

HB 9

**COMMITTEE
DOCUMENTS**

(FILE 1)

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE HOUSE

SPONSOR STATEMENT

COMMITTEE SUBSTITUTE for HOUSE BILL 9 (LS0036\E)

An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

The impetus for HB 9 really comes from what I view as society's inability to reform or rehabilitate certain criminals. People who commit the most monstrous of crimes will not have the opportunity to reoffend if a death sentence is carried out. 36 states currently have a death penalty on their books, whether they use it or not, and while I don't believe it's a deterrent to crime, I believe it should be an option for the justice system to brandish against the most heinous unremorseful criminals in our society.

Alaska is currently awaiting the trial of a man previously accused of murder who is going on trial for the torture and brutal murder of another woman. Federal prosecutors are deciding whether he should face the death penalty. Many Alaskans believe he should. It is important to note that if this individual had not committed Federal crimes in connection with this case, he would be prosecuted by the state and under current law would not be eligible for the death penalty. But would his torture and murder of a woman be any less offensive?

The most common argument against the death penalty is that you might execute an innocent individual. Let me be perfectly clear in stating I believe that the death penalty should only be used in cases where there is no question of guilt or innocence. No one supports innocent people being put to death for crimes they did not commit. But technology continues to make it more difficult for criminals to hide their offenses and I've included safe guards in the legislation to help ensure that people are not wrongfully convicted and sentenced to death.

It is my hope that we can engage in a healthy dialogue about the death penalty. The Alaska Territorial Legislature abolished the death penalty in 1957. I believe it is time for us to reexamine the issue, discuss advancements made in the judicial system, and once again consider how we as a society can most effectively dispense justice. I want this legislation to give Alaskans the confidence that we have a system of justice they can rely on to handle the most heinous members of our society.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 7

From: Jane W. Pierson

Date: April 8, 2009

Re: Going Final on HB9

Today, the House Judiciary Committee passed out the CS for HB9 version 26-LS0036\E with the attached three amendments, please note that amendment #3 is as amended. Please make the amendments and go final.

Should you have any questions, please do not hesitate to give me a call.

AMENDMENT # 1

OFFERED IN THE HOUSE

TO: CSHB 9(), Draft Version "E"

-
- 1 Page 15, line 11, following "fire fighter,":
 - 2 Insert "emergency medical technician, paramedic, ambulance attendant,"

Insert
L - V
G - N
H - N 4-2
C - 4
G - 1
K - 1

26-LS0036\E.6
Luckhaupt
3/23/09

Rep. Ramras

AMENDMENT # 2

OFFERED IN THE HOUSE

TO: CSHB 9(), Draft Version "E"

1 Page 1, line 4, following the first occurrence of "Rules":

2 Insert "16,"

3

4 Page 17, following line 29:

5 Insert new material to read:

6 "Sec. 12.58.070. Discovery. (a) Except as provided in (b) of this section, Rule
7 16, Alaska Rules of Criminal Procedure, applies to discovery in the penalty phase of a
8 capital felony prosecution if the prosecution is seeking the death penalty.

9 (b) Thirty days before the guilt phase of a capital felony case is scheduled to
10 begin, the prosecution and the defense shall provide to the opposing party a list of
11 witnesses, other than expert witnesses, that the party is likely to call at the penalty
12 phase if the defendant is found guilty of a charge that is the foundation for the death
13 penalty. In addition to the witness lists, the parties shall include the witnesses' written
14 or recorded statements, a summary of any other statements, and a summary of the
15 testimony the witness will provide the court.

16 (c) Nothing in this section affects discovery related to expert witnesses under
17 Rule 16, Alaska Rules of Criminal Procedure."

18

19 Page 23, following line 1:

20 Insert a new subsection to read:

21 "(c) AS 12.58.070, added by sec. 21 of this Act, has the effect of modifying Rule 16,
22 Alaska Rules of Criminal Procedure, by providing for the exchange of the names of
23 witnesses, their written or recorded statements, and summaries of their testimony by the

1 prosecution and defense for the penalty phase of a capital felony death penalty prosecution."

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAMRAS

TO: CSHB 9(), Draft Version "E"

1 Page 13, line 21, following "court.":

2 Insert "The attorney general may not elect to seek the death penalty under this section
3 unless the state is prepared to present to the jury at trial

4 (1) biological evidence or deoxyribonucleic acid evidence that links
5 the defendant to the act of murder;

6 (2) a videotaped voluntary confession by the defendant to the murder;

7 or

8 (3) a video recording that conclusively links the defendant to the
9 murder."

10

11 Page 14, line 13:

12 Delete "and"

13

14 Page 14, following line 13:

15 Insert a new paragraph to read:

16 "(3) that the state presented

17 (A) biological evidence or deoxyribonucleic acid evidence that
18 links the defendant to the act of murder;

19 (B) a videotaped voluntary confession by the defendant to the
20 murder; or

21 (C) a video recording that conclusively links the defendant to
22 the murder;"

23

1 Renumber the following paragraph accordingly.

2

3 Page 14, line 29:

4 Delete "and"

5

6 Page 14, following line 29:

7 Insert a new paragraph to read:

8 "(3) that the state presented

9 (A) biological evidence or deoxyribonucleic acid evidence that
10 links the defendant to the act of murder;

11 (B) a videotaped voluntary confession by the defendant to the
12 murder; or

13 (C) a video recording that conclusively links the defendant to
14 the murder;"

15

16 Renumber the following paragraph accordingly.

Amendment to Amendment #3

~~From SB 110~~

(2) "biological evidence" means

(A) the contents of a sexual assault forensic examination kit;

(B) semen, blood, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable human bodily material, collected as part of a criminal investigation

Page 1

AMENDMENT TO AMEND #3

SECTIONAL ANALYSIS
COMMITTEE SUBSTITUTE for HOUSE BILL 9 (LS0036\E)

“An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure.”

Section 1: Amends AS 05.15.105(b), Persons prohibited from involvement. Adds capital offense to the section prohibiting persons from becoming involved in games of skill and chance.

Section 2: Amends AS 05.15.140(b), Proof necessary to qualify for a permit. Adds capital offense to the section requiring a municipality or qualified organization to disclose the name and address of each person responsible for the operation of the activity and whether any person named has committed an offense as listed in subsection (b)(1).

Section 3: Amends AS 08.64.326(a), Grounds for imposition of disciplinary sanctions. Adds capital offense to the subsection where the Medical Board may impose a sanction if the board finds after a hearing that a licensee has committed a class A or unclassified felony.

Section 4: Amends AS 09.65.210, Damages resulting from commission of a felony or while under the influence of alcohol or drugs. Adds capital felony to the section prohibiting a person from recovering damages for a personal injury or death if the person was engaged in conduct that would constitute the commission of a capital, unclassified, class A or class B felonies.

Section 5: Amends AS 11.31.100(d), Attempt. Removes “other than murder in the first degree” from the attempt classifications under subsection (d) (2).

Section 6: Amends AS 11.31.110(c), Solicitation. Removes “other than murder in the first degree” from the solicitation classifications under subsection (e) (2).

Section 7: Amends AS 11.31.120(i), Conspiracy. Removes “other than murder in the first degree” from the conspiracy classifications under subsection (i) (2).

Section 8: Amends AS 11.31.120(h) (2), Conspiracy. Adds capital felony to the definition of serious felony offense in the conspiracy statutes as provided within the newly amended statute, AS 12.55.125(a), Sentences of imprisonment of felonies.

Section 9: Amends AS 11.41.100(b), Murder in the first degree. Defines murder in the first degree as a capital offense as it is provided under AS 12.55.125(a).

Section 10: Amends 12.30.020(a), Bail. Adds capital offense to the list of felonies for which bail may not be applicable unless certain conditions are met.

Section 11: Amends AS 12.30.040(b), Release after conviction. Adds capital offense to the provisions under which a person may not be released on bail before sentencing or pending appeal.

Section 12: Amends AS 12.47.110(b), Commitment on finding of incompetency. Adds capital felony to the list of charges for which a defendant may be charged again after a five-year period.

Section 13: Amends AS 12.50.101(i) (1), Immunity of witnesses. Adds capital offense to the list of "higher level" felonies.

Section 14: Amends AS 12.55.025(i), Sentencing procedures. Exempts imposing a sentence of death from the preponderance of evidence standard of proof as it applies to criminal proceedings.

Section 15: Amends AS 12.55.125(a), Sentences of imprisonment for felonies. Adds the death sentence to the sentencing considerations for murder in the first degree. Also removes the murder of an unborn child from the imposition of a death sentence, listing the parameters of sentencing and lists the possible sentence for one convicted of murder in the first degree and the circumstances that are to be considered upon sentencing.

Section 16: Amends AS 12.55.125(f), Sentences of imprisonment for felonies. Adds a sentence of death to the list of those sentences that may not be suspended.

Section 17: Amends AS 12.55.125(l), Sentences of imprisonment for felonies. Defines the length of sentence of 99 years for those convicted of a capital, unclassified or a class A felony offense when the defendant has been convicted of two or more serious felonies.

Section 18: Amends AS 12.55.145(a), Prior convictions. Adds capital offense to the exceptions for which a certain time period has elapsed when considering prior convictions upon sentencing.

Section 19: Amends AS 12.55.155(f), Factors in aggravation and mitigation. Clarifies that the aggravators listed within this section can only be considered under presumptive sentencing and not for capital punishment.

Section 20: Amends AS 12.55.185(10), Definitions. Adds capital felony to the definition of "most serious felony."

Section 21: Adds a new chapter, Chapter 58, to AS 12, Code of Criminal Procedure.

Article 1. Election to Seek Death Penalty.

Sec. 12.58.010, Prosecutor's election to seek death penalty. Outlines the procedure in which the attorney general can seek the death penalty and the district attorney giving notice and the applicable aggravating factor(s) to the court, the defendant and the defendant's attorney within 120 days of arraignment on the capital felony indictment or within 120 days of arraignment if the indictment has been waived.

Article 2. Imposition of Sentence.

Sec. 12.58.020, Sentencing procedure for a capital felony. If a defendant is convicted of a capital felony, the court conduct a separate sentencing proceeding before the jury to consider imposition of the death penalty. Aggravating or mitigating factors may be presented regardless of the admissibility of the evidence under the rules of evidence as long as this introduction of evidence does not violate the United States or State of Alaska constitutions.

After hearing the evidence, the jury will deliberate and recommend a sentence which includes a written finding of whether the jury agrees there is beyond a reasonable doubt at least one aggravating factor exists and that the aggravating factor(s) outweigh any mitigating factors found to exist by preponderance of the evidence and that death is the appropriate sentence for the defendant.

Sec. 12.58.030, Sentence imposition for capital felony. After hearing the evidence, the court may impose a sentence of death or term of imprisonment. A death sentence may be imposed if a jury finds that there is no reasonable doubt that at least one aggravating factor exists nor is the aggravating factor or factors outweighed by any mitigating factors and a death sentence has been recommended by the jury. If the court determines the defendant is mentally retarded under AS 12.58.060, a death sentence may not be imposed. When the court enters a death sentence, it is to state in writing the jury's findings of aggravating factors and mitigating factors considered but found insufficient to outweigh the aggravators. The death sentence is automatically subject to automatic review by the Supreme Court.

Sec. 12.58.040, Aggravating factors. Lists of aggravating factors that a jury may consider when determining whether a death sentence should be imposed.

Sec. 12.58.050, Mitigating factors. Lists of relevant mitigating factors to be considered when determining whether a death sentence should be imposed.

Sec. 12.58.060, Finding of mental retardation. If a death sentence is recommended, the court is to determine if the defendant was mentally retarded at the time the crime was committed. The procedure for a finding of mental retardation is outlined within this section.

Article 3. Sentence Review.

Sec. 12.58.100, Review of judgment of conviction of a capital offense. States that the Supreme Court shall review a death sentence within 60 days after imposition of the sentence. This time limit may be extended by the court for good cause. This review has priority over all other cases. This section outlines the review process that must be undertaken by the Supreme Court.

Sec. 12.58.110, Issuance of death warrant. If the Supreme Court upholds the conviction and sentence of death, it is to issue a death warrant and specific date of execution. The date of execution is to be no less than 30 days nor no more than 60 days after the date of the warrant. The death warrant is to be delivered to the commissioner of Corrections.

Article 4. Administration of the Death Penalty.

Sec. 12.58.200, Administration of the death penalty. The procedure for the execution of a sentence of death will be established by the commissioner of Corrections (commissioner).

Sec. 12.58.210, Execution under Supreme Court death warrant. After receiving the death warrant from the Supreme Court, the commissioner will specify the time and place of execution.

Sec. 12.58.220, Manner of execution. The punishment of death is to be inflicted by a lethal dose of a substance or substances until death is pronounced by a licensed physician and is to be carried out within a state correctional facility.

Sec. 12.58.230, Return of death warrant. The commissioner is to return the death warrant to the Supreme Court showing the time and place in which the defendant was executed.

Article 5. Stay of Execution.

Sec. 12.58.300, Incompetency or pregnancy of person sentenced to death. If after the death sentence is imposed and the commissioner has reason to believe the defendant is incompetent to proceed with the execution or the defendant is pregnant, written notice is to be given immediately to the court in which the death sentence was imposed, the prosecuting attorney and the counsel for the defendant. The execution will be stayed pending further order of the court.

Sec. 12.58.310, Examination into competency. Upon receiving receipt of notice, the sentencing court is to examine the mental condition of the defendant in the same manner as prescribed under AS 12.47.070. If the defendant is found to be incompetent, the court is to certify that finding to the Supreme Court and the commissioner and sentence the defendant under AS 12.55.125(a) and enter an order for confinement. If the defendant is found to be competent, that finding will be certified and sent immediately to the

Supreme Court and the commissioner. The Supreme Court is then required to issue another death warrant specifying a date of execution unless the finding is appealed.

Sec. 12.58.320, Disposition pending pregnancy. If the defendant is pregnant, the sentencing court is to certify that finding to the Supreme Court and the commissioner and also issue an order staying the execution during the pregnancy. Upon the completion of the pregnancy, the sentencing court is to immediately certify that finding to the Supreme Court and the commissioner. Another death warrant is issued by the Supreme Court specifying the date of execution.

Article 6. General Provisions.

Sec. 12. 58.900, Definitions. Defines commissioner and department as it applies to Chapter 12.58.

Section 22: Amends AS 22.07.020(a), Jurisdiction. Excludes prosecution for a capital felony for which a death sentence is imposed from the Court of Appeals jurisdiction.

Section 23: Amends AS 22.07.020(a), Jurisdiction. Excludes appeals of a death sentence from the Court of Appeals jurisdiction.

Section 24: Amends AS 47.12.030(a), Provisions inapplicable (Welfare, Social Services and Institutions chapter). Includes capital felony as one of the charges for which a 16-year old may be tried.

Section 25: Amends AS 47.12.100(c), Waiver of jurisdiction. Incorporates capital felony into the provisions that a minor is or is not amendable to treatment.

Section 26: Indirect Court Rule Amendments. AS 12.58 has the effect of modifying the sentencing provisions of Rules 32 (Sentence and Judgment), 32.1 (Presentence Procedure for Felony Sentencing) and 32.3 (Judgments and Orders), Alaska Rules of Criminal Procedure. AS 12.58 also has the effect of amending Rules 204 (Appeal: Time-Notice—Bonds), 209 (Appeals at Public Expense), 210 (Record on Appeal) and 212 (Briefs), Alaska Rules of Appellate Procedure.

Section 27: EXCESSIVE REVIEW, added by Section 21 of the bill. Provides that the Supreme Court will review whether a sentence of death is excessive compared to penalties imposed in similar cases. A sentence of death may not be found to be excessive when compared to similar cases based on the fact that a sentence of death had not been previously authorized as a penalty for murder in the state.

26-LS0036\E
Luckhaupt
2/18/09

CS FOR HOUSE BILL NO. 9()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Ramras

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to murder; authorizing capital punishment, classifying murder in the**
2 **first degree as a capital felony, and allowing the imposition of the death penalty for**
3 **certain murders; establishing sentencing procedures for capital felonies; and amending**
4 **Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210,**
5 **and 212, Alaska Rules of Appellate Procedure."**

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

7 *** Section 1. AS 05.15.105(b) is amended to read:**

8 (b) The department shall adopt regulations that provide that a disqualification
9 of a person under (a) of this section based upon a conviction of that person for a
10 violation

11 (1) of a law of this state that is, or a law or ordinance of another
12 jurisdiction that would be if it was committed in this state, a class B felony other than
13 extortion, a class C felony, or an unclassified felony described outside of AS 11, and

1 that is not a crime of dishonesty or theft or a violation of gambling laws, terminates 10
2 years after the person's conviction;

3 (2) of a law or ordinance of this state or another jurisdiction that is a
4 crime involving theft or dishonesty or a violation of gambling laws, and that is not, or
5 would not be if it was committed in this state, a capital or an unclassified felony
6 described in AS 11, a class A felony, or extortion, terminates 10 years after the
7 person's conviction, if the department determines that the

8 (A) person is of good character, honesty, and integrity; and

9 (B) person's involvement in charitable gaming is not against the
10 public interest.

11 * Sec. 2. AS 05.15.140(b) is amended to read:

12 (b) In an application for a permit, a municipality or qualified organization
13 shall disclose the name and address of each person responsible for the operation of the
14 activity and whether any person named

15 (1) has been convicted of a violation of a law of this state that is, or a
16 law or ordinance of another state that would be if committed in this state, a capital or
17 [AN] unclassified felony described in AS 11, a class A felony, extortion, or a violation
18 of a law or ordinance of this state or another jurisdiction that is a crime involving theft
19 or dishonesty or a violation of gambling laws; or

20 (2) has a prohibited financial interest, as defined in regulations adopted
21 by the department, in the operation of the activity.

22 * Sec. 3. AS 08.64.326(a) is amended to read:

23 (a) The board may impose a sanction if the board finds after a hearing that a
24 licensee

25 (1) secured a license through deceit, fraud, or intentional
26 misrepresentation;

27 (2) engaged in deceit, fraud, or intentional misrepresentation while
28 providing professional services or engaging in professional activities;

29 (3) advertised professional services in a false or misleading manner;

30 (4) has been convicted, including conviction based on a guilty plea or
31 plea of nolo contendere, of

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(A) a class A, capital, or unclassified felony or a crime in another jurisdiction with elements similar to a class A, capital, or unclassified felony in this jurisdiction;

(B) a class B or class C felony or a crime in another jurisdiction with elements similar to a class B or class C felony in this jurisdiction if the felony or other crime is substantially related to the qualifications, functions, or duties of the licensee; or

(C) a crime involving the unlawful procurement, sale, prescription, or dispensing of drugs;

(5) has procured, sold, prescribed, or dispensed drugs in violation of a law regardless of whether there has been a criminal action;

(6) intentionally or negligently permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards even if the patient was not injured;

(7) failed to comply with this chapter, a regulation adopted under this chapter, or an order of the board;

(8) has demonstrated

(A) professional incompetence, gross negligence, or repeated negligent conduct; the board may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient;

(B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the licensee's ability to practice safely;

(C) unfitness because of physical or mental disability;

(9) engaged in unprofessional conduct, in sexual misconduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by the board in regulations adopted under this chapter, or attempted sexual contact with a patient outside the scope of generally accepted methods of examination or treatment of the patient, regardless of the patient's consent or lack of consent, during the term of the physician-patient relationship, as defined by the board in regulations adopted under

1 this chapter, unless the patient was the licensee's spouse at the time of the contact or,
2 immediately preceding the physician-patient relationship, was in a dating, courtship,
3 or engagement relationship with the licensee;

4 (10) has violated AS 18.16.010;

5 (11) has violated any code of ethics adopted by regulation by the
6 board;

7 (12) has denied care or treatment to a patient or person seeking
8 assistance from the physician if the only reason for the denial is the failure or refusal
9 of the patient to agree to arbitrate as provided in AS 09.55.535(a); or

10 (13) has had a license or certificate to practice medicine in another
11 state or territory of the United States, or a province or territory of Canada, denied,
12 suspended, revoked, surrendered while under investigation for an alleged violation,
13 restricted, limited, conditioned, or placed on probation unless the denial, suspension,
14 revocation, or other action was caused by the failure of the licensee to pay fees to that
15 state, territory, or province.

16 * Sec. 4. AS 09.65.210 is amended to read:

17 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
18 **under the influence of alcohol or drugs.** A person who suffers personal injury or
19 death or the person's personal representative under AS 09.55.570 or 09.55.580 may
20 not recover damages for the personal injury or death if the injury or death occurred
21 while the person was

22 (1) engaged in the commission of a felony, the person has been
23 convicted of the felony, including conviction based on a guilty plea or plea of nolo
24 contendere, and the party defending against the claim proves by clear and convincing
25 evidence that the felony substantially contributed to the personal injury or death;

26 (2) engaged in conduct that would constitute the commission of a
27 **capital felony**, an unclassified felony, a class A felony, or a class B felony for which
28 the person was not convicted and the party defending against the claim proves by clear
29 and convincing evidence

30 (A) the felonious conduct; and

31 (B) that the felonious conduct substantially contributed to the

1 personal injury or death;

2 (3) fleeing after the commission, by that person, of conduct that would
3 constitute a capital felony, an unclassified felony, a class A felony, or a class B felony
4 or being apprehended for conduct that would constitute a capital felony, an
5 unclassified felony, a class A felony, or a class B felony if the party defending against
6 the claim proves by clear and convincing evidence

7 (A) the felonious conduct; and

8 (B) that the conduct during the flight or apprehension
9 substantially contributed to the injury or death;

10 (4) operating a vehicle, aircraft, or watercraft while under the influence
11 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
12 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
13 the party defending against the claim proves by clear and convincing evidence that the
14 conduct substantially contributed to the personal injury or death; or

15 (5) engaged in conduct that would constitute a violation of
16 AS 28.35.030 for which the person was not convicted if the party defending against
17 the claim proves by clear and convincing evidence

18 (A) the violation of AS 28.35.030; and

19 (B) that the conduct substantially contributed to the personal
20 injury or death.

21 * Sec. 5. AS 11.31.100(d) is amended to read:

22 (d) An attempt is

23 (1) an unclassified felony if the crime attempted is murder in the first
24 degree;

25 (2) a class A felony if the crime attempted is an unclassified felony
26 [OTHER THAN MURDER IN THE FIRST DEGREE];

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

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

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

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

1 * Sec. 6. AS 11.31.110(c) is amended to read:

2 (c) Solicitation is

3 (1) an unclassified felony if the crime solicited is murder in the first
4 degree;

5 (2) a class A felony if the crime solicited is an unclassified felony
6 [OTHER THAN MURDER IN THE FIRST DEGREE];

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

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

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

10 (6) a class B misdemeanor if the crime solicited is a class A or class B
11 misdemeanor.

12 * Sec. 7. AS 11.31.120(i) is amended to read:

13 (i) Conspiracy is

14 (1) an unclassified felony if the object of the conspiracy is murder in
15 the first degree;

16 (2) a class A felony if the object of the conspiracy is a crime
17 punishable as an unclassified felony [OTHER THAN MURDER IN THE FIRST
18 DEGREE];

19 (3) a class B felony if the object of the conspiracy is a crime
20 punishable as a class A felony;

21 (4) a class C felony if the object of the conspiracy is a crime
22 punishable as a class B felony.

23 * Sec. 8. AS 11.31.120(h)(2) is amended to read:

24 (2) "serious felony offense" means an offense

25 (A) against the person under AS 11.41, punishable as a capital,
26 an unclassified, or a class A felony;

27 (B) involving controlled substances under AS 11.71,
28 punishable as an unclassified, a class A, or a class B felony;

29 (C) that is criminal mischief in the first degree under
30 AS 11.46.475; or

31 (D) that is terroristic threatening in the first degree under

1 AS 11.56.807.

2 * Sec. 9. AS 11.41.100(b) is amended to read:

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

5 * Sec. 10. AS 12.30.020(a) is amended to read:

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

18 * Sec. 11. AS 12.30.040(b) is amended to read:

19 (b) Notwithstanding the provisions of (a) of this section, a person may not be
20 released on bail either before sentencing or pending appeal if the person has been
21 convicted of an offense that is

22 (1) a capital felony, an unclassified felony, or a class A felony; or

23 (2) a class B or class C felony if the person has been previously
24 convicted of an offense in this state that is a capital felony, an unclassified felony, a
25 class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 -
26 11.41.438 or of an offense in another jurisdiction with elements substantially similar
27 to an offense of this state described in this paragraph.

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

29 (b) On or before the expiration of the initial 90-day period of commitment, the
30 court shall conduct a hearing to determine whether or not the defendant remains
31 incompetent. If the court finds by a preponderance of the evidence that the defendant

1 remains incompetent, the court may recommit the defendant for a second period of 90
2 days. The court shall determine at the expiration of the second 90-day period whether
3 the defendant has become competent. If, at the expiration of the second 90-day period,
4 the court determines that the defendant continues to be incompetent to stand trial, the
5 charges against the defendant shall be dismissed without prejudice, and continued
6 commitment of the defendant shall be governed by the provisions relating to civil
7 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
8 crime involving force against a person and the court finds that the defendant presents a
9 substantial danger of physical injury to other persons and that there is a substantial
10 probability that the defendant will regain competency within a reasonable period of
11 time, in which case the court may extend the period of commitment for an additional
12 six months. If the defendant remains incompetent at the expiration of the additional
13 six-month period, the charges shall be dismissed without prejudice, and continued
14 commitment proceedings shall be governed by the provisions relating to civil
15 commitment under AS 47.30.700 - 47.30.915. If the defendant remains incompetent
16 for five years after the charges have been dismissed under this subsection, the
17 defendant may not be charged again for an offense arising out of the facts alleged in
18 the original charges, except if the original charge is a class A felony, an [OR]
19 unclassified felony, or a capital felony.

20 * Sec. 13. AS 12.50.101(i)(1) is amended to read:

21 (1) "higher-level felony" means an unclassified, capital, or class A
22 felony;

23 * Sec. 14. AS 12.55.025(i) is amended to read:

24 (i) Except as provided by AS 12.55.125(a)(3), 12.55.145(d), 12.55.155(f), and
25 12.55.165, or in determining if a sentence of death should be imposed under
26 AS 12.58, the preponderance of the evidence standard of proof applies to sentencing
27 proceedings.

28 * Sec. 15. AS 12.55.125(a) is amended to read:

29 (a) A defendant convicted of murder in the first degree [OR MURDER OF
30 AN UNBORN CHILD UNDER AS 11.41.150(a)(1)] shall be sentenced to a definite
31 term of imprisonment of at least 20 years but not more than 99 years, or shall be

1 sentenced to death. A defendant convicted of murder of an unborn child under
2 AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at
3 least 20 years but not more than 99 years. A defendant convicted of murder in the
4 first degree, but not sentenced to death, shall be sentenced to a mandatory term of
5 imprisonment of 99 years when

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

9 (2) the defendant has been previously convicted of

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

12 (B) murder in the second degree under AS 11.41.110 or former
13 AS 11.15.030; or

14 (C) homicide under the laws of another jurisdiction when the
15 offense of which the defendant was convicted contains elements similar to first
16 degree murder under AS 11.41.100 or second degree murder under
17 AS 11.41.110;

18 (3) the court finds by clear and convincing evidence that the defendant
19 subjected the murder victim to substantial physical torture;

20 (4) the defendant is convicted of the murder of and personally caused
21 the death of a person, other than a participant, during a robbery; or

22 (5) the court finds by clear and convincing evidence that the defendant
23 is a peace officer who used the officer's authority as a peace officer to facilitate the
24 murder.

25 * **Sec. 16.** AS 12.55.125(f) is amended to read:

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

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

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

30 (3) imprisonment for the prescribed minimum or mandatory term may
31 not be reduced, except as provided in (j) of this section;

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

* Sec. 17. AS 12.55.125(f) is amended to read:

(f) Notwithstanding any other provision of law, a defendant convicted of a capital, an unclassified, or a class A felony offense, and not sentenced to death or subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies. If a defendant is sentenced to a definite term under this subsection,

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

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

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

* Sec. 18. AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d), or (e),

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

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

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

1 (2) AS 12.55.125(l),

2 (A) a conviction in this or another jurisdiction of an offense
3 having elements similar to those of a most serious felony is considered a prior
4 most serious felony conviction;

5 (B) commission of and conviction for offenses relied on as
6 prior most serious felony offenses must occur in the following order:
7 conviction for the first offense must occur before commission of the second
8 offense, and conviction for the second offense must occur before commission
9 of the offense for which the defendant is being sentenced;

10 (3) AS 12.55.135(g),

11 (A) a prior conviction may not be considered if a period of five
12 or more years has elapsed between the date of the defendant's unconditional
13 discharge on the immediately preceding offense and commission of the present
14 offense unless the prior conviction was for a capital, an unclassified, or a class
15 A felony;

16 (B) a conviction in this or another jurisdiction of an offense
17 having elements similar to those of a crime against a person or a crime
18 involving domestic violence is considered a prior conviction;

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

26 (4) AS 12.55.125(i),

27 (A) a conviction in this or another jurisdiction of an offense
28 having elements similar to those of a sexual felony is a prior conviction for a
29 sexual felony;

30 (B) a felony conviction in another jurisdiction making it a
31 crime to commit any lewd and lascivious act upon a child under the age of 16

1 years, with the intent of arousing, appealing to, or gratifying the sexual desires
2 of the defendant or the victim is a prior conviction for a sexual felony;

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

10 * Sec. 19. AS 12.55.155(f) is amended to read:

11 (f) Under this section, if [IF] the state seeks to establish a factor in
12 aggravation at sentencing

13 (1) under (c)(7), (8), (12), (15), (18)(B), (19), (20), (21), or (31) of this
14 section, or if the defendant seeks to establish a factor in mitigation at sentencing,
15 written notice must be served on the opposing party and filed with the court not later
16 than 10 days before the date set for imposition of sentence; the factors in aggravation
17 listed in this paragraph and factors in mitigation must be established by clear and
18 convincing evidence before the court sitting without a jury; all findings must be set out
19 with specificity;

20 (2) other than one listed in (1) of this subsection, the factor shall be
21 presented to a trial jury under procedures set by the court, unless the defendant waives
22 trial by jury, stipulates to the existence of the factor, or consents to have the factor
23 proven under procedures set out in (1) of this subsection; a factor in aggravation
24 presented to a jury is established if proved beyond a reasonable doubt; written notice
25 of the intent to establish a factor in aggravation must be served on the defendant and
26 filed with the court

27 (A) 20 days before trial, or at another time specified by the
28 court;

29 (B) within 48 hours, or at a time specified by the court, if the
30 court instructs the jury about the option to return a verdict for a lesser included
31 offense; or

1 (C) five days before entering a plea that results in a finding of
2 guilt, or at another time specified by the court.

3 * Sec. 20. AS 12.55.185(10) is amended to read:

4 (10) "most serious felony" means

5 (A) arson in the first degree, promoting prostitution in the first
6 degree under AS 11.66.110(a)(2), or any capital, unclassified, or class A
7 felony prescribed under AS 11.41; or

8 (B) an attempt, or conspiracy to commit, or criminal
9 solicitation under AS 11.31.110 of, a capital or an unclassified felony
10 prescribed under AS 11.41;

11 * Sec. 21. AS 12 is amended by adding a new chapter to read:

12 **Chapter 58. Capital Punishment.**

13 **Article 1. Election to Seek Death Penalty.**

14 **Sec. 12.58.010. Attorney General's election to seek death penalty.** The
15 attorney general shall determine whether to seek the death penalty against the
16 defendant. If the attorney general elects to seek the death penalty, the district attorney
17 shall give notice of election and the applicable aggravating factor or factors in
18 AS 12.58.040 to the court, the defendant, and the defendant's attorney within 120 days
19 of arraignment of the defendant on the capital felony indictment, or within 120 days of
20 arraignment of the defendant if indictment has been waived. The time period for
21 giving notice of election may be extended by the court.

22 **Article 2. Imposition of Sentence.**

23 **Sec. 12.58.020. Sentencing procedure for a capital felony.** (a) If a defendant
24 is convicted of a capital felony, the court shall conduct a separate sentencing
25 proceeding before the jury as soon as practicable. If a jury trial has been waived or if
26 the defendant has pled guilty, the sentencing proceeding shall be held before a jury
27 impaneled for the purpose.

28 (b) During the sentencing proceeding, evidence that the court considers to
29 have probative value may be presented as to any aggravating factor under
30 AS 12.58.040 or any mitigating factor, regardless of the admissibility of the evidence
31 under the rules of evidence. The defendant shall have an opportunity to rebut hearsay

1 evidence that is admitted. The state and the defendant or the defendant's counsel shall
 2 be permitted to present oral statements. This subsection does not authorize the
 3 introduction of evidence in violation of the Constitution of the State of Alaska or the
 4 Constitution of the United States.

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

8 (1) beyond a reasonable doubt that at least one aggravating factor
 9 under AS 12.58.040 exists to justify the death sentence and the aggravating factor was
 10 noticed by the district attorney under AS 12.58.010; the jury does not have to
 11 unanimously agree with regard to a specific aggravating factor;

12 (2) beyond a reasonable doubt that the aggravating factor or factors
 13 outweigh any mitigating factors found to exist by a preponderance of the evidence;
 14 and

15 (3) that death is the appropriate sentence for the defendant.

16 **Sec. 12.58.030. Sentence imposition for capital felony.** (a) After considering
 17 the evidence and the recommended sentence, the court shall enter a sentence of death
 18 or a term of imprisonment in accordance with AS 12.55.125(a). The court may not
 19 impose the death sentence unless the jury makes the findings required by
 20 AS 12.58.020. If the jury makes the findings required by AS 12.58.020, the court shall
 21 sentence the defendant to death unless the court finds the defendant was mentally
 22 retarded under AS 12.58.060. If a sentence of death is not recommended by the jury,
 23 the court shall sentence the defendant to a term of imprisonment under
 24 AS 12.55.125(a).

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

27 (1) of the aggravating factor or factors that exist to justify the sentence;

28 (2) of mitigating factors considered but found insufficient to outweigh
 29 the aggravating factors; and

30 (3) that death is the appropriate sentence for the defendant.

31 (c) A judgment of conviction for which a sentence of death is imposed is

1 subject to automatic review under AS 12.58.100.

2 **Sec. 12.58.040. Aggravating factors.** In determining whether to impose a
3 sentence of death, the following aggravating factors may be considered:

4 (1) the defendant's conduct caused the death of a child under 18 years
5 of age, the defendant, at the time of the offense, was at least two years older than the
6 child, and the defendant

7 (A) was kidnapping, assaulting, or sexually assaulting, or was
8 attempting to kidnap, assault, or sexually assault, the child; or

9 (B) had kidnapped, assaulted, or sexually assaulted the child;

10 (2) the victim was a uniformed or otherwise clearly identified peace
11 officer, fire fighter, or corrections employee who was engaged in the performance of
12 official duties at the time of the murder;

13 (3) the defendant has been convicted of murdering two or more
14 individuals under AS 11.41.100, or a similar law of this or another jurisdiction,
15 regardless of whether the deaths occurred as the result of the same act or of several
16 related or unrelated acts;

17 (4) at the time of the act resulting in the death, the defendant was
18 serving a term of imprisonment, had escaped, or was on authorized or unauthorized
19 leave in or from a state facility or program for the incarceration or treatment of
20 persons adjudicated guilty of crimes;

21 (5) the defendant committed the murder under an agreement to receive
22 money or any other thing of value for committing the murder;

23 (6) the defendant solicited another person to commit the murder and
24 had paid or had agreed to pay money or any other thing of value for the other person's
25 committing the murder;

26 (7) the defendant committed the murder to obtain or maintain the
27 defendant's membership or to advance the defendant's position in the hierarchy of an
28 organization, association, or identifiable group;

29 (8) the victim was a judge, juror or former juror, prospective, current,
30 or former witness in an adjudicative proceeding, prosecuting attorney, deputy
31 prosecuting attorney, defense attorney, member of the board of parole, or probation or

1 parole officer, and the murder was related to the exercise of official duties performed
2 or to be performed by the victim;

3 (9) the defendant committed the murder to conceal the commission of
4 a crime or to protect or conceal the identity of any person committing a crime;

5 (10) there was more than one victim and the murders were part of a
6 common scheme or plan or the result of a single act of the defendant;

7 (11) at the time the defendant committed the murder, there existed a
8 court order, issued in this or any other state, that prohibited the defendant from
9 contacting the victim, molesting the victim, or disturbing the peace of the victim, and
10 the defendant had knowledge of the existence of that order.

11 **Sec. 12.58.050. Mitigating factors.** In determining whether to impose the
12 death sentence, all relevant mitigating factors may be considered, including the
13 following:

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

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

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

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

22 (5) the defendant did not have a significant history, either as a juvenile
23 or an adult, of prior criminal activity;

24 (6) the murder was committed while the defendant was under the
25 influence of extreme mental disturbance;

26 (7) the victim consented to the act of murder;

27 (8) the defendant was an accomplice to a murder committed by another
28 person where the defendant's participation in the murder was relatively minor;

29 (9) the capacity of the defendant to appreciate the wrongfulness of the
30 defendant's conduct or to conform the defendant's conduct to the requirements of law
31 was substantially impaired as a result of mental disease or defect; however, a person

1 found to be mentally retarded under AS 12.58.060 may not be sentenced to death;

2 (10) there is not a likelihood that the defendant will pose a danger to
3 others in the future.

4 **Sec. 12.58.060. Finding of mental retardation.** If the jury recommends a
5 sentence of death, the court shall determine if the defendant was mentally retarded
6 under the definition of mental retardation in this section at the time the crime was
7 committed. A diagnosis of mental retardation shall be documented by a licensed
8 psychiatrist or licensed psychologist designated by the court who is an expert in the
9 diagnosis and evaluation of mental retardation. The defense shall establish mental
10 retardation by a preponderance of the evidence, and the court shall make a finding as
11 to the existence of mental retardation. If the court makes the finding of mental
12 retardation, the court shall proceed to sentence the defendant to a term of
13 imprisonment under AS 12.55.125(a). In this section,

14 (1) "adaptive behavior" means the effectiveness or degree with which
15 an individual meets the standards of personal independence and social responsibility
16 expected for the individual's age;

17 (2) "developmental period" means the period of time between
18 conception and the 18th birthday;

19 (3) "general intellectual functioning" means the results obtained by
20 assessment with one or more of the individually administered general intelligence tests
21 developed for the purpose of assessing intellectual functioning;

22 (4) "mentally retarded" means the individual has

23 (A) significantly subaverage general intellectual functioning
24 that exists concurrently with deficits in adaptive behavior; and

25 (B) both significantly subaverage general intellectual
26 functioning and deficits in adaptive behavior that were manifested during the
27 developmental period;

28 (5) "significantly subaverage general intellectual functioning" means
29 an intelligence quotient of 70 or below.

30 **Article 3. Sentence Review.**

31 **Sec. 12.58.100. Review of judgment of conviction of a capital felony.** (a) A

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

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

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

9 (2) whether the evidence supports the finding of an aggravating factor
10 under AS 12.58.040 and whether the jury has properly considered mitigating factors
11 under AS 12.58.050;

12 (3) whether the sentence is excessive compared to the penalty imposed
13 in similar cases, considering both the crime and the defendant; and

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

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

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

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

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

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

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

26 **Sec. 12.58.110. Issuance of death warrant.** If the supreme court upholds a
27 judgment of conviction and sentence of death, the court shall issue a death warrant that
28 specifies a date of execution. The specified date of execution must be not less than 30
29 days nor more than 60 days after the date of the warrant. The death warrant shall be
30 delivered to the commissioner of corrections.

31 **Article 4. Administration of the Death Penalty.**

1 **Sec. 12.58.200. Administration of the death penalty.** The commissioner shall
2 establish a procedure for the execution of a sentence of death ordered by the state
3 supreme court at the time and place legally appointed.

4 **Sec. 12.58.210. Execution under supreme court death warrant.** After
5 receiving a supreme court warrant issued under AS 12.58.110, the commissioner shall
6 specify the time and place of execution.

7 **Sec. 12.58.220. Manner of execution.** (a) The punishment of death shall be
8 inflicted by continuous, intravenous administration of a lethal dose of a substance or
9 substances until death is pronounced by a licensed physician.

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

11 **Sec. 12.58.230. Return of death warrant.** After the execution, the
12 commissioner shall make a return upon the death warrant showing the time and place
13 in which the defendant was executed.

14 **Article 5. Stay of Execution.**

15 **Sec. 12.58.300. Incompetency or pregnancy of person sentenced to death.**
16 If, after a sentence of death is imposed, the commissioner has reason to believe that
17 the defendant has become incompetent to proceed with the execution or that the
18 defendant is pregnant, the commissioner shall immediately give written notice to the
19 court in which the sentence of death was imposed, the prosecuting attorney, and
20 counsel for the defendant. The execution of sentence shall be stayed pending further
21 order of the court.

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

26 (b) If the sentencing court finds that the defendant is incompetent, the court
27 shall immediately certify that finding to the supreme court and the commissioner, shall
28 sentence the defendant under AS 12.55.125(a), and shall order the defendant confined
29 in the same manner as provided for persons under AS 12.47.050.

30 (c) If the sentencing court finds that the defendant is competent, the court shall
31 immediately certify the finding to the supreme court and the commissioner. The

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

6 **Sec. 12.58.320. Disposition pending pregnancy.** (a) If the defendant is
 7 pregnant, the sentencing court shall immediately certify that finding to the supreme
 8 court and the commissioner. The supreme court shall issue an order staying the
 9 execution of the sentence of death during the pregnancy.

10 (b) When the defendant is no longer pregnant, the sentencing court shall
 11 immediately certify the finding to the supreme court and the commissioner. The
 12 supreme court shall issue and deliver another warrant under AS 12.58.110, together
 13 with a copy of the certified finding. Unless the sentencing court's finding is appealed
 14 under applicable court rule, the warrant shall specify a date of execution not less than
 15 30 days nor more than 60 days after the date of the warrant.

16 **Article 6. General Provisions.**

17 **Sec. 12.58.900. Definitions.** In this chapter,

- 18 (1) "commissioner" means the commissioner of corrections;
 19 (2) "department" means the Department of Corrections.

20 * **Sec. 22.** AS 22.07.020(a) is amended to read:

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

- 23 (1) criminal prosecution, except prosecution for a capital felony for
 24 which a death sentence is imposed;
 25 (2) post-conviction relief;
 26 (3) matters under AS 47.12, including waiver of jurisdiction over a
 27 minor under AS 47.12.100;
 28 (4) extradition;
 29 (5) habeas corpus;
 30 (6) probation and parole; and
 31 (7) bail.

1 * Sec. 23. AS 22.07.020(b) is amended to read:

2 (b) Except as limited in AS 12.55.120 and in this subsection, the court of
3 appeals has jurisdiction to hear appeals of unsuspended sentences of imprisonment
4 exceeding two years for a felony offense or 120 days for a misdemeanor offense
5 imposed by the superior court on the grounds that the sentence is excessive, or a
6 sentence of any length on the grounds that it is too lenient. The court of appeals, in the
7 exercise of this jurisdiction, may modify the sentence as provided by law and the state
8 constitution. The court of appeals does not have jurisdiction to hear appeals of
9 death sentences.

10 * Sec. 24. AS 47.12.030(a) is amended to read:

11 (a) When a minor who was at least 16 years of age at the time of the offense is
12 charged by complaint, information, or indictment with an offense specified in this
13 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
14 for which the minor is charged or to any additional offenses joinable to it under the
15 applicable rules of court governing criminal procedure. The minor shall be charged,
16 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
17 an adult. If the minor is convicted of an offense other than an offense specified in this
18 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
19 the minor is amenable to treatment under this chapter. If the court finds that the minor
20 is amenable to treatment under this chapter, the minor shall be treated as though the
21 charges had been heard under this chapter, and the court shall order disposition of the
22 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
23 subsection apply when the minor is charged by complaint, information, or indictment
24 with an offense

25 (1) that is a capital felony, an unclassified felony, or a class A felony
26 and the felony is a crime against a person;

27 (2) of arson in the first degree;

28 (3) that is a class B felony and the felony is a crime against a person in
29 which the minor is alleged to have used a deadly weapon in the commission of the
30 offense and the minor was previously adjudicated as a delinquent or convicted as an
31 adult, in this or another jurisdiction, as a result of an offense that involved use of a

1 deadly weapon in the commission of a crime against a person or an offense in another
 2 jurisdiction having elements substantially identical to those of a crime against a
 3 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
 4 weapon" has the meaning given in AS 11.81.900(b); or

5 (4) that is misconduct involving weapons in the first degree under

6 (A) AS 11.61.190(a)(1); or

7 (B) AS 11.61.190(a)(2) when the firearm was discharged under
 8 circumstances manifesting substantial and unjustifiable risk of physical injury
 9 to a person.

10 * Sec. 25. AS 47.12.100(c) is amended to read:

11 (c) For purposes of making a determination under this section,

12 (1) the standard of proof is by a preponderance of the evidence; and

13 (2) the burden of proof that a minor is not amenable to treatment under
 14 this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking
 15 to have the court declare a minor a delinquent is based on the minor's alleged
 16 commission of an offense that is a capital felony, an unclassified felony, or a class A
 17 felony and that is a crime against a person, the minor

18 (A) is rebuttably presumed not to be amenable to treatment
 19 under this chapter; and

20 (B) has the burden of proof of showing that the minor is
 21 amenable to treatment under this chapter.

22 * Sec. 26. The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 12.58, added by sec. 21 of this
 25 Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska
 26 Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death
 27 sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska
 28 Supreme Court.

29 (b) AS 12.58.100, added by sec. 21 of this Act, has the effect of amending Rules 204,
 30 209, 210, and 212, Alaska Rules of Appellate Procedure, by establishing procedures and
 31 limitations on procedures relating to the filing and disposition of appeals of sentences in cases

1 in which the death penalty is imposed.

2 * Sec. 27. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 EXCESSIVE REVIEW. AS 12.58.100(b)(3), added by sec. 21 of this Act, provides
5 that the Alaska Supreme Court will review whether a sentence of death is excessive compared
6 to the penalty imposed in similar cases. Under that review, a sentence of death may not be
7 found excessive compared to the penalty imposed in similar cases based on the fact that a
8 sentence of death has not been previously authorized as a penalty for murder in this state.

FISCAL HB 9		FY 2010 (Thousands of Dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Operating Expenditures							
Public Safety		481.8	334.2	334.2	334.2	334.2	334.2
Health & Social Services		0.0	0.0	0.0	***	***	****
Administration							
	OPA	1052.1	1439.7	2032.9	2016.5	2016.5	2016.5
	PDA	2276.9	3217.8	4184.0	4184.0	4184.0	4184.0
Law		1917.2	3783.3	5365.4	5219.4	5219.4	5219.4
AK Court System							
	Trial Courts	197.3	1412.2	3100.8	3058.3	3058.3	3058.3
	Appellate	0.0	203.7	193.7	193.7	193.7	193.7
DOC		0.0	0	380	392.5	402.5	412.5
Capital Expenditures							
AK Court System							
	Trial Courts		1843.1				
DOC			5000.0				
TOTAL/YEAR		5925.3	17234	15591	15398.6	15408.6	15418.6
CUMMULATIVE TOTAL			23159.3	38750.3	54148.9	69557.5	84976.1

**At the end of FY 2015, the State of Alaska will have spent almost \$85 Million Dollars implementing HB 9 should the bill pass

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: HB9-DOC-OC-02-24-09

Bill Version: _____

() Publish Date: _____

Identifier (file name): HB9-DOC-OC-02-24-09

Dept. Affected: DOC

Title "An Act Authorizing Capital Punishment"

RDU Administration & Support

Component Office of the Commissioner

Sponsor Representatives Chenault, Ramras

Requester Governor

Component Number 694

Expenditures/Revenues

(Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services				367.5	367.5	367.5	367.5
Travel				10.0	20.0	30.0	40.0
Contractual				2.5	5.0	5.0	5.0
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	380.0	392.5	402.5	412.5

CAPITAL EXPENDITURES			5,000.0				
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CHANGE IN REVENUES ()							
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FUND SOURCE

(Thousands of Dollars)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts						
1003 GF Match						
1004 GF			380.0	392.5	402.5	412.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	0.0	0.0	0.0	380.0	392.5	412.5

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time				5	5	5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections anticipates approximately 2 offenders annually to be sentenced under this legislation. The national average length of time for the appeals process is 13 years. The average annual cost of incarceration of an offender housed at Spring Creek Correctional Center (SCCC) is approximately \$51,012. The imposition of a death sentence on an offender who would be given a 99-year sentence under current law would result in a cost avoidance of \$51,012 per year once the sentence is carried out and until what would have been the end of the offender's natural life.

Any additional costs associated with execution would be addressed through the annual supplemental process. These costs would primarily be overtime and travel costs associated with the staffing of the death chamber during the fiscal years when an actual execution occurs.

Prepared by: Dwayne Peeples, Deputy Commissioner

Division: Office of the Commissioner

Approved by: Joesph Schmidt, Commissioner

Office of the Commissioner

Phone 465-4670

Date/Time 2/24/09 7:00 AM

Date 2/24/2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB9-DOC-OC-02-24-09

ANALYSIS CONTINUATION

Capital construction costs added in FY2012 are the anticipated costs associated with the building of a death chamber. These costs are based on construction of a 4,590 square foot stand-alone module to include:

Execution Room
Execution Equipment Room
Execution Witness Room
Public Lobby
Meeting and Contact Visitation Rooms
Non-Contact Visitation Video Station
Restrooms Staff / Inmate / Visitors
Medical Equipment
Medical Waste
Visitor Lockers / Screening
Metal Detector
Storage
Sally Ports Vehicle / Visitation

Annual Operating cost:

71000 Personal Services (FY10 rates employer rates applied, no overtime included):

Conversion of an existing housing unit at Spring Creek Correctional Center to meet a death row housing unit requires 2 security posts. These posts will consist of 5 existing staff and will require 5 new additional staffing of 1 Correctional Officer III and 4 Correctional Officer I/II positions.

72000 Travel:

Dept of Law has determined an average of 1 court hearings per year per inmate during the appeal process. The appeal process can take up to 13 years. Inmates must be transported back to judicial district for court hearing. It is the Department of Corrections responsibility to transport the offender back to the closest facility for each court appearance. Each round-trip is based on current costs for using the Public Safety King Air transportation or for a charter to each geographic region--Southeast, Interior, and Northwestern AK. Ground transportation within the Anchorage area, Mat-Su Valley, and Kenai Peninsula included. Travel is for the inmate and 2 transport officers, per diem and lodging for officers included.

73000 Contractual Services:

The services line is based on anticipated utility costs only. These are current estimates and are associated with the actual death chamber only.

74000 Commodities:

There is no increases anticipated for the daily costs of incarceration as these offenders would already be committed to the departments custody under existing legislation.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 009 (JUD)
() Publish Date: _____

Identifier (file name): CSHB009-DPS-DET-02-13-09 Dept. Affected: Public Safety
Title: "An Act relating to murder, authorizing capital punishment." RDU: Alaska State Troopers
Sponsor: Representative Chenault Component: AST Detachments
Requester: House Judiciary Component Number: 2325

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services	214.6		214.6	214.6	214.6	214.6	214.6	214.6
Travel	47.0		47.0	47.0	47.0	47.0	47.0	47.0
Contractual	75.0		57.0	57.0	57.0	57.0	57.0	57.0
Supplies	15.6		15.6	15.6	15.6	15.6	15.6	15.6
Equipment	129.6		0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	481.8	0.0	334.2	334.2	334.2	334.2	334.2	334.2

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

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts							
1003 GF Match							
1004 GF	481.8		334.2	334.2	334.2	334.2	334.2
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	481.8	0.0	334.2	334.2	334.2	334.2	334.2

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time	2		2	2	2	2	2
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

"An Act relating to murder, authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

Due to U.S. Supreme Court case law, passage of this legislation will require the department to conduct additional in-depth investigations on those defendants sentenced to death. Experience in other states has shown that the entire life of the defendant must be investigated for mitigating factors.

Prepared by: Lt. Rodney Dial Phone 907-247-4480
Division: Alaska State Troopers Date/Time 2/18/09 5:28 PM
Approved by: Joseph Masters, Commissioner Date _____
Department of Public Safety

FISCAL NOTE

**STATE OF ALASKA
2009 LEGISLATIVE SESSION**

BILL NO. _____

ANALYSIS CONTINUATION

In addition to those investigations conducted for the state it is likely that the department will be asked to assist, or conduct the investigations of other municipal police departments.

In order to adequately comply with this legislation the department estimates that it will require two (2) full time investigators.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB009 (JUD)
() Publish Date: _____

Identifier (file name): HB009CS(JUD)-DHSS-API-02-19-09 Dept. Affected: Health & Social Services
Title: Capital Punishment RDU: Behavioral Health
Component: Alaska Psychiatric Hospital
Sponsor: Chenault
Requester: House JUD Component Number: 23160

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	*	*	*	

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES (
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	*	*	*

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

If the proposed legislation is enacted, the fiscal impact to the Department is indeterminate.

If it takes the first cases three to five years to reach sentencing under this legislation, the fiscal impact in the initial three years will be minimal. Beyond that period, the fiscal impact is difficult to estimate since the department cannot estimate the identified population affected. The expectation is that the number of death row inmates meeting the criteria requiring mental health treatment will be negligible. However, should such an individual be identified by the courts and subsequently require transfer to API for treatment, costs are anticipated to be \$900.00/day, or \$328,500/year based upon current costs.

Prepared by: Melissa Stone
Division: Behavioral Health

Phone: 269-3410
Date/Time: 1/28/09 5:00 PM

Approved by: Alison Elgee Assistant Commissioner
DHSS Finance & Management Services

Date: 2/19/2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 9

ANALYSIS CONTINUATION

This bill provides for the availability of the death penalty as a punishment for certain murders. The costs of pursuing the death penalty have been studied by other jurisdictions with experience in this area, and in preparation of this fiscal note, the agency has drawn heavily from studies of the federal system and the state of Washington where the costs have been closely examined. Murder cases tend to be among the most complex and challenging cases for the attorneys and courts to handle, and capital cases have the additional requirements of added procedures and relevant evidence. Because of the penalty applicable in these cases, additional expectations are placed upon the attorneys providing defense both in terms of the training and qualifications and the substantive work to be performed.

Assumptions

The Office of Public Advocacy is the secondary public criminal defense agency in the state. The agency will only be appointed to capital cases where the Public Defender Agency has a legal conflict of interest precluding it from providing a defendant with services. Based upon our experience with the rate of conflict cases, the agency would expect to receive one-third of the capital cases for trial and direct appeal. Based upon the Department of Law's estimate that it will seek the death penalty in six cases per year, OPA anticipates receiving two pre-trial capital cases per year. After the first year of implementation, the agency expects to handle two cases per year for direct appeal as well. However, because post-conviction relief actions nearly universally include a claim of ineffective assistance of trial or appellate counsel, the agency anticipates handling all or nearly all of the capital post-conviction relief applications. The agency would need to be prepared to take these cases after the first two years of the implementation of capital crimes.

The American Bar Association 2003 Revised Guidelines for capital defense provide in part that no fewer than two qualified attorneys, one investigator, and a mitigation specialist should make up the core of the capital defense team. Further, under these same guidelines, at a minimum attorneys should be required to attend and complete at least once every two years, a specialized training program in capital defense. The Guidelines regarding the qualifications of counsel apply to trial, appellate, and post-conviction relief counsel equally.

The fiscal note contains an estimate of the costs associated with retaining experts for trial and sentencing of \$100,000 per case. The estimate is based upon median costs for experts in federal capital cases. Additionally, the agency estimates \$66,000 in costs associated with witness travel for each trial case, and \$27,000 in transcription and deposition costs for each case.

Implementation

Year One

During the first year of capital litigation, the agency anticipates creating a capital defense unit comprised of one supervising attorney (Attorney V), one staff attorney (Attorney IV), one investigator (Investigator III), one mitigation specialist (Associate Attorney II) and one law office assistant (LOA I). This unit would operate as a separate law firm in order to avoid conflicts from other staff being imputed to the counsel in this firm. This will allow the agency to keep as many cases in-house as possible. During this year the agency would also be required to provide training for this capital unit, and based upon training that is offered by nationally recognized capital defense programs, the agency would anticipate \$2500 in training costs per capital defense professional every two years after the initial training.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 9

ANALYSIS CONTINUATION

Year Two

During the second year of implementation, the agency anticipates adding an additional two appellate attorneys (Attorney IV) to handle the direct appeals. These attorneys would join the capital defense unit, and would handle all direct appeals generated from the unit's trial caseload.

Year Three

By the third year, the agency anticipates creating a separate capital defense, post-conviction unit to handle the post-conviction relief applications of the OPA clients and those of the Public Defender Agency clients. As previously indicated, because the focus of post-conviction relief litigation is often on whether trial counsel and appellate counsel provided effective assistance of counsel, the agency anticipates that it will receive all or nearly all of the capital post-conviction relief applications. This unit will be comprised of one supervising attorney (Attorney V), one staff attorney (Attorney IV), one investigator (Investigator III) and one law office assistant (LOA I).

Once the cases are in the post-conviction stage, the caseload will continue to increase over time, and it is not possible to predict with accuracy what the staffing and resource needs will be beyond the first two to three years of operations.

The agency anticipates relying to some degree upon the private criminal defense bar to provide representation in cases where legal conflicts prevent the agency from handling the cases with in-house staff. With the small number of cases under consideration, it is not possible to predict what percentage of cases will have to be handled by outside conflict counsel; however, there is data available related to the costs associated with providing counsel in death penalty cases through private counsel. In a 2008 report reviewing the costs associated with defense in capital cases the average per case costs for cases going to trial was \$620,932.00, and the average number of attorney hours spent defending capital cases in the federal system was 3,557 for those that went to trial. A December 2006 report from Washington state noted that the federal rate of \$163/hour for attorneys fees was reasonable, and the report recommended against going below \$125/hour for those services. Because we do not have an accurate way to estimate the number of cases that will be handled by private counsel, it is too early to suggest what the costs for contracting with private counsel would actually be for capital cases.

Y 10 Fiscal Note Cost (FY 10 Governor's Budget)

100 - Salaries and Benefits

	Atty V	Atty IV	Atty III	Atty II	Inv III	AA II	LOAI	LOAI	Total	2nd year	3rd year
Anchorage Ketchikan Juneau	10	10				10	10		50		
Barrow Kotz									00		
Bethel									00		
Kenai									00		
Kodiak									00		
Fairbanks									00		
Palmer Sitka									00		
Dillingham									00		
Nome									00		
Total	10	10	00	00	10	10	00	10	50	20	40
Anchorage Ketchikan Juneau	139.4	131.2	0.0	0.0	88.8	96.9	0.0	55.9			
Barrow Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Palmer Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Other											
Total	139.4	131.2	0.0	0.0	88.8	96.9	0.0	55.9			
Secretarial Support (1/3 cost)											
Anchorage, Ketchikan, Juneau											
Barrow, Kotz											
Bethel											
Kenai											
Kodiak											
Fairbanks											
Palmer, Sitka											
Dillingham											
Nome											
Other											
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Secretarial Support (1/3 cost)											
Anchorage, Ketchikan, Juneau	0.0	0.0	0.0	0.0	0.0						
Barrow, Kotz	0.0	0.0	0.0	0.0	0.0						
Bethel	0.0	0.0	0.0	0.0	0.0						
Kenai	0.0	0.0	0.0	0.0	0.0						
Kodiak	0.0	0.0	0.0	0.0	0.0						
Fairbanks	0.0	0.0	0.0	0.0	0.0						
Palmer, Sitka	0.0	0.0	0.0	0.0	0.0						
Dillingham	0.0	0.0	0.0	0.0	0.0						
Nome	0.0	0.0	0.0	0.0	0.0						
Other	0.0	16.7	0.0	0.0	0.0						
Total	0.0	16.7	0.0	0.0	0.0						
Total S+B by Location	139.4	131.2	0.0	0.0	88.8	96.9	0.0	55.9	512.2	262.4	415.3
Anchorage	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Barrow, Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Palmer Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	139.4	131.2	0.0	0.0	88.8	96.9	0.0	55.9	512.2	262.4	415.3
200 - Travel											
Base	7.5	7.5	7.5	7.5	5.0	5.0	5.0	0.5			
Total	7.5	7.5	0.0	0.0	5.0	5.0	0.0	0.5	25.5	40.5	61.0
Witness Travel (\$66.0 per case)									132.0	132.0	132.0
Total									157.5	172.5	193.0
300 - Contractual											
Base	27.0	27.0	17.4	17.4	6.5	6.5	6.5	3.2			
Total	27.0	27.0	0.0	0.0	6.5	6.5	0.0	3.2	70.2	124.2	187.9
400 - Expert Witness									200.0	200.0	200.0
Training									5.0	5.0	10.0
Deposition transcription charges (2.5 per case, base costs)									54.0	108.0	162.0
Total									341.9	455.2	664.0
500 - Supplies											
Base	2.0	2.0	2.0	2.0	1.0	1.0	1.0	1.0			
Total	2.0	2.0	0.0	0.0	1.0	1.0	0.0	1.0	7.0	11.0	17.0
600 - Equipment Total (includes PFI plus PFI)											
Base	6.7	6.7	6.0	6.0	1.0	1.0	6.0	1.0	1.00	7.0	13.0
Personal Computer	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1			
Total	6.7	6.7	0.0	0.0	6.7	6.7	0.0	6.7	33.5	18.4	30.0
Grand Total	182.6	174.4	0.0	0.0	108.0	116.1	0.0	67.3	1052.2	1439.7	2032.9

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 9
() Publish Date: _____

Identifier (file name): HB009-DOA-PDA-2-20-09 Dept. Affected: Administration
Title: An Act relating to murder, authorizing capital punishment... RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Representative Chenault Component Number: 1631
Requester: Judiciary

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services	1,078.9		1,618.4	2,157.8	2,157.8	2,157.8	2,157.8	
Travel	326.5		437.0	571.2	571.2	571.2	571.2	
Contractual	789.5		1,099.7	1,381.5	1,381.5	1,381.5	1,381.5	
Supplies	15.0		22.5	30.0	30.0	30.0	30.0	
Equipment	67.0		40.2	43.5	43.5	43.5	43.5	
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	2,276.9	0.0	3,217.8	4,184.0	4,184.0	4,184.0	4,184.0	4,184.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES ()								

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	2,276.9		3,217.8	4,184.0	4,184.0	4,184.0	4,184.0	
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	2,276.9	0.0	3,217.8	4,184.0	4,184.0	4,184.0	4,184.0	4,184.0

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time	10		15	20	20	20	20
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached pages

Prepared by: Quinlan Steiner, Director Phone 907 334-4414
Division: Public Defender Agency Date/Time 2/20/2009, 11:30 AM
Approved by: Rachael Petro, Deputy Commissioner Date 2/20/2009
Department of Administration

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 9

ANALYSIS CONTINUATION

Summary of HB 9

House Bill 9 establishes a capital crime in Alaska and authorizes the use of capital punishment. The following is a summary of material sections of the framework for the death penalty.

This bill establishes that the district attorney for the district in which the prosecution is occurring, with the concurrence of the attorney general, shall decide whether to seek the death penalty against the defendant. If it is elected, the district attorney shall give notice of the election and the applicable aggravating factor justifying the election to the court, the defendant, and the defendant's attorney within 120 days of arraignment on the capital felony indictment.

If a defendant is convicted of a capital felony, the jury must consider whether a sentence of death should be imposed. Evidence with any probative value as to any aggravating or mitigating factor may be presented, without regard to the rules of evidence. The jury then deliberates and must return written findings; these findings must be unanimous and detail whether at least one aggravating factor exists and that the district attorney noticed that factor; whether, beyond a reasonable doubt, the aggravating factor outweighs any mitigating factors found to exist by a preponderance of the evidence; and whether the defendant shall be sentenced to death.

Once the court considers the evidence and the recommended sentence, it shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a). A court can only impose a death sentence if the jury found no reasonable doubt as to at least one aggravating factor noticed by the district attorney exists, that there is no reasonable doubt that the aggravating factors are not outweighed by any mitigating factors found by a preponderance of the evidence, and that it recommended a sentence of death.

The new section then provides that "If the jury findings include an aggravating factor or factors under AS 12.58.040 that are not outweighed by one or more of the mitigating factors and if the jury recommends a sentence of death, the court shall sentence the defendant to death unless the court finds that the defendant was mentally retarded under AS 12.58.060." If a sentence of death is not recommended, the court shall sentence the defendant to a term of imprisonment.

Following the imposition of a death sentence, the Alaska Supreme court must automatically review the judgment within 60 days, a time period to be extended by the court for good cause. On review, the court shall determine whether the sentence was imposed under the influence of passion, prejudice, or some other arbitrary factor, whether the evidence supports the finding of the aggravating factor and whether the jury properly considered mitigating factors, whether the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, and any other issue the defendant may raise on appeal. If the court upholds the sentence of death, the Alaska Supreme Court must issue a death warrant specifying a date of execution, not less than 30 days nor more than 60 days after the date of the warrant.

Basis for Higher Cost

A sentence of death is final and irreversible--mistakes can not be undone. According to the United States Supreme Court, therefore, additional procedures and attention must be devoted to capital cases

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ANALYSIS CONTINUATION

to ensure the constitutional requirements of due process are met. It is the responsibility of defense counsel to review and litigate cases in a manner that minimizes the possibility that the death penalty is imposed arbitrarily, inappropriately, with bias, or on the innocent.

Moreover, appropriate resources are necessary to protect against what studies from other jurisdictions have indicated are the primary reasons for appellate reversal of trial court proceedings. The following are a list of the typical grounds for reversal of conviction or sentence in a capital case: (1) false eye-witness identification, (2) false confessions, (3) uncorroborated informant testimony, (4) scientific evidence validity and backlog, (5) prosecutorial misconduct, (6) judicial failure to report misconduct, (7) ineffective assistance of counsel and defense attorney misconduct, (8) failure to disclose exculpatory evidence.

Procedure and Workload

With death penalty cases, the guilt and penalty phases are treated as separate proceedings with the penalty phase often exceeding the guilt phase in both time and expense. Additionally, the post-conviction process involves both the appellate litigation and the collateral litigation that is more extensive than in non-capital cases.

The guilt phase requires the Agency to conduct a fact investigation and a scientific evidence investigation, conduct legal research and engage in motion practice, as well as jury selection, trial, and post-trial litigation. The sentencing phase requires similar, but separate obligations: sentencing mitigation investigation, additional legal research and motion practice, a sentencing hearing, and post-sentence litigation. Sentencing investigations involved investigating the defendant's entire life and can involved extensive investigation outside the state and the country depending on the defendant's background.

The post-conviction process involves a direct appeal to the Alaska Supreme Court and a petition for certiorari to United States Supreme Court. The collateral litigation requires additional proceedings in the Superior Court. Collateral proceedings involve new and separate investigation, motion practice, and evidentiary presentation. The collateral proceedings also include appeals to the Alaska Court of Appeals and the Alaska Supreme Court.

In addition to the traditional litigation, capital cases also require a petition for clemency to the Governor of Alaska and additional original writs filed with the United States Supreme Court.

Cost Estimates

The Agency typically refers 30% of A and Unclassified cases to the Office of Public Advocacy due to legal conflicts of interest. The cost estimates of this fiscal note are based on an estimate of a total of six capital cases a year, four for the Agency. The average time from the imposition of a death sentence to execution ranges from 13 years to over 20 years. Accordingly, the number of open death penalty cases would rise to approximately 78 to 120 before the cases would begin to close if the estimate of six cases per year remained constant.

It is difficult to predict the resources necessary to process this caseload beyond the first one to three years. The positions and costs contained in this fiscal note are an estimate of the resources necessary

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to create and train two trial teams and two post conviction teams to substantively process no more than 4 capital cases each year.

Based upon the ABA Guidelines, the current standard for death penalty litigation is a trial team consisting of two lawyers, one investigator, and one mitigation specialist; and a post-conviction team consisting of two lawyers, investigator, and a paralegal. A law office assistant has also been included for each team. The fiscal note contains the estimate for salary and related equipment costs for these positions starting with two full teams the first year, increasing to four teams by the third year. In the first year, the emphasis would be on hiring and training trial teams, then in the subsequent two years the emphasis would shift to hiring and training appellate teams. It is expected that the initial death penalty cases will likely take 3 years to complete sentencing.

The fiscal note contains an estimate for the cost of training the attorneys and paraprofessionals. The current standard for defense representation requires that attorneys assigned to death penalty cases be certified to handle a capital case. This will require out-of-state training specific to capital cases. Current standards also require significant continuing legal education and recertification every two years. A training and recertification budget of \$40,000 has been added for each year. Each team, accordingly, would receive training and recertification every two years.

The fiscal note contains an estimate for the costs associated with retaining experts for trial and sentencing. The mean and median costs for experts in federal capital cases are \$158,895 and \$101,592 respectively. This fiscal note contains an estimate of \$100,000 per case. The fiscal note also reflects increase costs for staff travel, witness travel, depositions, and transcript costs. Additionally, the costs associated with reviewing potential death penalty (potential death eligible cases in which the Attorney General does not elect to pursue the death penalty) are also included in this fiscal note.

The cost estimates in this fiscal note are based on the assumption that the Attorney General will elect to secure a sentence of death in 6 cases per year. This note further assumes that these cases will proceed in a timely and efficient manner, with only 1 or 2 of the cases assigned to the Agency proceeding to trial. If more cases become death penalty cases, or more cases go to trial, or trials must be conducted in rural locations, or the workload is underestimated, or involve investigations in other states or outside the United States, these estimates are expected to be inadequate for the Agency to meet its constitutional obligations and could be expected to increase substantially.

1990 Fiscal Note Cost of 1990 Governor's Budget (09 rates)

100 - Salaries and Benefits

	Atty V	Atty IV	Atty III	Atty II	Inv III	AA II	LOAR	LOAI	Total	2nd year	3rd year
Anchorage, Ketchikan, Juneau	2.0	3.0							10.0		
Barrow, Kotz									0.0		
Bethel									0.0		
Kenai									0.0		
Kodiak									0.0		
Fairbanks									0.0		
Palmer, Sitka									0.0		
Dillingham									0.0		
Nome									0.0		
Total	2.0	3.0	0.0	0.00	2.0	1.0	2.0	0.0	10.0		

Anchorage, Ketchikan, Juneau	139.4	131.2	0.0	0.0	88.8	96.9	86.0	0.0			
Barrow, Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Palmer, Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Other	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			

Secretarial Support (1/3 cost)

Anchorage, Ketchikan, Juneau											
Barrow, Kotz											
Bethel											
Kenai											
Kodiak											
Fairbanks											
Palmer, Sitka											
Dillingham											
Nome											
Other											
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			

Secretarial Support (1/3 cost)

Anchorage, Ketchikan, Juneau	21.8	21.8	21.8	21.8	21.8						
Barrow, Kotz	0.0	0.0	0.0	0.0	0.0						
Bethel	0.0	0.0	0.0	0.0	0.0						
Kenai	0.0	0.0	0.0	0.0	0.0						
Kodiak	0.0	0.0	0.0	0.0	0.0						
Fairbanks	0.0	0.0	0.0	0.0	0.0						
Palmer, Sitka	0.0	0.0	0.0	0.0	0.0						
Dillingham	0.0	0.0	0.0	0.0	0.0						
Nome	0.0	0.0	0.0	0.0	0.0						
Other	0.0	16.7	0.0	0.0	0.0						

Total S+B by Location

Anchorage, Ketchikan, Juneau	278.8	393.6	0.0	0.0	177.6	96.9	132.0	0.0	1078.9		
Barrow, Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Palmer, Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Other	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
Total	278.8	393.6	0.0	0.0	177.6	96.9	132.0	0.0	1078.9	1618.4	2157.8

200 - Travel

Base	7.5	7.5	7.5	7.5	5.0	5.0	5.0	0.5			
Total	15.0	22.5	0.0	0.0	10.0	5.0	10.0	0.0	62.5	93.8	125.0

Witness Travel (\$66.0 per case) 264.0 343.2 446.2

200 - Travel

Total									326.5	437.0	571.2
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300 - Contractual

Base	27.0	27.0	17.4	17.4	6.5	6.5	6.5	3.2			
Total	54.0	81.0	0.0	0.0	13.0	6.5	13.0	0.0	167.5	251.3	335.0

300 - Field Work (\$100.0 per case)

Training									40.0	40.0	67.0
Dependent transcription charges (\$27.0 per case)									165.0	140.4	182.5
Crises, etc.									24.0	146.0	178.0
Total									789.5	1099.7	1361.5

400 - Supplies

Base	4.0	6.0	0.0	0.0	2.0	1.0	2.0	0.0	15.0	22.5	30.0
Total	4.0	6.0	0.0	0.0	2.0	1.0	2.0	0.0	15.0	22.5	30.0

500 - Equipment

Base	13.4	13.4	0.0	0.0	13.4	13.4	13.4	0.0	67.0	40.2	43.5
Personal Computer	0.7	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	13.4	13.4	0.0	0.0	13.4	13.4	13.4	0.0	67.0	40.2	43.5

Grand Total 365.2 516.5 0.0 0.0 216.0 122.8 170.4 0.0 2276.9 3217.7 4164.0

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB009
 () Publish Date: _____

Identifier (file name): HB009-LAW-CRIM-2-20-09 Dept. Affected: LAW
 Title An Act relating to murder; authorizing capital punishment and RDU CRIMINAL
classifying murder in the first degree as a capital felony. Component CRIMINAL JUSTICE LITIGATION
 Sponsor Representative Chenuall
 Requester Judiciary Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services	837.0		1,449.0	2,164.0	2,164.0	2,164.0	2,164.0
Travel	321.8		614.4	779.6	779.6	779.6	779.6
Contractual	646.4		1,525.1	2,129.6	1,983.6	1,983.6	1,983.6
Supplies	43.0		74.0	111.0	111.0	111.0	111.0
Equipment	69.0		120.8	181.2	181.2	181.2	181.2
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	1,917.2	0.0	3,783.3	5,365.4	5,219.4	5,219.4	5,219.4

CAPITAL EXPENDITURES							
CHANGE IN REVENUES ()							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	1,917.2		3,793.3	5,365.4	5,219.4	5,219.4	5,219.4
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	1,917.2	0.0	3,793.3	5,365.4	5,219.4	5,219.4	5,219.4

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time	8.0		14	21	21	21	21
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached pages...

Prepared by: Robert Meiners, Deputy Director
 Division: Administrative Services Division
 Approved by: Richard Svobodny, Acting Attorney General
Department of Law

Phone 907.465.5427
 Date/Time 2/20/09 8:50 AM
 Date 2/20/2009

FISCAL NOTE

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2009 LEGISLATIVE SESSION

BILL NO. HB009

ANALYSIS CONTINUATION

HB9 authorizes capital punishment by classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for capital felonies. The bill would establish sentencing procedures for capital felonies; and amend Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure. If enacted, there will be significant costs for the Department of Law.

In the last 15 years there have been several attempts to adopt capital punishment in Alaska. The Department of Law has submitted fiscal notes over these years. In 1993 for SB 127, the department estimated that in the first years after implementation the department would need eight new employees, in the second year the number would be 14 new employees, and the following years the number would be 21 new employees. In 1994 in support of the same bill, the numbers changed to 10 new employees the first year, and 14 for the second year, and then 20 new employees for the following years.

In the 1995 fiscal note for HB 45 the number of new employees was estimated to be eight in the first year, 17 in the second, and 25 in the following years. In 1996, the number of new employees was six new employees in year one, 16 employees in year two, and 20 employees in year three, and 24 employees in the following years.

In 1997 the fiscal note for HB 131 provided for eight employees in the first year, year two 14 employees, and 21 employees for the following years. These numbers are summarized here:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
1993	8	14	21	21
1994	10	14	20	20
1995	8	17	25	25
1996	6	16	20	24
1997	8	14	21	21
		<u>HB 9</u>		
2009	8	14	21	21

Although the number of new employees in 2009 is consistent with previous bills, the nature of capital litigation has become more complex and commensurately more costly. The department assumes a methodology based upon a substantially decreased number of capital cases under HB 9 than the number of cases assumed for SB 127 in 1994.

In 1994, the department's criminal division had 17 first degree murder cases in which aggravating factors were present that would justify the death penalty, had a similar provision been the law. The number of murders committed in Alaska varies somewhat from year-to-year and, therefore, the assumptions made in this fiscal note are as conservative as possible. (All murders in Alaska in 2007 totaled 44.)

The Department of Corrections' statistics show the following number of intakes for murder in the first degree in the previous five years:

2004	4
2005	16
2006	10
2007	20
2008	17

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These numbers show a spread of 4 to 20 murders in the first degree and a yearly average of 13.4. It is unknown the number of these cases which would be death eligible. However, if approximately half the murders in the first degree were eligible the number would be between 6 and 7. Department of Law statistics show for the same time period - 2003 to 2008 - that 170 murder in the first degree cases were submitted for prosecution. 33 or 19.4% of these cases were dismissed by the state. There were 14 of these cases where the defendant pled guilty to murder in the first degree; 18 cases resulted in a guilty verdict at trial and 5 cases where the verdict was not guilty. The prior three groups of cases total 37. The remaining cases were resolved in some other manner. The 37 cases over this five year period average 7.4 per year. Not all of these cases will be death eligible. If the number of pleas to murder are subtracted from the total number, assuming that these would not be death eligible, then the number is 23, or 4.6 per year. The range between 4.6 and 7.4 suggests a number of 6 (six) capital murders a year. This fiscal note uses as its working assumption the conservative number of six capital murder cases each year.

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 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 1994's data, where there were 17 murders having death penalty aggravators, the department would probably seek the death penalty in ten cases, all of which would require trials. In the remaining seven cases, prosecutors would elect to try the cases as non-capital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. The department expects that six capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed four to five times each year.

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

In its several reviews of capital penalty laws, the United States Supreme Court has 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 non-capital 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 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 staffed. The trend is that defense council must be "death penalty certified." This means that each attorney has "second-chaired" in a capital case. In the vast majority of states two defense attorneys are assigned to the guilt phase of the trial and two different attorneys to the penalty phase of the trial. In other words, four defense attorneys per case.

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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. Cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about \$60,000 in 1994 dollars. The state believes that expert costs today can easily exceed \$100,000.

The state's district attorneys offices do not have investigators as do most prosecutors in capital punishment states. These investigators are specially trained to investigate facts which pertain to the penalty phase of capital cases. The Department of Public Safety is anticipated to present a fiscal note requesting two additional investigators to fulfill this function. Whether in Law or Public Safety, specially trained investigators will be required.

Given the special rules that apply in capital cases, prosecutors and paralegals will need advanced training to deal with these cases.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a non-capital 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 one 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 non-capital 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.

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 four or five 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. Information indicates that nationally an average of nearly 12.7 years elapses from the time a death penalty sentence is imposed to the time the sentence is carried out.

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ANALYSIS CONTINUATION

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 two and three years after the bill takes effect. (A recent study by the Alaska Judicial Council showed that of the 51 felony jury trials in Anchorage in 2007, the average time to disposition was 669 days. Capital cases can be estimated to take substantially longer.) Likewise, the post-conviction appellate review process will not commence until sometime during the latter years. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add three attorneys, three paraprofessionals, and two law office assistants to handle capital felony prosecutions. Although perhaps as few as four bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all 17 potential capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed. This is so even if the cases eventually resolve with a conviction of a lesser offense.

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 non-capital 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 possibly 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 therefore be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, six or more additional capital felonies would need to be processed at the same time the previous years cases are readied for trial. At this point, it will be necessary to add one attorney, one paraprofessional, and one law office assistant to handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to begin the appellate review process. Initially, one attorney, one paraprofessional, and one law office assistant will be needed to handle capital felony appeals.

During the third year, the number of bifurcated capital murder trials 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 third 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, one paraprofessional, and one law office assistant. Post-conviction capital felony appeals will have reached stride by year three, and they will continue to increase at the rate of six new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year by adding two attorneys, one paraprofessional, and one law office assistant.

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.

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(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) There will need to be two teams of prosecutors: one for the guilt phase at trial and a second team specializing in the penalty phase.

(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) The cost for appeals is calculated only through the sixth 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 thirteen years (12.7 in 2007). Consequently, the state will have to provide enough resources to respond to the ongoing appeals of up to 78 (6 capital felony trials per year) or more capital felony defendants annually, within 13 years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

(8) 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, \$66,000 per case.
- Staff travel and per diem, \$10,000 per attorney, \$6,600 per paraprofessional, \$4,000 per law office assistant, per annum.
- Expert witness fees, \$100,000 per case.
- Standard witness fees paid to others, \$2,500 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$4,600 per attorney, \$2,500 per paraprofessional, per annum.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.
- Training first year \$10,000, following years \$5,000

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB009

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Cost Summary (First Year, Capital Trials)

Assumption: 6 trials per year including trial preparation

OBJECT	(1) Atty V	(2) Atty IV	(2) Assoc Atty I	(1) P/A II	(2) LOA I	Total
100 - Salaries & Benefits	167.0	290.0	180.0	80.0	120.0	837.0
	167.0	290.0	180.0	80.0	120.0	837.0
200 - Travel						
Staff Travel & Per Diem	10.0	19.9	13.3	6.6	8.0	57.8
	10.0	19.9	13.3	6.6	8.0	57.8
300 - Contractual						
Communications, Copy	4.8	9.6	6.4	3.2	6.4	30.3
Office Space Leases	7.4	14.9	14.9	7.4	14.9	59.5
PC Network Maintenance	2.0	4.0	4.0	2.0	4.0	15.9
Staff Training	4.0	4.0	2.0	0.0	0.0	0.0
WestLaw	1.6	3.2	3.2	1.6	0.0	9.6
	19.8	35.6	30.4	14.2	25.2	125.2
400 - Supplies						
Office Consumables	2.4	4.8	4.8	2.4	3.2	17.5
Law Library	1.6	3.2	3.2	1.6	0.0	9.6
New Position Supplies	2.0	4.0	4.0	2.0	4.0	15.9
	6.0	11.9	11.9	6.0	7.2	43.0
500 - Equipment						
New Position Equipment	3.3	6.6	6.6	3.3	6.6	26.6
Personal Computer	5.3	10.6	10.6	5.3	10.6	42.5
	8.6	17.3	17.3	8.6	17.3	69.0
Total	211.4	374.7	252.9	115.4	177.6	1132.0

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB009

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Cost Summary (Second and Third Year Additions, Capital Trials)

Assumption:
Year 2 - 12 trials
Year 3 - 18 trials, preparation on 10 new charges

<u>Second Year</u> OBJECT	(1) Atty IV	(1) Assoc Atty I	(1) LOA I	Total
100 - Salaries & Benefits	145.0	90.0	60.0	295.0
	<u>145.0</u>	<u>90.0</u>	<u>60.0</u>	<u>295.0</u>
200 - Travel				
Staff Travel & Per Diem	10.0	6.6	4.0	20.6
	<u>10.0</u>	<u>6.6</u>	<u>4.0</u>	<u>20.6</u>
300 - Contractual				
Communications, Copy	4.8	4.8	3.2	12.7
Office Space Leases	7.4	7.4	7.4	22.3
PC Network Maintenance	2.0	2.0	2.0	6.0
WestLaw	1.6	1.6	0.0	3.2
	<u>15.8</u>	<u>15.8</u>	<u>12.6</u>	<u>44.2</u>
400 - Supplies				
Office Consumables	2.4	2.4	1.6	6.4
Law Library	1.6	1.6	0.0	3.2
New Position Supplies	2.0	2.0	2.0	6.0
	<u>6.0</u>	<u>6.0</u>	<u>3.6</u>	<u>15.5</u>
500 - Equipment				
New Position Equipment	3.3	3.3	3.3	10.0
Personal Computer	5.3	5.3	5.3	15.9
	<u>8.6</u>	<u>8.6</u>	<u>8.6</u>	<u>25.9</u>
Total	<u>185.4</u>	<u>127.0</u>	<u>88.8</u>	<u>401.2</u>

<u>Third Year</u> OBJECT	(1) Atty IV	(1) P/A II	(1) LOA I	Total
100 - Salaries & Benefits	145.0	80.0	60.0	285.0
	<u>145.0</u>	<u>80.0</u>	<u>60.0</u>	<u>285.0</u>
200 - Travel				
Staff Travel & Per Diem	10.0	6.6	4.0	20.6
	<u>10.0</u>	<u>6.6</u>	<u>4.0</u>	<u>20.6</u>
300 - Contractual				
Communications, Copy	4.8	4.8	3.2	12.7
Office Space Leases	7.4	7.4	7.4	22.3
PC Network Maintenance	2.0	2.0	2.0	6.0
WestLaw	1.6	1.6	0.0	3.2
	<u>15.8</u>	<u>15.8</u>	<u>12.6</u>	<u>44.2</u>
400 - Supplies				
Office Consumables	2.4	2.4	1.6	6.4
Law Library	1.6	1.6	0.0	3.2
New Position Supplies	2.0	2.0	2.0	6.0
	<u>6.0</u>	<u>6.0</u>	<u>3.6</u>	<u>15.5</u>
500 - Equipment				
New Position Equipment	3.3	3.3	3.3	10.0
Personal Computer	5.3	5.3	5.3	15.9
	<u>8.6</u>	<u>8.6</u>	<u>8.6</u>	<u>25.9</u>
Total	<u>185.4</u>	<u>117.0</u>	<u>88.8</u>	<u>391.2</u>

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB009

ANALYSIS CONTINUATION

Fiscal Analysis HB9

Cost Summary (Second and Third Year Additions, Appellate Review Process)

Assumption:

Year 2 - 4 trials begin appellate review process

Year 3 - 8 trials on appeal, with 6 new cases each following year

<u>Second Year</u>	(1)	(1) Assoc	(1)	
OBJECT	Atty V	Atty I	LOA I	Total
100 - Salaries & Benefits	167.0	90.0	60.0	317.0
	<u>167.0</u>	<u>90.0</u>	<u>60.0</u>	<u>317.0</u>
200 - Travel				
Staff Travel & Per Diem	4.6	3.3	0.0	8.0
	<u>4.6</u>	<u>3.3</u>	<u>0.0</u>	<u>8.0</u>
300 - Contractual				
Communications, Copy	29.7	29.7	3.2	62.7
Office Space Leases	7.4	7.4	7.4	22.3
PC Network Maintenance	2.0	2.0	2.0	6.0
WestLaw	3.2	3.2	0.0	6.4
	<u>42.4</u>	<u>42.4</u>	<u>12.6</u>	<u>97.3</u>
400 - Supplies				
Office Consumables	2.4	2.4	1.6	6.4
Law Library	1.6	1.6	0.0	3.2
New Position Supplies	2.0	2.0	2.0	6.0
	<u>6.0</u>	<u>6.0</u>	<u>3.6</u>	<u>15.5</u>
500 - Equipment				
New Position Equipment	3.3	3.3	3.3	10.0
Personal Computer	5.3	5.3	5.3	15.9
	<u>8.6</u>	<u>8.6</u>	<u>8.6</u>	<u>25.9</u>
Total	<u>228.6</u>	<u>150.3</u>	<u>84.8</u>	<u>463.7</u>
<u>Third Year</u>	(2)	(1)	(1)	
OBJECT	Atty IV	P/A II	LOA I	Total
100 - Salaries & Benefits	290.0	80.0	60.0	430.0
	<u>290.0</u>	<u>80.0</u>	<u>60.0</u>	<u>430.0</u>
200 - Travel				
Staff Travel & Per Diem	9.3	3.3	0.0	12.6
	<u>9.3</u>	<u>3.3</u>	<u>0.0</u>	<u>12.6</u>
300 - Contractual				
Communications, Copy	59.5	29.7	3.2	92.4
Office Space Leases	14.9	7.4	7.4	29.7
PC Network Maintenance	4.0	2.0	2.0	8.0
WestLaw	6.4	3.2	0.0	9.6
	<u>84.7</u>	<u>42.4</u>	<u>12.6</u>	<u>139.7</u>
400 - Supplies				
Office Consumables	4.8	2.4	1.6	8.8
Law Library	3.2	1.6	0.0	4.8
New Position Supplies	4.0	2.0	2.0	8.0
	<u>11.9</u>	<u>6.0</u>	<u>3.6</u>	<u>21.5</u>
500 - Equipment				
New Position Equipment	6.6	3.3	3.3	13.3
Personal Computer	10.6	5.3	5.3	21.2
	<u>17.3</u>	<u>8.6</u>	<u>8.6</u>	<u>34.5</u>
Total	<u>413.2</u>	<u>140.3</u>	<u>84.8</u>	<u>638.3</u>

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB009

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Out-of-Pocket Costs - Capital Felony Trials

Year 1: (4 cases underway)

Witness travel and per diem \$66.0 per case x 4 cases	=	264.0
Expert witness fees \$100.0 per case x 4 cases	=	400.0
Witness fees (witnesses of fact) \$3.3 per case x 4 cases	=	13.2
Deposition/court reporter charges \$27.0 per case x 4 cases	=	108.0

Year 2: (8 cases underway)

Witness travel and per diem \$66.0 per case x 8 cases	=	528.0
Expert witness fees \$100.0 per case x 8 cases	=	800.0
Witness fees (witnesses of fact) \$3.3 per case x 8 cases	=	26.4
Deposition/court reporter charges \$27.0 per case x 8 cases	=	216.0

Year 3: (10 cases underway)

Witness travel and per diem \$66.0 per case x 10 cases	=	660.0
Expert witness fees \$100.0 per case x 10 cases	=	1000.0
Witness fees (witnesses of fact) \$3.3 per case x 10 cases	=	33.0
Deposition/court reporter charges \$27.0 per case x 10 cases	=	270.0

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB009

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Out-of-Pocket Costs - Capital Felony Appeals

Year 2: (4 cases underway)

Outside counsel to uphold statute
\$66.0 per case x 1 case = 66.0

Deposition/court reporter charges
\$40.0 per case x 4 cases = 160.0

Year 3: (4 cases underway)

Outside counsel to uphold statute
\$66.0 per case x 1 case = 66.0

Deposition/court reporter charges
\$40.0 per case x 8 cases = 320.0

Year 4: (14 cases underway)

Deposition/court reporter charges
\$40.0 per case x 6 cases = 240.0

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB009

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Cumulative Implementation Cost by Year

OBJECT	<u>Criminal Felony Trial</u>					
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
100 - Salaries & Benefits	837.0	1132.0	1417.0	1417.0	1417.0	1417.0
200 - Travel						
Staff Travel & Per Diem	57.8	78.4	99.0	99.0	99.0	99.0
Witness Travel	264.0	528.0	660.0	660.0	660.0	660.0
	321.8	606.4	759.0	759.0	759.0	759.0
300 - Contractual						
Staff Contractual	125.2	159.4	203.6	203.6	203.6	203.6
Outside Services	521.2	1042.4	1303.0	1303.0	1303.0	1303.0
	646.4	1201.8	1506.6	1506.6	1506.6	1506.6
400 - Supplies	43.0	58.5	74.0	74.0	74.0	74.0
500 - Equipment	69.0	94.9	120.8	120.8	120.8	120.8
Total	1917.2	3093.6	3877.4	3877.4	3877.4	3877.4
PFT	8	11	14	14	14	14

OBJECT	<u>Appellate Review</u>					
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
100 - Salaries & Benefits	0.0	317.0	747.0	747.0	747.0	747.0
200 - Travel						
Staff Travel & Per Diem	0.0	8.0	20.6	20.6	20.6	20.6
Witness Travel	0.0	0.0	0.0	0.0	0.0	0.0
	0.0	8.0	20.6	20.6	20.6	20.6
300 - Contractual						
Staff Contractual	0.0	97.3	237.0	237.0	237.0	237.0
Outside Services	0.0	226.0	386.0	240.0	240.0	240.0
	0.0	323.3	623.0	477.0	477.0	477.0
400 - Supplies	0.0	15.5	37.0	37.0	37.0	37.0
500 - Equipment	0.0	25.9	60.4	60.4	60.4	60.4
Total	0.0	689.7	1488.0	1342.0	1342.0	1342.0
PFT	0	3	7	7	7	7

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB9-ACS-02-20-09
() Publish Date: _____

Identifier (file name): _____ Dept. Affected: _____
Title Death Penalty RDU Alaska Court System
Sponsor Representative Chenault Component Trial Courts
Requester _____ Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services	128.8	128.8	618.9	1,163.2	1,163.2	1,163.2	1,163.2
Travel			28.8	52.5	47.5	47.5	47.5
Contractual	62.0	62.0	638.0	1,828.1	1,828.1	1,828.1	1,828.1
Supplies	6.5	6.5	126.5	57.0	19.5	19.5	19.5
Equipment							
Land & Structures	1,843.1	1,843.1					
Grants & Claims							
Miscellaneous							
TOTAL OPERATING AND CAPITAL	2,040.4	2,040.4	1,412.2	3,100.8	3,058.3	3,058.3	3,058.3

CAPITAL EXPENDITURES	1,843.1	1,843.1					
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	2,040.4	2,040.4	1,412.2	3,100.8	3,058.3	3,058.3	3,058.3
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	2,040.4	2,040.4	1,412.2	3,100.8	3,058.3	3,058.3	3,058.3

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time	1.0	1.0	7.0	13.0	13.0	13.0	13.0
Part-time							
Temporary	1.0	1.0					

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
Alaska Court System

Phone 463-4750
Date/Time 2-20-09 @ 11:00 am
Date 2/20/2009

Alaska Court System
 Fiscal Note Calculations for HB 9
 2/20/2009

<u>Personal Services</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>
Superior Court Pro Tem Judge - Anchorage	23,100					
Superior Court Judge - Anchorage		238,077	238,077	238,077	238,077	238,077
Staff Attorney (22A), Anchorage, PFT	105,693	105,693	105,693	105,693	105,693	105,693
Law Clerk (13D), Anchorage, PFT		58,440	58,440	58,440	58,440	58,440
Administrative Assistant (12A), Anchorage, PFT		59,376	59,376	59,376	59,376	59,376
In-Court Clerk (12A), Anchorage, PFT		59,376	59,376	59,376	59,376	59,376
Deputy Clerk II (10A), Anchorage, PFT		53,895	53,895	53,895	53,895	53,895
Bailiff (6A), Anchorage, PFT		44,000	44,000	44,000	44,000	44,000
Superior Court Judge - Fairbanks			239,520	239,520	239,520	239,520
Law Clerk (13D), Fairbanks, PFT			65,637	65,637	65,637	65,637
Administrative Assistant (12A), Fairbanks, PFT			65,917	65,917	65,917	65,917
In-Court Clerk (12A), Fairbanks, PFT			65,917	65,917	65,917	65,917
Deputy Clerk II (10A), Fairbanks, PFT			59,376	59,376	59,376	59,376
Bailiff (6A), Fairbanks, PFT			48,000	48,000	48,000	48,000
Subtotal Personal Services	128,793	618,857	1,163,224	1,163,224	1,163,224	1,163,224
<u>Travel</u>						
New Judges' Training		5,000	5,000			
Jury Sequestration, Travel, Meals, Lodging		23,750	47,500	47,500	47,500	47,500
Subtotal Travel	0	28,750	52,500	47,500	47,500	47,500
<u>Contractual</u>						
<u>Jury Costs</u>						
500 Jurors 15 Days for Selection		187,500	187,500	187,500	187,500	187,500
18 Jurors for 66 Days of Trial		29,700	29,700	29,700	29,700	29,700
18 Jurors for 5 Days of Deliberation		2,250	2,250	2,250	2,250	2,250
Deliberation Meals \$16/18 jurors + bailiff		1,520	1,520	1,520	1,520	1,520
Total per Superior Court Trial		220,970	220,970	220,970	220,970	220,970
Proposed # Superior Court Trials		2	6	6	6	6
Est. Cost of Jury Fees for Capital Punishment Trials		441,900	1,325,800	1,325,800	1,325,800	1,325,800
Offset Jury Costs for Standard Felony Trials		(15,916)	(47,748)	(47,748)	(47,748)	(47,748)
		425,984	1,278,052	1,278,052	1,278,052	1,278,052
Training (Certification to Hear Capital Cases)	60,000	20,000	20,000	20,000	20,000	20,000
Transcription Costs (24,000 pages per trial)		168,000	504,000	504,000	504,000	504,000
Software	2,000	24,000	26,000	26,000	26,000	26,000
Subtotal Contractual	62,000	637,984	1,828,052	1,828,052	1,828,052	1,828,052
<u>Supplies</u>						
Workstations, Furniture, Computers, Printers, Recording Equipment, Office Equip/Supplies	6,500	126,500	57,000	19,500	19,500	19,500
<u>Capital Expenses</u>						
Remodel Boney & Nesbett Courtrooms	1,696,100					
Complete Fairbanks 5th Floor Superior Court	147,000					
Subtotal Capital	1,843,100	0	0	0	0	0
Total all Costs	2,040,393	1,412,091	3,100,776	3,058,276	3,058,276	3,058,276
Breakdown by Expense Category:						
Personal Services Total	128,800	618,900	1,163,200	1,163,200	1,163,200	1,163,200
Travel Total	0	28,800	52,500	47,500	47,500	47,500
Contractual Total	62,000	638,000	1,828,100	1,828,100	1,828,100	1,828,100
Supplies Total	6,500	126,500	57,000	19,500	19,500	19,500
Capital Total	1,843,100	0	0	0	0	0
Total	2,040,400	1,412,200	3,100,800	3,058,300	3,058,300	3,058,300

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 9

ANALYSIS CONTINUATION

House Bill 9 adopts a death penalty system for Alaska. The bill establishes a bifurcated jury trial, with a guilt phase and, if the person is convicted of a capital offense, a penalty phase. All death sentences are automatically appealed to the supreme court. The extent to which the court system will be impacted by this bill is largely determined by the number of capital cases charged, the number that go to trial and the number that result in a death sentence. This note is based on the Department of Law's estimate of six death penalty trials a year, with four of those resulting in a sentence of death.

Pretrial

As thoroughly explained in the department's fiscal note analysis, a death penalty case is time consuming and resource intensive through every phase and for every part of the criminal justice system. The court system will begin to feel the impact soon after the department first gives its notice of election to seek the death penalty in a particular case. It is at that point that pretrial motion practice begins. Experience from other states shows that the number of pretrial motions filed in a death penalty case far exceed those filed in a non-capital case.

Pretrial motions are not only much more plentiful in capital cases, but they address constitutional issues that are not generally relevant in non-capital cases. Defense attorneys must raise these challenges in the trial court if they are going to preserve them for future federal court review. The prosecution must respond to and the court must rule on these motions.

In order to help with all motions filed both before and during trial, this note adds one superior court staff attorney. Although based in Anchorage, where the majority of cases will likely be filed, the position will work on motions filed in all locations.

Trial

Once the pretrial work is completed (and data from other states suggests that it takes an average of one and a half to three years to bring a death penalty case to trial), the trial work begins and it starts with jury selection.

Jury selection in a capital trial is different from jury selection in a non-capital trial. One difference is that capital trials last an average of three months, which is roughly four times the length of a non-capital trial for the same offense. Because few people can afford to sit on a jury for three months, many potential jurors are excused. Additionally, jurors in capital cases must be "death qualified," that is they must be willing to impose the death penalty. This further limits the number of people eligible for jury service.

These two limiting factors result in a much longer jury selection process and a need to call far more people as potential jurors. Evidence from other states suggests that it takes many hundreds of potential jurors and from two to four weeks to seat a jury in a death penalty case. This note assumes 500 potential jurors and a selection process that lasts an average of three weeks.

In addition to jury challenges, long trials require tremendous judicial resources. With three weeks to seat each jury and three months for trial, the department's estimate of six capital trials a year means a total of 22.5 months of trial work each year. That is the equivalent of two superior court judges. The court system will need two new judges to handle this increase in workload. However, because this increase in workload is likely to build over the next three years, this note calls for a pro tem (part-time) judge in year one (FY 10) and the services of a staff attorney to help with the initial pretrial motions. In year two (FY 11), this note calls for a superior court judge in Anchorage to begin with the first trials that we anticipate, and in year 3 (FY 12), when the system is up to its six trial a year level, this note calls for the second judge, who will be seated in Fairbanks.

ANALYSIS CONTINUATION

Appeals

At the conclusion of the trial process, all death sentences go directly to the supreme court for review. The record on appeal consists of the record before the trial court and the trial court transcript, which is estimated to average 24,000 pages. The court has estimated a \$3.50 per page expense for transcription services and this note reflects those costs.

As with the other phases of the process, death penalty appeals are different from other appeals. The court conducts a "proportionality review" to ensure that the penalty is being applied in a uniform and non-discriminatory fashion. This process is long and difficult and involves a detailed look at every stage of the process from charging decision through sentencing. It then compares the case against other cases where the death penalty was not charged.

Additionally, and also unlike most other cases, each death penalty case will come before the court multiple times. The state of Arizona reports that each death penalty defendant brings six or seven cases before the Arizona Supreme Court. Similarly, the Florida Supreme Court states that, although they see an average of 15 new death sentence cases each year, because of the multiple appeals and the back and forth with the state trial courts and the federal courts, they currently have before them 75 different appeals in one form or another.

Judicial Training

Finally, this note includes funding for judicial training. Many states require judges to have special death penalty training prior to presiding over a death penalty case. This training helps reduce the number of cases overturned on appeal due to judicial errors that result from a lack of familiarity with the unique complexities of death penalty law.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB9-ACS-02-20-09
() Publish Date: _____

Identifier (file name): _____ Dept. Affected: _____
Title: Death Penalty RDU: Alaska Court System
Sponsor: Representative Chenault Component: Appellate Courts
Requester: _____ Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services			178.7	178.7	178.7	178.7	178.7
Travel							
Contractual			10.0	10.0	10.0	10.0	10.0
Supplies			15.0	5.0	5.0	5.0	5.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING AND CAPITAL	0.0	0.0	203.7	193.7	193.7	193.7	193.7

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			203.7	193.7	193.7	193.7	193.7
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	203.7	193.7	193.7	193.7	193.7

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time			2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
Alaska Court System

Phone 463-4750
Date/Time 2-20-09 @ 11:00 am
Date 2/20/2009

Alaska Court System
 Fiscal Note Calculations for HB 9
 2/20/2009

<u>Personal Services</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>
Supreme Court Staff Attorney (24A), Anchorage, PFT		119,306	119,306	119,306	119,306	119,306
Legal Technician (12A), Anchorage, PFT		59,376	59,376	59,376	59,376	59,376
Subtotal Personal Services	0	178,682	178,682	178,682	178,682	178,682
<u>Contractual</u>						
Software, Conference Fees, Misc Contractual		10,000	10,000	10,000	10,000	10,000
Subtotal Contractual Services	0	10,000	10,000	10,000	10,000	10,000
<u>Supplies</u>						
Office Supplies, Subscriptions		5,000	5,000	5,000	5,000	5,000
Office Furniture, Equipment (computers, printers)		10,000				
Subtotal Supplies	0	15,000	5,000	5,000	5,000	5,000
Total all Costs	0	203,682	193,682	193,682	193,682	193,682
Breakdown by Expense Category:						
Personal Services Total	0	178,700	178,700	178,700	178,700	178,700
Contractual Total	0	10,000	10,000	10,000	10,000	10,000
Supplies Total	0	15,000	5,000	5,000	5,000	5,000
Total	0	203,700	193,700	193,700	193,700	193,700

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 9

ANALYSIS CONTINUATION

House Bill 9 adopts a death penalty system for Alaska. The bill establishes a bifurcated jury trial, with a guilt phase and, if the person is convicted of a capital offense, a penalty phase. All death sentences are automatically appealed to the supreme court. The extent to which the court system will be impacted by this bill is largely determined by the number of capital cases charged, the number that go to trial and the number that result in a death sentence. This note is based on the Department of Law's estimate of six death penalty trials a year, with four of those resulting in a sentence of death.

Pretrial

As thoroughly explained in the department's fiscal note analysis, a death penalty case is time consuming and resource intensive through every phase and for every part of the criminal justice system. The court system will begin to feel the impact soon after the department first gives its notice of election to seek the death penalty in a particular case. It is at that point that pretrial motion practice begins. Experience from other states shows that the number of pretrial motions filed in a death penalty case far exceed those filed in a non-capital case.

Pretrial motions are not only much more plentiful in capital cases, but they address constitutional issues that are not generally relevant in non-capital cases. Defense attorneys must raise these challenges in the trial court if they are going to preserve them for future federal court review. The prosecution must respond to and the court must rule on these motions.

In order to help with all motions filed both before and during trial, this note adds one superior court staff attorney. Although based in Anchorage, where the majority of cases will likely be filed, the position will work on motions filed in all locations.

Trial

Once the pretrial work is completed (and data from other states suggests that it takes an average of one and a half to three years to bring a death penalty case to trial), the trial work begins and it starts with jury selection.

Jury selection in a capital trial is different from jury selection in a non-capital trial. One difference is that capital trials last an average of three months, which is roughly four times the length of a non-capital trial for the same offense. Because few people can afford to sit on a jury for three months, many potential jurors are excused. Additionally, jurors in capital cases must be "death qualified," that is they must be willing to impose the death penalty. This further limits the number of people eligible for jury service.

These two limiting factors result in a much longer jury selection process and a need to call far more people as potential jurors. Evidence from other states suggests that it takes many hundreds of potential jurors and from two to four weeks to seat a jury in a death penalty case. This note assumes 500 potential jurors and a selection process that lasts an average of three weeks.

In addition to jury challenges, long trials require tremendous judicial resources. With three weeks to seat each jury and three months for trial, the department's estimate of six capital trials a year means a total of 22.5 months of trial work each year. That is the equivalent of two superior court judges. The court system will need two new judges to handle this increase in workload. However, because this increase in workload is likely to build over the next three years, this note calls for a pro tem (part-time) judge in year one (FY 10) and the services of a staff attorney to help with the initial pretrial motions. In year two (FY 11), this note calls for a superior court judge in Anchorage to begin with the first trials that we anticipate, and in year 3 (FY 12), when the system is up to its six trial a year level, this note calls for the second judge, who will be seated in Fairbanks.

ANALYSIS CONTINUATION

Appeals

At the conclusion of the trial process, all death sentences go directly to the supreme court for review. The record on appeal consists of the record before the trial court and the trial court transcript, which is estimated to average 24,000 pages. The court has estimated a \$3.50 per page expense for transcription services and this note reflects those costs.

As with the other phases of the process, death penalty appeals are different from other appeals. The court conducts a "proportionality review" to ensure that the penalty is being applied in a uniform and non-discriminatory fashion. This process is long and difficult and involves a detailed look at every stage of the process from charging decision through sentencing. It then compares the case against other cases where the death penalty was not charged.

Additionally, and also unlike most other cases, each death penalty case will come before the court multiple times. The state of Arizona reports that each death penalty defendant brings six or seven cases before the Arizona Supreme Court. Similarly, the Florida Supreme Court states that, although they see an average of 15 new death sentence cases each year, because of the multiple appeals and the back and forth with the state trial courts and the federal courts, they currently have before them 75 different appeals in one form or another.

Judicial Training

Finally, this note includes funding for judicial training. Many states require judges to have special death penalty training prior to presiding over a death penalty case. This training helps reduce the number of cases overturned on appeal due to judicial errors that result from a lack of familiarity with the unique complexities of death penalty law.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: HB9-DOC-OC-03-15-09
 Bill Version: _____
 () Publish Date: _____

Identifier (file name): HB9-DOC-OC-03-15-09
 Title "An Act Authorizing Capital Punishment"
 Sponsor Representatives Chenault, Ramras
 Requester Governor

Dept. Affected: DOC
 RDU Administration & Support
 Component Office of the Commissioner
 Component Number 694

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services					367.5	367.5	367.5	367.5
Travel					20.0	40.0	60.0	80.0
Contractual					2.5	5.0	5.0	5.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	390.0	412.5	432.5	452.5

CAPITAL EXPENDITURES			5,000.0					
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF					390.0	412.5	432.5	452.5
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	390.0	412.5	432.5	452.5

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time					5	5	5	5
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections anticipates up to four offenders will be sentenced each year under this legislation. The national average length of time for the appeals process is 13 years. The average annual cost of incarceration of an offender housed at Spring Creek Correctional Center (SCCC) is approximately \$51,012. The imposition of a death sentence on an offender who would be given a 99-year sentence under current law would result in a cost avoidance of \$51,012 per year once the sentence is carried out and until what would have been the end of the offender's natural life.

Any additional costs associated with execution would be addressed through the annual supplemental process. These costs would be the result of transport/security officer overtime and travel costs associated with the staffing of the death chamber during the fiscal year when an actual execution occurs.

Prepared by: Dwayne Peeples, Deputy Commissioner
 Division Office of the Commissioner
 Approved by: Joesph Schmidt, Commissioner
Office of the Commissioner

Phone 465-4670
 Date/Time 3/15/2009 1243 pm
 Date 3/15/2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB9-DOC-OC-03-15-09

ANALYSIS CONTINUATION

Capital Construction costs added in FY2012 are the anticipated costs associated with the building of a death chamber. These costs are based on construction of a 4,590 square foot stand-alone module to include:

- o Metal Detector
- o Public Lobby
- o Visitor Lockers / Screening
- o Meeting and Contact Visitation Rooms
- o Non-Contact Visitation Video Station
- o Separate restrooms for Staff / Inmate / Visitors
- o Sally Ports Vehicle
- o Execution Room
- o Execution Equipment Room
- o Medical Equipment
- o Medical Waste Collection and Disposal Area
- o Storage
- o Execution Witness Room

Annual Operating Cost:

71000 Personal Services (FY10 rates employer rates applied, no overtime included):

A housing unit located at SCCC will be converted to a death row housing unit. Two security posts will be required with each post consisting of five security officers--1 Correctional Officer III, and 4 Correctional Officer I/II positions. The department will utilize five existing positions and add five new positions to staff these posts.

72000 Travel:

The Department of Law has determined an average of one court hearing per year, per inmate during the appeal process. The appeal process can take up to 13 years. Inmates must be transported back to their judicial district for the court hearing. The Department of Corrections is responsible for transporting the offender to the closest secure facility for each court appearance. Each round-trip is based on current costs for the Public Safety King Air transportation or for a charter to each geographic region--Southeast, Interior, and Northwestern AK. Ground transportation within the Anchorage area, Mat-Su Valley, and Kenai Peninsula is included. Travel is for the inmate and two transport officers, per diem and lodging for the officers is included.

73000 Contractual Services:

The services line is based on anticipated utility costs only. These are current estimates and are associated with the actual death chamber only.

74000 Commodities:

There are no increases anticipated for the daily costs of incarceration as these offenders are already committed to the department's custody under existing legislation.

