

HB

75

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to murder; authorizing capital BRU Administration and Operations
punishment, classifying murder in the first degree as a capital Component All
 Sponsor Representative Masek
 Requester House Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services		168.5	337.0	337.0	337.0	337.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	168.5	337.0	337.0	337.0	337.0

CAPITAL EXPENDITURES	2,185.0					
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		168.5	337.0	337.0	337.0	337.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	168.5	337.0	337.0	337.0	337.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by Bruce Richards Phone _____
 Division Commissioner's Office Date/Time 4/12/99 3:56 PM
 Approved by Comm. Margaret M. Pugh *Margaret M. Pugh* Date 4/12/99
 Agency Department of Corrections

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STATE OF ALASKA
1999 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. HB 75
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DATE 4/12/99

Enactment of HB 75 would amend existing Alaska statutes to permit capital punishment for certain aggravated murder in the first degree convictions. The Dept. of Law estimates one capital felony conviction/death penalty sentence per year. The average length of time between sentencing and execution of the offender is approximately ten years. Because of the lengthy appeal process for cases involving the death penalty, it is anticipated that a ten-bed death row facility would need to be constructed for public safety reasons and separate confinement for inmates who are sentenced to death.

1. The estimated cost for a ten-bed death row facility to be constructed on the grounds of Spring Creek Correctional Center is approximately \$160,000 per bed plus an additional \$300,000 for the execution chamber. Engineering and Design costs are estimated to be approximately \$285,000 for a total building cost of \$2,185,000.

2. To staff the new facility it would require one post (5 correctional officers) at a cost of approximately \$337.0 per year. Assuming the new facility would be brought on line July 1, 2000, the staff costs would be \$168.5 plus an additional \$22.6 for utilities, food and clothing. By FY 05 the operating costs would reach \$379.2.

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1999 LEGISLATIVE SESSION

BILL NO. HB 75

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "... relating to murder; authorizing capital punishment, ... BRU Criminal Division
when certain of those murders are committed against children..." Component Criminal Appeals/Special Litigation
 Sponsor Representative Masek
 Requester House Judiciary Committee Component Serial No. 2203

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	112.3	300.1	300.1	412.4	524.7	524.7
Travel	32.9	45.0	57.5	65.4	69.3	69.3
Contractual	99.5	212.1	282.1	281.6	331.1	361.1
Supplies	1.7	4.6	4.6	6.3	8.0	8.0
Equipment	6.5	19.5	0.0	6.5	6.5	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	252.9	581.3	644.3	772.2	939.6	963.1

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	252.9	581.3	644.3	772.2	939.6	963.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	252.9	581.3	644.3	772.2	939.6	963.1

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time	1	4	4	5	6	6
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 75 would classify as a capital felony certain instances of murder in the first degree when the victim is a minor child under 18 years of age, and establishes sentencing procedures for the capital felony. A 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. Passage of this bill will have significant costs for the Department of Law.

Overview

Capital felony trials would be bifurcated, that is, 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

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 Division Attorney General's Office Date/Time 4/14/99, 8:29 AM
 Approved by Commissioner Bruce M. Botelho *Bruce M. Botelho* Date 4/14/99
 Agency Department of Law

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BILL NO. HB 75

ANALYSIS CONTINUATION

mitigating factors exist that outweigh the aggravating factors, and whether the defendant should be sentenced to a term of imprisonment or to death. The department assumes two murders per year would be referred for prosecution with death penalty aggravators and it would probably seek the death penalty in three cases every two years. Each case accepted for prosecution as a capital felony would require trials. In the remaining case, prosecutors would elect to try it as noncapital first degree murder for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. The department expects that one capital offense conviction will occur each year.

Thus, the department must be prepared to prosecute capital felonies on one and a half 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 taken the position that "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 greater prosecution resources. Many of the thirty-eight 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 and during sentencing proceedings, 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 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 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 addition, 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. 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 capital murder trials.

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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, 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 9.6 years elapses from the time a death penalty sentence is imposed to 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 the first phase of a 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 to handle capital felony prosecutions. Although perhaps 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 another potential capital felony 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 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, at least one more capital felony is expected to go to trial, and two new potential capital felony offenses will occur. At this point, it will be necessary to add one paraprofessional and one legal secretary to handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals unit during the second year when appeals from the first trial are expected to begin the appellate review process. Initially, one attorney will be needed to handle capital felony appeals.

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During the third and fourth years, the number of bifurcated capital murder trials (1.5) should equal the number of new capital offenses charged, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the fourth year, in order to handle the total annual workload, and to insure against speedy trial problems. The trial staff would be increased by one attorney. Post-conviction capital felony appeals will increase at the rate of one new case each year. It will, therefore, be necessary to increase the appeals staff in the fifth year by adding one additional attorney.

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 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 per diem 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, the total 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 (both personal and non-personal services) of a bifurcated capital felony case has been projected to be nearly \$240,000 or considerably less than one-half of the \$597,000 cost for the first Peel trial.
- (8) The cost for appeals is shown only through the fifth 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 ten or more capital felony defendants annually, within ten years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

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(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, \$25,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees and standard witness fees, \$60,000 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney per annum.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.

Department of Law staff costs are based on the Civil Division's FY00 standard cost schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses (FTE attorney, \$133,926; FTE paraprofessional, \$90,038). Case specific costs (staff travel, witness fees and travel, and document costs as outlined above), as well as one-time equipment costs of \$6,500 per position, are not included in the rate, and are added separately. While annual clerical support costs are included in the cost schedule as overhead, a position authorization is necessary, and 1 PFT Legal Secretary position is included with its associated one-time equipment costs.

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ANALYSIS CONTINUATION

Cost Summary (Capital Trials)

FY00 - ASSUMPTION: 1 trial, preparation on 1 potential capital felony

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		7.5				7.5
Trial Unit Costs	112.3	7.9	19.5	1.7	6.5	147.9
Witness Travel & Per Diem		25.0				25.0
Witness Fees			60.0			60.0
Deposition/Court Reporter Charges			20.0			20.0
Total FY00	112.3	32.9	99.5	1.7	6.5	252.9

FY01 - ASSUMPTION: 1 trial, preparation on 2 potential capital felonies

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Paraprofessional	75.5	0.2	13.1	1.2	6.5	96.5
1 Legal Secretary					6.5	6.5
Staff Case Travel		8.0				8.0
Subtotal New Costs	75.5	8.2	13.1	1.2	13.0	111.0
Cumulative Trial Unit Costs	187.8	16.1	32.6	2.9	13.0	252.4
Witness Travel & Per Diem		25.0				25.0
Witness Fees			60.0			60.0
Deposition/Court Reporter Charges			20.0			20.0
Total FY01	187.8	41.1	112.6	2.9	13.0	357.4

FY02 - ASSUMPTION: 1.5 trials, preparation on 2 potential capital felonies

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	187.8	16.1	32.6	2.9		239.4
Witness Travel & Per Diem		37.5				37.5
Witness Fees			90.0			90.0
Deposition/Court Reporter Charges			30.0			30.0
Total FY02	187.8	53.6	152.6	2.9	0.0	396.9

FY03-05 - ASSUMPTION: 1.5 trials, preparation on 2 potential capital felonies

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		7.5				7.5
Subtotal New Costs	112.3	7.9	19.5	1.7	6.5	147.9
Cumulative Trial Unit Costs	300.1	24.0	52.1	4.6	6.5	387.3
Witness Travel & Per Diem		37.5				37.5
Witness Fees			90.0			90.0
Deposition/Court Reporter Charges			30.0			30.0
Total FY03-05	300.1	61.5	172.1	4.6	6.5	544.8

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Cost Summary (Appellate Review Process)

FY01 - ASSUMPTION: 1 trial begins appellate review process

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		3.5				3.5
Trial Unit Costs	112.3	3.9	19.5	1.7	6.5	143.9
Outside Counsel to Uphold Death						0.0
Penalty Law			50.0			50.0
Deposition/Court Reporter Charges			30.0			30.0
Total FY01	112.3	3.9	99.5	1.7	6.5	223.9

FY02 - ASSUMPTION: 2 trials on appeal, with 1 new case each following year

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	112.3	3.9	19.5	1.7		137.4
Outside Counsel to Uphold Death						0.0
Penalty Law			50.0			50.0
Deposition/Court Reporter Charges			60.0			60.0
Total FY02	112.3	3.9	129.5	1.7	0.0	247.4

FY03 - ASSUMPTION: 3 trials on appeal

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	112.3	3.9	19.5	1.7	0.0	137.4
Deposition/Court Reporter Charges			90.0			90.0
Total FY03	112.3	3.9	109.5	1.7	0.0	227.4

FY04 - ASSUMPTION: 4 trials on appeal

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		3.5				3.5
Subtotal New Costs	112.3	3.9	19.5	1.7	6.5	143.9
Cumulative Trial Unit Costs	224.6	7.8	39.0	3.4	6.5	281.3
Deposition/Court Reporter Charges			120.0			120.0
Total FY04	224.6	7.8	159.0	3.4	6.5	401.3

FY05 - ASSUMPTION: 5 trials on appeal

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	224.6	7.8	39.0	3.4		274.8
Deposition/Court Reporter Charges			150.0			150.0
Total FY05	224.6	7.8	189.0	3.4	0.0	424.8

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ANALYSIS CONTINUATION

Cumulative Implementation Cost by Year

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
FY00						
Capital Trials	112.3	32.9	99.5	1.7	6.5	252.9
FY01						
Capital Trials	187.8	41.1	112.6	2.9	13.0	357.4
Appellate Review Process	112.3	3.9	99.5	1.7	6.5	223.9
Total	300.1	45.0	212.1	4.6	19.5	581.3
FY02						
Capital Trials	187.8	53.6	152.6	2.9	0.0	396.9
Appellate Review Process	112.3	3.9	129.5	1.7	0.0	247.4
Total	300.1	57.5	282.1	4.6	0.0	644.3
FY03						
Capital Trials	300.1	61.5	172.1	4.6	6.5	544.8
Appellate Review Process	112.3	3.9	109.5	1.7	0.0	227.4
Total	412.4	65.4	281.6	6.3	6.5	772.2
FY04						
Capital Trials	300.1	61.5	172.1	4.6	0.0	538.3
Appellate Review Process	224.6	7.8	159.0	3.4	6.5	401.3
Total	524.7	69.3	331.1	8.0	6.5	939.6
FY05						
Capital Trials	300.1	61.5	172.1	4.6	0.0	538.3
Appellate Review Process	224.6	7.8	189.0	3.4	0.0	424.8
Total	524.7	69.3	361.1	8.0	0.0	963.1

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

Revision Date: _____
Title: "An act relating to murder..."

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

Sponsor: Representative Masek
Requestor: (H) JUD

COMPONENT SERIAL NO: 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2 002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	373.8	1044.7	1332.4	1571.2	1571.2	1571.2
TRAVEL	85.5	230.5	240.0	413.0	413.0	413.0
CONTRACTUAL	214.3	580.3	729.5	780.6	780.6	780.6
SUPPLIES	24.8	61.4	67.2	77.2	71.2	71.2
EQUIPMENT	39.0	72.8	46.8	52.0	38.0	38.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	737.4	1989.7	2415.9	2894.0	2874.0	2874.0

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	737.4	1989.7	2415.9	2894.0	2874.0	2874.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	737.4	1989.7	2415.9	2894.0	2874.0	2874.0

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME	6.0	16.0	20.0	24.0	24.0	24.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Date: 4/14/99

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BILL NO. HB 75

ANALYSIS: (continued)

Summary of the Bill

This bill would make first degree murder a capital offense. (Sec. 6) A sentence of death could be imposed if a jury found certain aggravating factors after a guilty verdict. The jury would also have to find that one of the four listed mitigating factors did not outweigh the aggravating factors and that the defendant should be sentenced to death. (Sec. 17)

This is a true death penalty bill. It does not call for an advisory vote. If the bill is enacted, death penalty prosecutions could begin immediately after it becomes effective.

The bill sets up death penalty procedures that can be applied in any case as long as aggravating factors are found. Although the death penalty in the current bill appears to be limited to cases where the defendant caused the death of a child (any person under 18 years old), other aggravating factors can easily be added in coming years. With the death penalty mechanism in place, a simple one-page bill can add other aggravating factors and increase the scope of death penalty cases.

Thus the bill does not set up a separate crime which makes killing a child a capital offense. Instead, it makes all first degree murders capital offenses and sets up an easily-expanded list of aggravating factors, which, in the current legislation, are limited to situations in which the defendant causes the death of someone under 18 years of age.

The bill also apparently takes away the normal criminal jurisdiction of the Alaska Court of Appeals. Instead, it sets up a "Sentence Review" procedure in the Alaska Supreme Court. (Sec. 18) The bill does not say whether the Alaska Court of Appeals or the Supreme Court would review "merit appeals." The Sentence Review in the Alaska Supreme Court would have to be done on an expedited basis.

Fiscal Impact

1. Assumptions

In gauging the fiscal impact of this bill, the Public Defender Agency assumes that death penalty cases under this bill would be restricted to first-degree murders where the victim is under 18.

It must be noted that the Public Defender Agency is concerned about this assumption because, as set out in the Summary above, the bill makes all first degree murders capital offenses. Unlike capital murder laws in other states, this bill does not require notice at the beginning of the case that the prosecution intends to seek the death penalty. Oddly, the Sentencing Procedure statute provides that a death penalty sentencing proceeding must be started in every first degree murder case – not only in cases involving children. Finally, the Aggravating Factors section (Sec. 17, page 10) is not very clear. It says that the "following aggravating factors may be considered (emphasis added)." Hopefully, this provision would not allow consideration of other aggravating factors not listed.

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However, setting aside these concerns, the Public Defender Agency estimates that, given the limitation to deaths of children under 18, the Agency would have to handle two to three capital cases per year. The Public Defender Agency will base its projections on these figures.

2. Death Penalty Cases Are Invariably Complex and Expensive

Passage of this death penalty legislation will have an undeniably significant impact on the entire criminal justice system. The Public Defender Agency, like other criminal justice agencies, would need significant additional fiscal resources.

Death penalty cases require much 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. For example, a commonly accepted estimate for expert witness fees alone in a death penalty case is \$60,000.

Capital felony trials are bifurcated. That is, two separate trials are actually held. The first determines guilt or innocence; the second determines whether aggravating factors exist to justify execution; whether mitigating factors exist that outweigh the aggravating factors, and whether to impose a period of imprisonment or death. The experience of other states is that these trials require far more defense resources than first-degree murder cases that do not involve the potential for execution.

Many states that have a death penalty provide a minimum of two defense attorneys to each capital defendant to insure that the required heightened procedural safeguards are met. The American Bar Association Standards for Criminal Justice: Providing Defense Services (3d. Ed.) note the following:

Workload in capital cases creates extraordinary difficulties in every jurisdiction in which the death penalty can be imposed. Time requirements in such cases vastly exceed those of non-capital felony cases. In some states where death row populations are high, the situation has reached crisis proportions. After conducting a national survey, for example, attorneys in Florida arrived at an annual caseload standard of five cases per attorney when the defendant was not under a warrant of death, and three cases per attorney when a warrant for execution had been issued. In California, where the Office of the State Public Defender handled capital appeals in the California Supreme Court, one study concluded that the attorneys handling such cases should be responsible for only two to three briefs per year in such cases.

(at p. 73; footnotes omitted.)

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During the investigation and preparation phase of the case, crime scene evidence will have to be examined and the forensic examinations performed by the state will have to be scrutinized. Psychiatric experts are essential to deal with competency, insanity or diminished capacity issues. Motion practice in death penalty cases has been estimated to be five times more labor and cost-intensive than in non-capital homicide trials. Trial itself in capital cases is an extremely time consuming process, lasting in excess of six months in some cases. Serious scheduling conflicts will arise in staff resources to provide simultaneous representation in a number of cases.

A sentencing, or penalty phase trial is categorically different in breadth and procedure from any comparable proceeding in a non-capital trial. Heightened due process requirements continue. In addition to the expert witnesses employed during the trial phase, such expertise will be necessary when mental health issues do not rise to the level of perfect defenses but are important in establishing mitigators. Additionally, extensive investigation and presentation of the defendant's family friends, co-workers, neighbors, and school and social workers is minimally required. The analysis of defendants' entire life and the gathering of historical detail are absolutely mandated. In a recent California case 240 such witnesses were located and interviewed, and 120 of those were called as actual witnesses in a single penalty phase.

If a defendant is convicted of first-degree murder and sentenced to death, a lengthy, complex, and difficult appeals process ensues. Again, as noted above, there is some ambiguity in the "Sentence Review" statute in the bill. Although it is clear that the Alaska Supreme Court would review the death sentence itself, this would only be part of the appellate case. "Merit appeal" issues, such as whether there was an illegal search or seizure or whether the trial court erred in evidentiary and procedural rulings have to be decided as well. In the first few cases at least, there would be protracted litigation on whether the Alaska Court of Appeals or the Supreme Court would hear the "merit" issues. In addition to the direct merit and sentence appeals, there could be motions to modify or reconsider the death sentence and motions for a new trial before the trial judge. If the appeals were unsuccessful, post-conviction relief proceedings could be filed in state court. Unsuccessful post-conviction relief proceedings could be appealed to the Alaska Court of Appeals. If the post-conviction relief appeal was unsuccessful in the Alaska Court of Appeals, a petition for hearing could be filed in the Alaska Supreme Court. This does not include the extensive litigation that takes place in federal court in death penalty cases. Finally, there are often remands from the state or federal appellate courts for additional hearings in these cases. The Public Defender Agency would be responsible for conducting these hearings, too. 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 that is routinely done in most death penalty cases following conviction.

Breakdown of Fiscal Impact

1. Personal Services

Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, a minimum of two defense attorneys will need to take up representation of the accused in death penalty matters. This level of staffing is set out in the American Bar Association Standards referred to above. The Public Defender will follow this prudent course, whether established by statute or internal policy.

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It is anticipated that the Public Defender Agency will take in two to three new 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. The Public Defender Agency also anticipates that, during the second year three or more additional capital cases are expected to go to trial, and three new capital felony offenses will occur. 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. Therefore, 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 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 that have the death penalty.

Consistent with its 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.

2. Travel and Contractual

Travel expenses will be necessarily high given the broad geographic area served by these teams. These teams will have to travel to locations where the crime occurred and where trial is being held. Travel expenses are higher in Alaska because of the geography of the state, the lack of surface roads and the high cost of air travel and lodging. Costs will be even higher for the considerable out-of-state travel associated with these cases. Once an individual is convicted of a capital offense, preparation begins for the penalty phase (sentencing hearing). Defense investigators will travel to locations where the defendant lived, went to school, etc., to interview people and develop facts for the purpose of vitiating a sentence of execution. If favorable witnesses are located, they will then have to be subpoenaed for travel to Alaska for the hearing.

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

3. Supplies and Equipment

These expenses naturally accrue when additional staff is required. The estimates that follow are very conservative projections without consideration of inflationary factors.

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4. Training

Attorneys will most likely need to be recruited from outside as there are few or no "death-qualified" attorneys available locally, and none currently employed by the Public Defender Agency. Training in Alaska law will be required. Additionally, training for lawyers engaged in death penalty work is a critical component for any death penalty defense unit. Both the prosecution and the defense will avail themselves of national training programs related to these kinds of cases that are conducted on a yearly basis.

Conclusion

Due to the accrual of cases from year to year, once implementation of death penalty legislation like this occurs, expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion that will be exercised by the prosecution in seeking the death penalty. Continued additional staff will have to be added to this agency beyond the fourth year of implementation of the capital crime law. Despite our best predictive efforts, this cost estimate might very well understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

		Cumulative Cost Summary - Years 1-5				
		Year 1	Year 2	Year 3	Year 4	Year 5
100 - Salaries and Benefits						
		373.8	1044.7	1332.4	1571.2	1571.2
200 - Travel						
	Staff Travel	35.5	80.5	90.0	113.0	113.0
	Witness Travel	50.0	150.0	150.0	300.0	300.0
	Total	85.5	230.5	240.0	413.0	413.0
300 - Contractual						
	Agency Contractual	81.8	252.8	342.0	393.1	393.1
	Outside Services	132.5	327.5	387.5	387.5	387.5
	Total	214.3	580.3	729.5	780.6	780.6
400 - Supplies						
		24.8	61.4	67.2	77.2	71.2
500 - Equipment						
		39.0	72.8	46.8	52.0	38.0
	Grand Totals	737.4	1989.7	2415.9	2894.0	2874.0
Permanent Full Time Positions		6.0	16.0	20.0	24.0	24.0

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Revision Date _____ Dept. Affected Alaska Court System
 Title Capital punishment for murder of a child BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Masek
 Requester House Judiciary Component Serial No. 769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	75.2	75.2	75.2	75.2	75.2	75.2
Travel	19.9	19.9	19.9	19.9	19.9	19.9
Contractual	76.0	76.0	76.0	76.0	76.0	76.0
Supplies						
Equipment	13.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	184.6	171.1	171.1	171.1	171.1	171.1

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	184.6	171.1	171.1	171.1	171.1	171.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	184.6	171.1	171.1	171.1	171.1	171.1

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time	4	4	4	4	4	4
Temporary						

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

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265
 Agency: Alaska Court System Date/Time: 4/14/99 11:29 AM
 Approved by: Stephanie J. Cole, Administrative Director Date: 4/14/99
 Agency: Alaska Court System

Alaska Court System
Fiscal Analysis
HB 75

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tern Judge, Anchorage, PPT, 6 months	\$19,500	\$8,830	\$28,330
Law Clerk I, Anchorage Trial Courts, 13D, PPT, 6 months	17,094	6,412	23,506
Law Clerk III, Appellate Courts, 15D, PPT, 6 months	19,704	6,954	26,658
Bailiff, Anchorage, 6A, NPP, 6 months	6,836	678	7,514
	Subtotal		<u>86,008</u>

Offset cost of existing caseload

Currently, non-capital punishment, first degree murder cases experience a 50% trial rate and last approximately one month. The Department of Law anticipates 3 cases with a 100% trial rate every 2 years. Using this estimate, the court could expect approximately 1-1/2 trials a year of 4 months duration each. The proposed legislation will result in approximately 6 months of trial activity. Therefore, the cost offset is computed at one-eighth (3/4 month / 6 months) of the estimated personal services costs.

Net Personal Services	<u>(10,800)</u>
	<u>75,208</u>

The Department of Law expects to prosecute 3 capital offenses related to children every 2 years. Capital offense trials will be split into 2 separate trials with each lasting 4 months. The court anticipates extraordinary jury costs from calling additional jurors, extended jury selection and questioning, the need for alternate jurors, and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record required for capital offenses. Additional law clerks are required for extensive legal research of motions and other legal questions.

Travel

Jury sequestration costs - transportation, meals and lodging		
1-1/2 innocence/guilt trials with 18 jurors, 7 days in deliberation each at \$120 day		22,700
<i>Offset cost of existing caseload (see note in Personal Services)</i>		(2,800)
Net Travel		<u>19,900</u>

Contractual

Jury fees - 1-1/2 trials at 66 days (3 months) with 18 jurors at \$25 a day and 1 sentencing trial at 22 days (1 month) with 18 jurors at \$25 a day		54,500
Contractual security guard to staff metal detector		1,000
Transcription fees - 2-1/2 transcripts of 5000 pages at \$2.50 a page		31,300
Freight for high security equipment kit	Subtotal	<u>100</u>
		86,900
<i>Offset cost of existing caseload (see note in Personal Services)</i>		(10,900)
Net contractual		<u>76,000</u>

Equipment (one-time cost)

Standard office equipment, computer and reference materials for law clerks		6,000
Portable high security kit, consisting of walk-through metal detector and other security items.		7,500
		<u>13,500</u>

Total Estimated Cost	<u>\$184,608</u>
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Committees:

Transportation
Chair

Resources
Vice Chair

World Trade and
State & Federal Relations

Alaska State Legislature



Representative Beverly Masek

During Interim: (June-Dec.)
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600 E. Railroad Avenue
Wasilla, AK 99654
(907) 376-2679
Fax: 373-4745

During Session: (Jan.-May)
State Capitol
Juneau, AK 99801-1182
(907) 465-2679
Fax: 465-4822
1-800-505-2678

Sponsor Statement for HB 75

CAPTIAL PUNISHMENT FOR CERTAIN CRIMES AGAINST CHILDREN

I have introduced HB 75 in an effort to afford more protection to the lives of Alaska's children. Under our present system of justice, when a sexual predator strikes they have no incentive to preserve the lives of their young victims.

HB 75 will serve notice to any predator who would consider murdering their victim for any reason that they may be forfeiting their own life.

I wish to keep this bill narrow because I specifically want it aimed at responding to situations involving children.

My intent with this legislation is to serve notice to any sexual predator who would consider murdering their young victim that their own life would be forfeit also. Although it may not always deter a murder, if it did only in a few instances, it would be well worth it. By giving the death penalty as an option to Alaskan juries instead of just a longer prison term, we will perhaps save some children which otherwise would have been lost.

Please support this effort now so that we can be pro-active instead of re-active in our protection of children.

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 31, 1999

SUBJECT: HB 75 - Capital Punishment (Work Order No. 21-LS0310\A)

TO: Representative Beverly Masek
Attn: Eddie Grasser

FROM: Gerald P. Luckhaupt *GLP*
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 05.15.140(b) to make a conforming change necessitated by the creation of capital felonies in this bill.

Section 2 of the bill amends AS 11.31.100(d) to make a conforming change necessitated by the creation of capital felonies in this bill.

Section 3 of the bill amends AS 11.31.110(c) to make a conforming change necessitated by the creation of capital felonies in this bill.

Section 4 of the bill amends AS 11.31.120(h) by making a conforming change necessitated by the creation of capital felonies in this bill.

Section 5 of the bill amends AS 11.31.120(i) by making a conforming change necessitated by the creation of capital felonies in this bill.

Section 6 of the bill amends AS 11.41.100(b) to provide that murder in the first degree is a capital offense.

Section 7 of the bill amends AS 12.30.020(a) to provide that a person charged with a capital offense is not eligible for release before trial.

Section 8 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 9 of the bill amends AS 12.47.110(b) to provide that a person that has been found to be incompetent to stand trial and has remained incompetent for five years may still be retried if the original charge is a capital felony.

Section 10 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 the aggravating factor beyond a reasonable doubt.

Section 11 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 12 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 13 of the bill amends AS 12.55.125(l) by making a conforming change.

Section 14 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 15 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 16 of the bill amends AS 12.55.185(8) by making a conforming change.

Section 17 of the bill is the statutory "meat" of the bill. This section adds a new chapter to AS 12 with the following sections:

AS 12.58.010 provides that (a) when a defendant is convicted of a capital felony the court shall commence a separate sentencing proceeding before the same jury that convicted the defendant or, if the jury trial was waived or the defendant pled guilty, the court will impanel a jury for the sentencing; (b) during the sentencing proceeding evidence may be presented as to any aggravating or mitigating factor the court determines to have probative value; (c) after hearing the evidence the jury shall deliberate and issue a recommended sentence with written findings of whether the jury unanimously finds the existence of at least one aggravating factor listed in AS 12.58.030, unanimously determines by a preponderance of the evidence that the aggravating factor or factors outweigh any mitigating factors that the one or more members of the jury may have found to exist by a preponderance of the evidence, and unanimously find that the defendant should be sentenced to death.

AS 12.58.020 provides procedures for the imposition of sentence by the court. If the jury finds as provided in AS 12.58.010(c) then the court must impose the death penalty but if the jury does not find an aggravating factor, or finds the aggravating factor or factors outweighed by the mitigating factors, or does not recommend that the defendant be sentenced to death, then the court may not impose the death sentence but must impose a term of imprisonment as provided in AS 12.25.125(a). When a sentence of death is imposed under this section it is subject to automatic review by the Alaska Supreme Court under AS 12.58.200.

AS 12.58.030 provides a list of aggravating factors which may be considered by a jury and, if at least one of these factors is found to exist, upon which a death sentence may be based.

AS 12.58.040 provides a list of mitigating factors which must be considered by the jury along with any other mitigating factors that may exist and which must be outweighed by the aggravating factor or factors in order to support a sentence of death.

AS 12.58.100 provides procedures for an automatic, priority review by the Alaska Supreme Court of the judgment of conviction of any capital felony in which the death sentence is imposed.

AS 12.58.110 provides that after review of the conviction and sentence the Alaska Supreme Court shall issue a death warrant and set a date of execution if the court upholds the conviction and sentence.

AS 12.58.200 requires the commissioner of corrections to establish a procedure for the execution of a sentence of death.

AS 12.58.210 requires the commissioner of corrections to specify the time and date of execution after receiving a death warrant from the Alaska Supreme Court.

AS 12.58.220 specifies that the death sentence shall be inflicted by lethal injection within a state correctional facility.

AS 12.58.230 requires the commissioner of corrections to make a return upon the death warrant showing the time and place in which the defendant was executed.

AS 12.58.300 requires the commissioner of corrections to give notice if the commissioner believes the defendant has become incompetent or is pregnant and provides a stay of execution.

AS 12.58.310 provides procedures for determining and reviewing the competency of the defendant.

Representative Beverly Masek
March 31, 1999
Page 4

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 18 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 19 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 20 of the bill amends AS 47.10.010(e) makes a conforming change to the juvenile waiver provisions necessitated by the creation of capital felonies in this bill.

Section 21 of the bill amends AS 47.10.060(f) makes a conforming change necessitated by the creation of capital felonies in this bill.

Sections 22 and 23 of the bill provide notice provisions for court rules changes necessitated by the bill.

GPL:jdr
99-175.jdr

FEB 24 1999

ALASKA PEACE OFFICERS ASSOCIATION

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Pres. Aleutian Islands Chapter

Representative Masek
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

Dear Representative Masek,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 75.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association