur, OPA costs will rise because of the addition of an appellate attorney. In FY99, an additional trial attorney position would be needed to support the initial two trial attorney positions created in FY97. Further, an additional associate attorney (non-lawyer position) a paralegal and a legal secretary would be necessary to support the four lawyer staff.

In FY00, the death penalty defense staff would remain static. In FY01, that staff would need to be enlarged by at least one attorney to supplement the efforts of the appellate attorney added in FY98, together with an additional paralegal and legal secretary. In FY02, the defense would be enlarged by an additional trial attorney position whose workload hopefully would be absorbed by the existing support staff.

FISCAL ANALYSIS -- FY 97

Personal Services

Anchorage

Attorney V Salary and Benefits	\$ 88.9
Attorney IV Salary and Benefits	83.6
Associate Attorney II Salary and Benefits	61.2

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Legal Secretary I Salary and Benefits	<u>37.0</u>
<b>Subtotal Personal Services</b>	<b>270.7</b>
<b>Travel</b>	
Necessary travel for court hearings, investigation, expert witnesses, etc.	35.0
<b>Contractual</b>	
Additional office space for four positions in Anchorage. 12.9	
Expert witness fees based on two cases per year at \$60,000 per case.	60.0
<b>Subtotal Contractual</b>	<b>72.9</b>
<b>Supplies</b>	
Stationary, library and office supplies for four new positions at \$1,000 per position.	4.0
<b>Equipment</b>	
Office furniture and equipment for three professional positions at \$3,635 each and one legal secretary at \$4,869.	<u>15.7</u>
<b>TOTAL FY 97</b>	<b>\$398.3</b>

FISCAL ANALYSIS -- FY 98

Personal Services

Anchorage

Salary and Benefits for 4 current positions \$ 270.7

Attorney IV  
Salary and Benefits 83.6

**Subtotal Personal Services** 354.3

**Travel**

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

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

**Contractual**

Office space for four current positions and one new position. 16.3

Expert witness fees based on one case per year. 60.0

**Subtotal Contractual Services 76.3**

**Supplies**

Stationary, library and office supplies for five positions. 5.0

**Equipment**

Office furniture and equipment for one professional position. 3.6

**TOTAL FY 98 \$474.2**

**FISCAL ANALYSIS -- FY 99**

**Personal Services**

Anchorage

Salary and Benefits for 5 current positions \$ 440.6

Attorney IV  
Salary and Benefits 83.6

Associate Attorney II  
Salary and Benefits 61.2

Paralegal Assistant II  
Salary and Benefits 52.1

Legal Secretary II  
Salary and Benefits 39.1

**Subtotal Personal Services 590.3**

**Travel**

Necessary travel for court hearings, investigation, expert witnesses, etc. 70.0

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

**Contractual**

Office space for five current positions and four new positions.	29.3
Expert witness fees based on one new case per year.	<u>60.0</u>
<b>Subtotal Contractual Services</b>	<b>89.3</b>

**Supplies**

Stationary, library and office supplies for nine positions.	9.0
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**Equipment**

Office furniture and equipment for three new professional positions and one new legal secretary position.	<u>15.8</u>
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**TOTAL FY 99** **\$774.4**

**FISCAL ANALYSIS -- FY 00**

**Personal Services**

Anchorage

Salary and Benefits for 9 current positions	\$ 590.3
---	----------

**Travel**

Necessary travel for court hearings, investigation, expert witnesses, etc.	70.0
--	------

**Contractual**

Office space for nine current positions.	29.3
Expert witness fees based on one new case per year.	<u>60.0</u>

**Subtotal Contractual Services** **89.3**

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Supplies

Stationary, library and office supplies for nine positions. 9.0

TOTAL FY 00 \$758.6

FISCAL ANALYSIS -- FY 01

Personal Services

Anchorage

Salary and Benefits for 9 current positions \$ 590.3

Attorney IV  
Salary and Benefits 83.6

Paralegal Assistant II  
Salary and Benefits 52.1

Legal Secretary I  
Salary and Benefits 37.0

Subtotal Personal Services 763.0

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 105.0

Contractual

Office space for nine current positions and three new positions. 38.8

Expert witness fees based on one case per year. 60.0

Subtotal Contractual Services \$98.8

Supplies

Stationary, library and office supplies for twelve positions. 12.0

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

**Equipment**

Office furniture and equipment for two new professional positions  
and one new legal secretary position. 12.1

**TOTAL FY 01** \$990.9

**FISCAL ANALYSIS -- FY 02**

**Personal Services**

Anchorage

Salary and Benefits for 12 current positions \$ 763.0

Attorney IV  
Salary and Benefits 83.6

**Subtotal Personal Services** 846.6

**Travel**

Necessary travel for court hearings, investigation, expert witnesses, etc. 105.0

**Contractual**

Office space for twelve current positions and one new position. 42.2

Expert witness fees based on one case per year. 60.0

**Subtotal Contractual Services** \$102.2

**Supplies**

Stationary, library and office supplies for thirteen positions. 13.0

**Equipment**

Office furniture and equipment for one new professional position. 3.6

**TOTAL FY 02** \$1,070.4

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. HB 481**

Revision Date: \_\_\_\_\_  
 Title: "An Act authorizing capital punishment..."  
 Sponsor: Representative Masek  
 Requestor: (H) JUD

Department Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	367.5	1032.0	1293.9	1525.4	1525.4	1525.4
TRAVEL	50.0	150.0	250.0	300.0	350.0	400.0
CONTRACTUAL	94.5	282.5	462.5	628.5	787.5	946.5
SUPPLIES	15.0	28.0	38.0	47.5	60.0	75.0
EQUIPMENT	27.0	36.0	18.0	15.0	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>554.0</b>	<b>1528.5</b>	<b>2062.1</b>	<b>2516.4</b>	<b>2722.9</b>	<b>2946.9</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	554.0	1528.5	2062.1	2516.4	2722.9	2946.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>554.0</b>	<b>1528.5</b>	<b>2062.1</b>	<b>2516.4</b>	<b>2722.9</b>	<b>2946.9</b>

Estimate of any current year (FY 96) cost: \$ 0

**POSITIONS:**

FULL-TIME	6	16	20	24	24	24
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

See attached.

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

Phone: 264-4412  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 4/13/96

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## FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

### ANALYSIS: (continued)

This legislative proposal permits the state to execute individuals as punishment for committing certain types of Murder in the First Degree. Capital punishment would be an available sanction for Murder in the First Degree if certain aggravating factors were found to exist.

Under this bill capital punishment would be limited to homicides where the victim was a child (under 18 years of age). The provisions of the statute target child homicides involving kidnap, assault and sexual assault, or attempts to commit these crimes where death results.

### Fiscal Impact

Passage of this death penalty legislation will have an undeniably significant impact on the entire criminal justice system, including the courts, corrections, prosecution, public counsel services and other related entities. Death penalty cases require greater due process safeguards than do non-capital cases. This is obviously a consequence of the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. It must be understood that the criminal justice system is an imperfect process based on the combination of law and human judgment. Some percentage of error is a consequence of the American jury system. In non-death cases the system stands ready to correct those mistakes when and where they become known. An execution following a death penalty case can never be corrected. It is for these reasons so much care must be taken to defend individuals accused in capital cases. Providing "super due process" translates into adequate attorney resources, support resources, expert and consultation monies, funds for appealing death penalty convictions and other attendant expenses. A commonly accepted estimate for expert witness fees alone in a death penalty case is \$60,000.

It is not unusual for a death penalty case to remain in the court system, litigated by the parties, for a period of up to ten years. This is a result of the extensive appellate work which is routinely done in each death penalty case following conviction. Following are the procedures which are typically utilized after a trial and sentencing:

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

## FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

### Breakdown of Fiscal Impact

1. Personal Services. Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, many states require by statute that a minimum of two defense attorneys take up representation of the accused in death penalty matters. Both the state District Attorney and the Office of Public Advocacy contemplate such a policy for their respective agencies. The Public Defender will follow this prudent course, whether established by statute or internal policy. It should also be noted that trial attorneys doing death penalty cases typically carry a caseload of only two active cases.

Based on Department of Law projections, it is anticipated that the Public Defender Agency will handle two to three capital cases per year if this bill becomes law. A death penalty unit will be established in Anchorage during the first year following enactment of the death penalty. According to the Department of Law fiscal analysis, during the second year "three or more additional capital cases are expected to go to trial, and three new capital felony offenses will occur." (Page 4 of DOL fiscal analysis) The Public Defender Agency expects to be involved in two of the three cases which go to trial during the second year, and will additionally absorb two or three of the new capital cases which are filed by the state. As such a second death penalty team will be created during the second year to absorb this additional workload.

During the second year an Anchorage appellate team will also be created so that it can begin interacting with the death penalty trial teams to establish defense strategies, to assist in the developments of petitions for review to the Supreme Court on an interlocutory basis, and to receive training prior to the filing of the first appeal following a death penalty conviction. (It should be noted that the Public Defender Agency does not have the appellate resources currently available to the Department of Law in that there is no defense equivalent of the Department of Law's Office of Special Prosecutions and Appeals). It is anticipated that the Public Defender Agency staff will continue to grow from year to year as capital cases accumulate. This assumption is consistent with the experiences of other states which have the death penalty, and in accord with the Department of Law's assumptions and projections.

Consistent with the Department of Law's analysis and projected resource needs, the Alaska Public Defender Agency will take on additional cases and increase its staff accordingly during the third year that the death penalty is in effect. This accumulation of cases and placement of resources for the years relevant to this fiscal note follow below. The rising costs from year to year are a consequence of the need to carry over existing staff and add lawyers and support staff to absorb the cumulative death penalty caseload.

### Fiscal Impact--FY 97

#### Personal Services (100 Line) \*

##### Anchorage - Trial Team

Attorney V	
Salary & Benefits	\$ 88.9
Attorney IV	
Salary & Benefits	\$ 83.6
Associate Attorney I	
Salary & Benefits	\$ 53.8
Paralegal Assistant II	
Salary & Benefits	\$ 52.1

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Investigator II Salary & Benefits	\$ 52.1	
Legal Secretary I Salary & Benefits	\$ 37.0	
	SUBTOTAL	\$367.5

\* Using FY 96 salary schedule with no increases factored in.

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL \$ 50.0

Contractual (300 Line)

Expert witness fees	\$ 60.0	
Additional office space for death penalty staff in Anchorage and Fairbanks P.D. offices	\$ 15.0	
Communications	\$ 7.5	
Printing	\$ 2.0	
Depositions	\$ 5.0	
Westlaw	<u>\$ 5.0</u>	
	SUBTOTAL	\$ 94.5

Supplies (400 Line)

Office consumables	\$ 5.0	
Law library	\$ 5.0	
New position supplies (one time)	<u>\$ 5.0</u>	
	SUBTOTAL	\$ 15.0

Equipment (500 Line)

Office furniture and equipment, pc/word processing, etc. (one time)		<u>\$ 27.0</u>
	TOTAL FY 97	\$ 554.0

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Fiscal Impact--FY 98

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

Personal Services (100 Line)

Anchorage - Appellate Team

Attorney V Salary & Benefits	\$ 88.9
Attorney IV Salary & Benefits	\$ 83.6
Paralegal Assistant II Salary & Benefits	\$ 52.1
Legal Secretary I Salary & Benefits	<u>\$ 37.0</u>

Fairbanks - Trial Team

Attorney V Salary & Benefits	\$100.9	
Attorney IV Salary & Benefits	\$ 94.7	
Associate Attorney I Salary & Benefits	\$ 61.2	
Paralegal Assistant II Salary & Benefits	\$ 53.9	
Investigator II Salary & Benefits	\$ 53.9	
Legal Secretary I Salary & Benefits	\$ 38.3	
	SUBTOTAL	\$664.5

Travel (200 Line)

Staff travel, expert travel and per diem.	\$100.0
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Contractual (300 Line)

Expert witness fees (based on accrual of FY 97 and 98 cases)	\$120.0
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FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Office space for Anchorage appellate team/Fairbanks trial team	\$ 30.0	
Training for Death Penalty Teams	\$ 10.0	
Communications	\$ 10.0	
Depositions	\$ 5.0	
Document production	\$ 5.0	
Westlaw	<u>\$ 8.0</u>	
	SUBTOTAL	\$ 188.0
<u>Supplies (400 Line)</u>		
Office consumables	\$ 6.0	
Law library	\$ 4.0	
New position supplies (one time)	<u>\$ 8.0</u>	
	SUBTOTAL	\$ 18.0
<u>Equipment (500 Line)</u>		
New position equipment (one time)		\$ 36.0
	SUBTOTAL FY 98	\$1006.5
	FY 97 CONTINUING COSTS	<u>\$ 522.0</u>
	TOTAL FY 98 EXPENDITURES	\$1528.5

Fiscal Impact--FY 99

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

Personal Services (100 Line)

Anchorage - Appellate Team

Attorney V Salary & Benefits	\$ 88.9
Attorney IV Salary & Benefits	\$ 83.6
Paralegal Assistant II Salary & Benefits	\$ 52.1

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Legal Secretary I Salary & Benefits	<u>\$ 37.0</u>	
	SUBTOTAL	\$261.6
 <u>Travel (200 Line)</u>		
Staff travel, expert travel and per diem.		\$100.0
 <u>Contractual (300 Line)</u>		
Expert witness fees (based on accrual of FY 97 and 98 cases)	\$120.0	
Office space for Anchorage appellate team	\$ 15.0	
Training for Death Penalty Teams	\$ 10.0	
Communications	\$ 10.0	
Depositions	\$ 10.0	
Document production	\$ 5.0	
Westlaw	<u>\$ 10.0</u>	
	SUBTOTAL	\$ 180.0
 <u>Supplies (400 Line)</u>		
Office consumables	\$ 6.0	
Law library	\$ 4.0	
New position supplies (one time)	<u>\$ 8.0</u>	
	SUBTOTAL	\$ 18.0
 <u>Equipment (500 Line)</u>		
New position equipment (one time)		\$ 18.0
	SUBTOTAL FY 99	\$ 577.6
 FY 98 CONTINUING COSTS		<u>\$1484.5</u>
 TOTAL FY 99 EXPENDITURES		\$2062.1
 <u>Fiscal Impact--FY 00</u>		

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

(These costs are in addition to FY 97-98-99 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage

Attorney V Salary & Benefits	\$ 88.9	
Associate Attorney I Salary & Benefits	\$ 53.8	
Investigator II Salary & Benefits	\$ 52.1	
Legal Secretary I Salary & Benefits	\$ 37.0	
	SUBTOTAL	\$231.8

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL \$ 50.0

Contractual (300 Line)

Expert witness fees	\$120.0	
Additional office space for death penalty staff in Anchorage	\$ 7.0	
Communications	\$ 15.0	
Printing	\$ 4.0	
Depositions	\$ 10.0	
Westlaw	<u>\$ 10.0</u>	
	SUBTOTAL	\$ 166.0

Supplies (400 Line)

Office consumables	\$ 5.0
Law library	\$ 10.0

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

New position supplies (one time)	<u>\$ 2.5</u>	
	SUBTOTAL	\$ 17.5

Equipment (500 Line)

Office furniture and equipment, pc/word processing, etc. (one time)	<u>\$ 15.0</u>	
	SUBTOTAL FY 00	\$ 480.3

FY 99 CONTINUING COSTS	<u>\$2036.1</u>
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TOTAL FY 00 EXPENDITURES	\$2516.4
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Fiscal Impact--FY 01

(These costs are in addition to FY 97-98-99-00 costs which will be carried over from year to year.)

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL	\$ 50.0
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Contractual (300 Line)

Expert witness fees	\$120.0	
Communications	\$ 15.0	
Printing	\$ 4.0	
Depositions	\$ 10.0	
Westlaw	<u>\$ 10.0</u>	
	SUBTOTAL	\$ 159.0

Supplies (400 Line)

Office consum. .bles	\$ 5.0	
Law library	<u>\$ 10.0</u>	
	SUBTOTAL	\$ 15.0
	SUBTOTAL FY 01	\$ 224.0

FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

FY 00 CONTINUING COSTS	<u>\$2498.9</u>
TOTAL FY 01 EXPENDITURES	\$2722.9

Fiscal Impact--FY 02

(These costs are in addition to FY 97-98-99-00-01 costs which will be carried over from year to year.)

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL	\$ 50.0
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Contractual (300 Line)

Expert witness fees	\$120.0
Communications	\$ 15.0
Printing	\$ 4.0
Depositions	\$ 10.0
Westlaw	<u>\$ 10.0</u>
SUBTOTAL	\$ 159.0

Supplies (400 Line)

Office consumables	\$ 5.0
Law library	<u>\$ 10.0</u>
SUBTOTAL	\$ 15.0

SUBTOTAL FY 02 \$ 224.0

FY 01 CONTINUING COSTS	<u>\$2722.9</u>
TOTAL FY 02 EXPENDITURES	\$2946.9

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act authorizing capital punishment....allowing.. BRU: Statewide Operations  
the death penalty....murders committed against children..... Component: Spring Creek Correctional Center  
 Sponsor: Representative Masek  
 Requester: House Judiciary COMPONENT SERIAL NO. #0722

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	67.1	69.4	568.0	586.0	586.0	586.0
TRAVEL	3.0					
CONTRACTUAL	315.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS		97.6	8.6	17.2	25.8	34.4
<b>TOTAL OPERATING</b>	<b>385.1</b>	<b>167.0</b>	<b>576.6</b>	<b>603.2</b>	<b>611.8</b>	<b>620.4</b>

CAPITAL EXPENDITURES		1,785.0				
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CHANGE IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	385.1	1,952.0	576.6	603.2	611.8	620.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>385.1</b>	<b>1,952.0</b>	<b>576.6</b>	<b>603.2</b>	<b>611.8</b>	<b>620.4</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	1	10				
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

The Department of Law (DOL) estimates that based on current data, where death penalty aggravators occur, the DOL would probably seek the death penalty in three (3) cases, annually. The DOL expects that two (2) capital offense convictions will occur each year. Of this latter number, the DOL believe that the death penalty will be imposed once each year. Experience in states with a death penalty statute indicate that an individual remains on death row an average of 9.6 years from the time a death penalty sentence is imposed and the time the sentence is carried out. Using these estimates, the Department of Corrections must plan for a "Death Row" structure within an existing facility capable of holding at least ten (10) prisoners. Additionally, the facility would need to contain suitable structures for the execution itself.

The average age of Alaskan male inmates sentenced for murder in the first degree is 31 years old. It is assumed that each inmate sentenced to death will live until the day of execution or until age 73 years old; whichever comes first. Thus, it is assumed that each person sentenced to death will remain in the (Continued on page 2)

Prepared by: Joseph Reeves Phone: 465-4652  
 Division: Office of the Commissioner Date: 4/15/96  
 Approved by Commissioner: Margaret U. Pugh Margaret Pugh Date: 4/15/96  
 Agency: Department of Corrections

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**Fiscal Note**

**HB 481**

**"An Act authorizing capital punishment...allowing...the death penalty.."**

**4/15/96**

**Page 2**

death row structure for the rest of their life and no allowances are made for appeals; commutations, sentence modifications, or other means of sentence reductions.

The "Death Row" structure would have to be built to the highest security standards. The cost of construction of a maximum security bed is \$180,000 to \$200,000 per bed. The lower figure is based on the assumption that the structure stated on this fiscal note would be built adjacent to the Spring Creek Correctional Center and some infrastructure construction cost savings could be realized. Construction would begin immediately and engineering (E) and design (D) funds have been included in the contractual line item for FY97 with construction to begin in FY98. It is expected that these funds would be transferred by Reimbursable Services Agreement to the Department of Transportation and Public Facilities. E&D costs are estimated at 15% of the total construction costs.

The Department would be required to construct special facilities in which to administer the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility would be in excess of \$300,000 assuming that it would be built in conjunction with the death row structure.

**CONSTRUCTION COSTS**

$(10 \text{ Bed Structure} \times \$180,000 \text{ per bed}) + \$300,00 = \$2,100,000$

$.15 \text{ E\&D} \times \$2,100,000 = \$315,000 \text{ in FY97}$

$\$1,800,000 + \$300,000 - \$315,000 = \$1,785,000 \text{ in FY98}$

The Department of Corrections does not expect to be required to house prisoners sentenced to the death penalty until FY99. The only staff necessary in FY98 would be a facilities manager to deal with DOC's responsibilities in the planning and design phase. The position will be carried on until completion of the project which is expected to be at least until the end of FY98. Actual operations of the structure would come on line in FY99, with staff hiring and training to begin in Mid FY98. The first year cost is estimated to be \$ 97.6.

Staffing of the structure would require nine correctional officers and one administrative support position. The estimated cost of these staff members would be \$ 568,000. Also, no inflation factor has been used. The structure will need to be fully staffed from the date of opening even though it will not be filled with inmates sentenced to death. If overcrowding exists at that time, other high security inmates could be housed there to mitigate the costs.

In addition, to staffing there are miscellaneous costs such as food service, and medical. The average cost of these services per inmate is \$23.62 a day. It is assumed that one inmate will be sentenced to death in FY 99, and one additional inmate will be sentenced to death each following year. This figure has been used and is shown in the miscellaneous line simply because final design will determine the line item cost break down.

**Fiscal Note**

**HB 481**

**"An Act authorizing capital punishment...allowing...the death penalty.."**

**4/15/96**

**Page 3**

**OPERATING COSTS**

2 CO III X \$75,000 = \$150,000

7 CO II X \$54,000 = \$378,000

1 Admin Clerk III X \$40,000 = \$40,000

\$8621.30 per inmate, per year for miscellaneous costs

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Capital punishment... murders committed BRU: Trial Courts  
           against children... Component: \_\_\_\_\_  
 Sponsor: Representative Masek  
 Requestor: Representative Masek COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	169.2	169.2	169.2	169.2	169.2	169.2
TRAVEL	43.0	43.0	43.0	43.0	43.0	43.0
CONTRACTUAL	143.7	143.7	143.7	143.7	143.7	143.7
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	10.9					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>369.2</b>	<b>358.4</b>	<b>358.4</b>	<b>358.4</b>	<b>358.4</b>	<b>358.4</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	369.2	358.4	358.4	358.4	358.4	358.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>369.2</b>	<b>358.4</b>	<b>358.4</b>	<b>358.4</b>	<b>358.4</b>	<b>358.4</b>

Estimate of any current year (FY 96) cost: \$ None

Positions

Full-Time	2.0	2.0	2.0	2.0	2.0	2.0
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary	1.0	1.0	1.0	1.0	1.0	1.0

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

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 Agency: Alaska Court System Date: 04/18/96

Approved by: Arthur H. Snowden, II, Administrative Director Date: 04/18/96  
 Agency: Alaska Court System

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**Alaska Court System**

**Fiscal Analysis**

**HB 481**

**Personal Services**

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	\$48,300	\$29,779	\$78,079
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	36,672	14,935	51,507
Bailiff, Statewide, range 6A, NPP, 12 months	19,092	1,823	20,915
			<u>195,875</u>

Offset cost of existing caseload -

*Currently, first degree murder cases experience a 50% trial rate and last approximately one month. Using this experience, the court could expect one to two trials and to incur approximately 1 to 2 months of trial. The proposed legislation will result in approximately 11 months of trial activity (see jury fees in the contractual section below). Therefore, the cost offset is computed at 1.5 months / 11 months of the expected personnel costs.*

	<u>(26,700)</u>
<b>Net personal services</b>	<u>169,175</u>

*Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use a 50% vested pro tem judge, which is among the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for a non-permanent bailiff, which will serve in the designated trial site.*

Travel

Jury sequestration costs - transportation, meals and lodging	37,800
3 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day	

Offset cost of existing caseload -

*See offset note in personal services.*

	<u>(5,200)</u>
<b>Net travel</b>	<u>43,000</u>

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

Contractual

Jury fees - 3 innocence/guilt trial @ 66 days each (3 months), 18 jurors @ \$25 a day	108,900
and 2 sentencing trials @ 22 days each (1 month), 18 jurors @ \$25 a day	
Contractual security guard to staff metal detectors	1,000
Transcription fees - 5 transcripts, 5,000 pages each at \$2.25 a page	56,250
Freight for high security equipment kit	250
<b>Total contractual service</b>	<u>166,400</u>

Offset cost of existing caseload -

*See offset note in personal services.*

	<u>(22,700)</u>
<b>Net contractual services</b>	<u>143,700</u>

*See additional note on contractual costs on the next page.*

Alaska Court System  
Fiscal Analysis (continued)  
HB 481

*The Department of Law expects to prosecute 3 capital offences related to children each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.*

Supplies

Office and courtroom supplies for new positions and trials. 2,500

Equipment (one-time cost)

Standard office equipment and reference materials for law clerks 3,360

Portable high security equipment kit, consisting of a walk-through metal detector and other security system items. The security kit will be shipped to trial site. 7,500

10,860

Total estimated costs \$369,235

## WRITTEN TESTIMONY OF AVERIL LERMAN

**Should there be an advisory vote on the death penalty in Alaska?  
Should the Legislature pass a bill authorizing a death penalty for certain crimes?**

**RESPECTFULLY SUBMITTED to the members of the House Judiciary Committee:  
Chairman Brian Porter, Vice Chair Joe Green, Con Bundle, Cynthia Tohey, Al  
Vezey, Bettye Davis, Dave Finkelstein, on April 15, 1996**

My name is Averil Lerman. I ask you today to reject the advisory vote bill, and to reject any bill authorizing the death penalty in Alaska.

I come before you today as a legal historian, who has spent two years studying the history of the death penalty in Territorial Alaska between 1900 and 1957. My research was funded by the Alaska Humanities Forum and the National Endowment of the Humanities and the Alaska Native Justice Center. It has included extensive documentary review, in archives, libraries, and private collections. It also included collecting an oral history from more than 50 interviews of persons who were involved with or affected by the hangings in the territory.

My research suggests that communities who use the death penalty at first come to reject it. In Fairbanks, there were three hangings in the 1920's. After that decade, not one more person was hanged, although homicide in Fairbanks continued. The same thing happened in Juneau, where there were three hangings between 1939 and 1950, and then no further hangings, although homicide in Juneau also continued.

**Why did the Territorial Legislature abolish the death penalty in Alaska in 1957?  
Why did the hangings stop? Why did juries no longer sentence murderers to death?**

My answer is that, with the death penalty, familiarity breeds contempt. People unfamiliar with the problems of capital punishment often think that maybe it is a good thing; maybe it will help us reduce violent crime; maybe it is fair to take a life for a life; maybe it is plain justice. People who have no experience with the death penalty, and no basis to evaluate it, may often think these things. I used to be such a person, and I used to think the death penalty might be a good idea.

But people who live with a death system in their state start to change their minds after watching it work for awhile. What people think about the death penalty changes once they get to know it. What they want is not what they get. Humans wield the sword of God in all too-human ways.

**Some people change their minds when they see that execution is often based on race.** In Alaska, after 1903, not one white person was hanged, although more than 75% of all homicides in the Territory were committed by white people. <sup>1</sup>

**Some people change their minds about the death penalty when they see that execution is based on poverty:** Rich men don't hang from that rope. In Alaska, rich men who committed murder, like Guy Prince and Harry de Groot in Juneau, never got a death sentence. O.J. Simpson and Claus von Bulow were never in danger of execution either.

**Some people change their minds when they see that the death penalty is not just reserved for the people committing the worst crimes, and avoided with more common murders.** In Juneau, the three men who were hanged in 1939, 1948, and 1950 had not committed murders showing them to be depraved psychopaths. One of them called the Marshal's office within 3 hours after the crime, to confess, but he was an Indian, and had no money, and no appeal, and he was hanged in 1939.

**An advisory vote is a bad idea because Alaskans have no accessible experience with what a death penalty means.** Should the legislature seek advice from an uninformed electorate? There is no reason at all that any Alaska voter would be informed about the reality of the death penalty, because the Alaska legislature banished government execution 40 years ago.

**History has shown us that what people believe in the abstract about the death penalty is not the opinion that they hold once they have dealt with it at close quarters.** The best example of this came from the mouths of two United States Supreme Court Justices, Justice Blackmun and Justice Powell. Both of these men were political conservatives. Both of them upheld the death penalty over decades of litigation. But in the past two years, each of them has publicly stated that he would change his vote on every death case that had ever come before him, if he could, if the men weren't already dead. Each of them stated that, after years of trying to create a fair death system, he had concluded that fairness in application was impossible.

**Justice Blackmun and Justice Powell changed their minds about the death penalty only after decades of exposure to it.** The juries in Juneau and in Fairbanks changed their minds about the death penalty ten years of exposure to it.

**A responsible legislature, knowing that the electorate is uninformed, must, in light of these facts, take on the responsibility to first inform itself in making this decision.** The legislature, not the people, has the ability to summon those most informed about this issue, and to question them. Call up the heads of corrections in California and Texas and Florida. Seek expert guidance from leading criminologists, like John Angel at the UAA Justice Center, and ask him to summarize the literature on whether homicide will be deterred by a death penalty. Quiz the treasurers of counties and cities in death states about whether or not the death system has caused them to fire police officers to pay for the death process.

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<sup>1</sup> K.S.Kynell *A Different Frontier: Alaska Criminal Justice 1935-1965*, University Press of America, Inc., Lanham, MD, 1991.

**You have been entrusted with the power of making difficult and complex decisions about public policy, We, your constituents, know that you must learn a great deal to make these hard decisions. Do not abandon us by failing to inform yourselves, and then passing the political hot potato to us, so that a bad decision can be justified by our bad advice.**

Thank you for the opportunity to be heard on this most critical question.