

LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

SB 17 cont. 585 176

### Method of execution

At yearend 1987 lethal injection (18 States) and electrocution (14 States) were the most common methods of execution authorized (table 2). Seven States authorized lethal gas; two States, hanging; and two States, a firing squad. Six States authorized more than one method—lethal injection and an alternative method—generally at either the election of the condemned prisoner or based upon the date of sentencing.

Some States have stipulated an alternative to lethal injection, anticipating that it may be found unconstitutional. Each of the other four methods, previously challenged on Eighth Amendment grounds as cruel and unusual punishment, has been found to be constitutional. The method of execution for Federal offenders is that of the State in which the execution takes place.

### Automatic review

Of the 37 States with capital punishment statutes at yearend 1987, 34 provided for an automatic review of all death sentences. Arkansas, Florida, and Vermont had no specific provisions for automatic review. In most States automatic review is conducted regardless of the defendant's wishes. While most of the 34 States authorize automatic review of both conviction and sentence, Idaho and Indiana require review of the sentence only. Typically, the review is undertaken directly by the State Supreme Court. If either the conviction or sentence is vacated, the case may be remanded to the trial court for additional proceedings or for retrial. It is possible that, as a result of retrial or resentencing, the death sentence may be reimposed.

### Minimum age

A total of 26 States specify a minimum age at the time of the offense for which the death penalty may be imposed (table 3). In some States the minimum age is specified in the capital punishment statute; in others it is, in effect, set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. The most frequently specified age is 18 years (11 States). Eleven States and the Federal system report no minimum age.

Table 2. Method of execution, by State, 1987

Lethal injection	Electrocution	Lethal gas	Hanging	Firing squad
Arkansas	Alabama	Arizona	Montana	Idaho <sup>a</sup>
Delaware	Connecticut	California	Washington <sup>a</sup>	Utah <sup>a</sup>
Idaho <sup>a</sup>	Florida	Colorado <sup>d</sup>		
Illinois	Georgia	Maryland		
Mississippi <sup>b</sup>	Indiana	Mississippi <sup>b</sup>		
Montana <sup>a</sup>	Kentucky	Missouri <sup>c</sup>		
Nevada	Louisiana	North Carolina <sup>a</sup>		
New Hampshire <sup>c</sup>	Nebraska			
New Jersey	Ohio			
New Mexico	Pennsylvania			
North Carolina <sup>a</sup>	South Carolina			
Oklahoma	Tennessee			
Oregon	Vermont			
South Dakota	Virginia			
Texas				
Utah <sup>a</sup>				
Washington <sup>a</sup>				
Wyoming				

<sup>a</sup> Authorizes two methods of execution.  
<sup>b</sup> Mississippi authorizes lethal injection for those convicted after 7/1/84; executions of those convicted prior to that date are to be carried out with lethal gas.  
<sup>c</sup> Lethal injection authorized effective 1/1/87.  
<sup>d</sup> Lethal injection authorized effective 7/1/88.  
<sup>e</sup> Lethal injection authorized effective 7/29/88.

Table 3. Minimum age authorized for capital punishment, yearend 1987

12 years	Montana
13 years	Georgia Mississippi
14 years	Alabama Connecticut Missouri
15 years	Arkansas Louisiana Virginia
16 years	Indiana <sup>a</sup> Kentucky <sup>b</sup> Nevada
17 years	New Hampshire North Carolina <sup>c</sup> Texas
18 years	California Colorado Illinois Maryland <sup>d</sup> Nebraska New Jersey New Mexico Ohio Oregon South Dakota <sup>e</sup> Tennessee
No minimum age specified	Federal system Arizona Delaware Florida Idaho Oklahoma Pennsylvania South Carolina Utah Vermont Washington Wyoming

<sup>a</sup> Effective 9/1/87 (IC 35-50-2-3(b)).  
<sup>b</sup> Effective 7/1/87 (KRS 640.040).  
<sup>c</sup> Effective 7/29/87 (GS 14-17) may also be applied to those age 14 and above convicted of murder while incarcerated or escaping from incarceration.  
<sup>d</sup> Effective 7/1/87 (Article 27, Section 412(f)).  
<sup>e</sup> May be certified as an adult between ages 10 and 17.

Table 4. Prisoners under sentence of death, by region and State, yearend 1986 and 1987

Region and State	Prisoners under sentence 1986	Changes during 1987			Prisoners under sentence 1987
		Received under sentence	Removed from death row (excluding executions)	Executed	
<b>U.S. total</b>	<b>1,800</b>	<b>299</b>	<b>90<sup>a</sup></b>	<b>25</b>	<b>1,984</b>
<b>Federal<sup>b</sup></b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>State</b>	<b>1,800</b>	<b>299</b>	<b>90</b>	<b>25</b>	<b>1,984</b>
<b>Northeast</b>	<b>97</b>	<b>22</b>	<b>10</b>	<b>0</b>	<b>109</b>
Connecticut	0	1	0	0	1
New Hampshire	0	0	0	0	0
New Jersey	23	8	3	0	28
Pennsylvania	74	13	7	0	80
Vermont	0	0	0	0	0
<b>Midwest</b>	<b>269</b>	<b>36</b>	<b>8</b>	<b>0</b>	<b>297</b>
Illinois	101	11	4	0	108
Indiana	40	4	0	0	44
Missouri	43	9	0	0	52
Nebraska	14	0	1	0	13
Ohio	71	12	3	0	80
South Dakota	0	0	0	0	0
<b>South</b>	<b>1,123</b>	<b>186</b>	<b>64</b>	<b>24</b>	<b>1,221</b>
Alabama	84	14	7	1	90
Arkansas	26	4	2	0	28
Delaware	5	1	0	0	6
Florida	254	44	20	1	277
Georgia	110	15	4	5	116
Kentucky	31	3	2	0	32
Louisiana	46	9	5	8	42
Maryland	18	1	2	0	17
Mississippi	44	12	4	2	50
North Carolina	63	16	3	0	78
Oklahoma	72	15	1	0	86
South Carolina	47	1	3	0	45
Tennessee	64	9	1	0	62
Texas	235	36	9	6	256
Virginia	34	6	1	1	38
<b>West</b>	<b>311</b>	<b>55</b>	<b>8</b>	<b>1</b>	<b>357</b>
Arizona	62	12	1	0	73
California	176	27	3	0	200
Colorado	1	2	0	0	3
Idaho	14	0	1	0	13
Montana	5	1	0	0	6
Nevada	35	5	2	0	38
New Mexico	0	2	0	0	2
Oregon	2	3	0	0	5
Utah	7	1	0	1	7
Washington	7	1	0	0	8
Wyoming	2	1	1	0	2

Note: States not listed and the District of Columbia did not have the death penalty as of 12/31/86. Some of the figures shown for yearend 1986 are revised from those shown in Capital Punishment, 1986, NCJ-106483. The revised figures include 25 inmates who were either reported late to the National Prisoner Statistics program or who were not in the custody of State correctional authorities as of 12/31/86 (2 in Ohio, 1 in Delaware, 2 in Tennessee, 1 in Alabama, 7 in Mississippi, 7 in Louisiana, 3 in Arizona, 1 in Georgia, and 1 in Virginia) and exclude 6 inmates relieved of the death

sentence on or before 12/31/86 (2 in Georgia and 1 each in Tennessee, Mississippi, Texas, and Wyoming).

<sup>a</sup>Includes four deaths that were suicides (one each in Virginia, Florida, Wyoming, and Nevada); one inmate in Tennessee murdered by another; one inmate in Illinois died of cocaine overdose; and five deaths due to natural causes (one each in Pennsylvania, Georgia, Florida, Texas, and Alabama).

<sup>b</sup>Excludes two males held under Armed Forces jurisdiction with a military death sentence for murder.

#### Prisoners under sentence of death at yearend 1987

A total of 34 States reported 1,984 persons under sentence of death on December 31, 1987, an increase of 184 or 10.2% over the count at the end of 1986 (table 4). States with the largest number of prisoners under sentence of death were Florida (277), Texas (256), California (200), Georgia (116), and Illinois (108).

Although 37 States (covering 77% of the Nation's adult population) had statutes authorizing the death penalty, 3 of these reported no prisoners under sentence of death at yearend (New Hampshire, South Dakota, and Vermont).

Of the 1,984 persons under sentence of death, more than three-fifths (62%) were in the South, 18% were in Western States, 15% were in the Midwest, and 5% were in the Northeastern States of Connecticut, New Jersey, and Pennsylvania.

Nearly 99% of those under a sentence of death were male, and the majority were white (57.4%) (table 5). Blacks constituted 41.4% of those under death sentences, and another 1.3% were American Indians or Asian Americans. The States reported a total of 117 Hispanics under a death sentence, 6% of the total. The largest numbers of Hispanics were held in States with relatively large Hispanic populations: Texas (35), California (25), Florida (17), Arizona (12), and Illinois (9).

The median age of those under sentence of death was nearly 33 years. About .5% were under age 20, and 2% were 55 or older. The youngest offender under sentence of death was 16 years old (born May 1971); the oldest was 76 years old (born October 1911). About 1 in 10 of the inmates for whom information on education was available had not gone beyond seventh grade, but nearly the same percentage had some college education. The median level of education was almost 11 years. Less than a third of the condemned inmates for whom data on marital status were available were married.

The 21 women under sentence of death at yearend 1987 were held in 13 States; Florida's 5 female inmates were the most of any State (table 6). Since 1977, one woman has been executed.

**Entries and removals of persons under sentence of death**

During 1987, 32 State prison systems reported receiving prisoners under sentence of death. Florida reported the

largest number (44), followed by Texas (36), California (27), and North Carolina (16).

Of the 299 prisoners received under sentence of death:

- All were convicted of murder;
- 185 were white males, 106 were black males, 5 were white females, 2 were male American Indians, and 1 was a male Asian; and
- 18 were Hispanic.

Eighteen States reported a total of 79 persons whose sentences of death were vacated or commuted. Florida (18), Texas (8), and Pennsylvania (6) reported the largest numbers of such exits.

Of the 79 persons whose death sentences were vacated or commuted during 1987:

- 46 had their sentences vacated but convictions upheld;
- 28 had both their convictions and sentences vacated; and
- 5 had their sentences commuted, including 4 prisoners under death sentences in Texas.

At yearend, 53 of the 79 persons were serving reduced sentences (50 to life imprisonment), 13 were awaiting new trials, 7 were awaiting resentencing, 3 were subsequently found not guilty after retrial, and 3 had further prosecution dropped.

In addition, 11 persons died while under sentence of death in 1987. Florida, Nevada, Virginia, and Wyoming each reported one death by suicide; Tennessee reported one inmate murdered by another inmate; Illinois reported one death due to an apparent cocaine overdose; and five States each reported one death due to natural causes (Alabama, Florida, Georgia, Pennsylvania, and Texas).

From 1977, the year after the Supreme Court reinstated the death penalty, through 1987, there were a total of 2,743 admissions to State prisons under a sentence of death; 1,088 releases from a death sentence occurred over the same period as a result of appellate court actions, commutations, or death while under sentence; and 93 persons were executed. Among death sentence admissions, 1,590 (58%) were white, 1,117 (40.7%) were black, and 36 (1.3%) were classified as other races. Among those released other than by execution, 620 (57.1%) were white, 455 (41.9%) were black, and 11 (1%) were classified as other races. Of the 93 executed, 57 (61.3%) were white, and 36 (38.7%) were black.

**Table 5. Demographic profile of prisoners under sentence of death, 1987**

	Yearend 1987	1987 admissions	1987 removals
Total number under sentence of death	1,984	299	115
<b>Sex</b>			
Male	98.9%	98.3%	98.3%
Female	1.1	1.7	1.7
<b>Race</b>			
White	57.4%	63.6%	56.5%
Black	41.4	35.5	40.9
Other <sup>a</sup>	1.3	1.0	2.6
<b>Ethnicity</b>			
Hispanic	6.6%	7.0%	8.7%
Non-Hispanic	93.4	93.0	91.3
<b>Age<sup>b</sup></b>			
Less than 20 years	.5%	2.0%	.9%
20-24	11.2	25.1	13.0
25-29	25.8	28.1	20.0
30-34	23.0	18.3	21.7
35-39	17.6	13.4	20.9
40-54	19.9	14.1	21.7
55+	2.0	1.0	1.7
Median age	32.7 years	28.1 years	33.0 years
<b>Education</b>			
7th grade or less	10.2%	9.3%	11.7%
8th	10.3	7.4	11.7
9th-11th	36.7	37.8	35.9
12th	33.3	35.9	33.0
Any college	9.5	9.6	7.8
Median education	10.6 years	10.8 years	10.8 years
<b>Marital status</b>			
Married	30.3%	23.0%	22.0%
Divorced/separated	22.3	26.3	18.4
Widowed	2.0	2.2	4.6
Never married	45.4	48.5	55.0

Note: Percentage and median calculations are based on those cases for which data were reported. Ethnicity data were not reported for 216 prisoners at yearend 1987, 41 prisoners admitted in 1987, and 11 prisoners removed in 1987. Education data were not reported for 210 prisoners at yearend 1987, 29 prisoners admitted in 1987, and 12 prisoners removed in 1987. Data on marital status were not reported for 99 prisoners at yearend 1987, 25 prisoners admitted in 1987, and 6 prisoners

removed in 1987.

<sup>a</sup>Consists of 16 American Indians and 9 Asians present at the end of 1987, 2 American Indians and 1 Asian admitted during the year, and 2 American Indians and 1 Asian removed during 1987.

<sup>b</sup>The youngest person under sentence of death was a black inmate in Louisiana born in May 1971. The oldest was a white inmate in Kentucky born in October 1911.

**Table 6. Number of women on death row, by State, yearend 1972-87**

State	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
U.S. total	4	3	3	8	7	8	5	7	9	11	14	13	17	17	18	21
California	3			1	2											
Georgia	1	2	1	1	1	1	1	2	3	4	4	3	2	2	1	1
North Carolina		1	2	3			2	1	1	1	1	1				
Ohio				2	3	4							2	2	1	1
Oklahoma				1				1	1	1	2	2	1	1	1	1
Florida					1	1	1	1	1	1			1	2	2	5
Alabama							1	1		1	1	2	2	2	2	2
Texas								1	2	2	2		1	2	2	2
Kentucky									1	1						1
Maryland										1	2	1	2	1	1	0
Mississippi											1	1	1	1	2	1
Nevada											1	1	2	2	1	1
New Jersey														1	1	1
Arkansas														1		0
Idaho														1		0
Indiana															1	3
Tennessee															1	1

**Criminal history of inmates under sentence of death in 1987**

Among those under sentence of death at yearend 1987 for whom criminal history information was available, 68% had a history of felony convictions (table 7). Among those for whom information on prior homicide convictions was available, 11% had a previous conviction for that crime.

Among those for whom legal status at the time of the capital offense was reported, about 40% had an active criminal justice status: Half of these were on parole, while the rest had charges pending, were on probation, or were prison inmates or escapees. Excluding those with pending charges, a total of 1 in 3 were already under sentence for another crime when the offense for which they were condemned occurred; in a number of States such status is considered an aggravating factor in capital sentencing.

The criminal history patterns were similar for whites and blacks, although somewhat higher percentages of blacks than whites had prior felony convictions, had prior homicide convictions, or were on parole at the time of the capital offense.

**Executions**

Since 1930, when data on executions were first collected by the Federal Government, 3,952 executions have been conducted under civil authority (table 8).<sup>2</sup> Since the death penalty was reinstated by the Supreme Court in 1976,<sup>3</sup> the States have executed 93 persons:

1977--1	1984--21
1979--2	1985--18
1981--1	1986--18
1982--2	1987--25
1983--5	

A total of 12 States have carried out executions since 1977. During the period, 56 white males, 36 black males, and 1 white female have been executed. The largest number of executions occurred in Texas (26), Florida (17), Louisiana (15), and Georgia (12).

Since 1977 a total of 3,163 offenders have been under a death sentence for varying periods of time (table 9). There were 93 executions (2.9% of those at risk) and 1,086 removals (34.3% of those at risk) during this period. A slightly higher percentage of whites than blacks were executed (3.1% v. 2.7%), but removal rates for the two races were nearly identical (34.2% v. 34.7%).

For those executed since 1977, the average time between sentence imposition and execution was 6 years and 5 months (table 10). For the 25 prisoners executed during 1987, the average time spent under a death sentence was just over 7 years, about the same as those executed during the preceding year. Black prisoners executed during 1987 had spent an average of 8 years awaiting execution; whites, 6 years and 6 months.

<sup>2</sup>An additional 160 executions have been carried out under military authority since 1930.

<sup>3</sup>For the period 1977-87, the FBI reported 224,400 cases of murder and nonnegligent manslaughter and an estimated 217,120 arrests for these crimes. During the same period, 2,743 persons entered prison under sentence of death, and there were 93 executions. In 1987 there were 20,100 reported murders and nonnegligent manslaughters, 19,200 arrests, 299 persons who entered prison under a death sentence, and 25 executions.

**Table 7. Criminal history profile of prisoners under sentence of death, by race, 1987**

	Number under sentence of death			Percent of those under sentence of death <sup>a</sup>		
	All races <sup>b</sup>	White	Black	All races <sup>b</sup>	White	Black
<b>Prior felony conviction history</b>						
Yes	1,257	693	550	67.5%	64.8%	71.7%
No	606	377	217	32.5	35.2	28.3
Not reported	122	68	54			
<b>Prior homicide conviction history</b>						
Yes	193	98	91	11.2%	10.0%	12.8%
No	1,524	886	619	88.8	90.0	87.2
Not reported	267	154	111			
<b>Legal status at time of capital offense</b>						
Charges pending	99	60	37	5.8%	6.2%	5.3%
Probation	118	79	38	7.0	8.1	5.6
Parole	340	181	177	20.1	18.6	25.2
Prison escapee	36	24	12	2.1	2.5	1.7
Prison inmate	55	33	22	3.2	3.4	3.1
Other status <sup>c</sup>	22	13	8	1.3	1.3	1.1
None	1,024	600	408	80.4	81.9	58.1
Not reported	290	168	119			
<b>Median time elapsed since imposition of death sentence</b>	43 mos.	42 mos.	45 mos.			

<sup>a</sup>Percenta are based on those offenders for whom data were reported.

<sup>b</sup>Includes whites, blacks, and persons classified as members of other races.

<sup>c</sup>Includes 4 persons on mandatory release, 2 on bail, 3 on furlough from prison, 1 for whom

charges were pending from the U.S. Army, 1 in a local jail, 1 under house arrest, and 10 on work release/work furlough from prison.

Table 8. Number of persons executed, by jurisdiction, in rank order, 1930-87

State	Number executed	
	Since 1930	Since 1977
U.S. total	3,952	93
Georgia	378	12
New York	329	
Texas	323	26
California	292	
North Carolina	266	3
Florida	187	17
Ohio	172	
South Carolina	164	2
Mississippi	157	3
Pennsylvania	152	
Louisiana	148	15
Alabama	138	3
Arkansas	118	
Kentucky	103	
Virginia	98	6
Tennessee	93	
Illinois	90	
New Jersey	74	
Maryland	68	
Missouri	62	
Oklahoma	60	
Washington	47	
Colorado	47	
Indiana	43	2
West Virginia	40	
District of Columbia	40	
Arizona	38	
Federal system	33	
Nevada	31	2
Massachusetts	27	
Connecticut	21	
Oregon	19	
Iowa	18	
Kansas	15	
Utah	15	2
Delaware	12	
New Mexico	8	
Wyoming	7	
Montana	6	
Vermont	4	
Nebraska	4	
Idaho	3	
South Dakota	1	
New Hampshire	1	
Wisconsin	0	
Rhode Island	0	
North Dakota	0	
Minnesota	0	
Michigan	0	
Maine	0	
Hawaii	0	
Alaska	0	

Persons executed, 1930-87

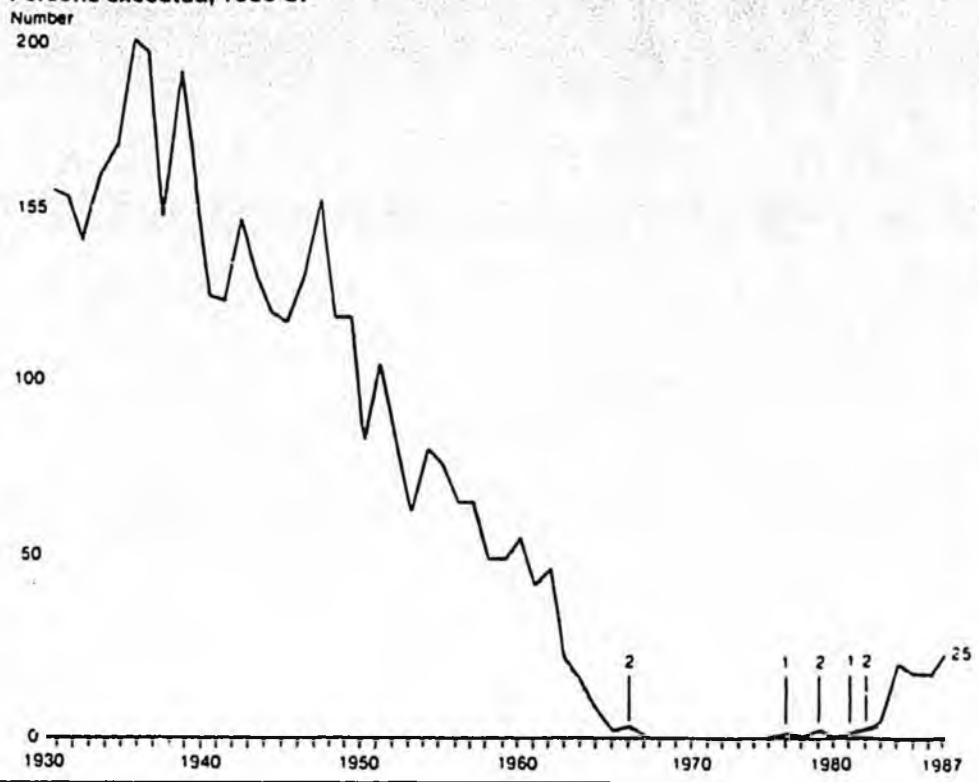


Figure 3

Table 9. Percentage of those under sentence of death who were executed or received other dispositions, by race, 1977-87

Race	Total under sentence of death 1977-87 <sup>a</sup>	Prisoners executed		Prisoners who received other dispositions <sup>b</sup>	
		Number	Percent of total	Number	Percent of total
All races <sup>c</sup>	3,163	93	2.9%	1,086	34.3%
White	1,815	57	3.1	620	34.2
Black	1,312	36	2.7	455	34.7

<sup>a</sup>Those under sentence of death at the beginning of 1977 (420) plus all new admissions under sentence of death between 1977 and 1987 (2,743).

<sup>b</sup>Other dispositions include persons removed from a sentence of death due to statutes struck down on appeal, sentences/convictions vacated, commutations, or death other than

by execution. Of the 1,086 removals, 52 resulted from death during confinement--22 from natural causes, 21 by suicide, 2 during escape attempts, 6 murdered by other inmates, and 1 by drug overdose.

<sup>c</sup>Includes whites, blacks, and persons classified as members of other races.

Table 10. Elapsed time between imposition of death sentence and execution, by race, 1977-87

Year of execution	Number executed			Average elapsed time from sentence to execution for:		
	All races	White	Black	All races	White	Black
Total	93	57	36	77 months	70 months	86 months
1977-83	11	9	2	58	59	58
1984	21	13	8	79	76	84
1985	18	11	7	71	65	80
1986	18	11	7	86	77	102
1987	25	13	12	86	78	96

Note: Three cases were resentenced to death after appeal. For these executions, average time was calculated from the original sen-

tencing dates. The range for elapsed time for the 93 executions was 3 months to 160 months.

**Appendix I. Current status of inmates under sentence of death, 1973-87**

Since 1973 a total of 3,404 individuals have been sentenced to death (appendix table 1). The table shows the status of those received in each year with respect to their death sentence, as of December 31, 1987. For example, of the 189 persons sentenced to death in 1978, 18 have been executed, 3 have died while in confinement, 22 have been relieved of the death sentence due to court actions striking down in whole or in part the statutes under which they were sentenced, 33 have had their convictions overturned on appeal, 49 have had their death sentences overturned on appeal, 8 have had their sentences commuted, and 56 were still under a death sentence at yearend 1987. Of the 1,984 persons under sentence of death on December 31, 1987, 222 or 11.2% were sentenced prior to 1980.

Appendix table 2 shows the distribution of the 1,984 persons under sentence of death by State and by year of sentencing. Florida, Georgia, Texas, and Utah had those inmates who had served the longest period of time under sentence of death among all condemned inmates at the end of 1987. By contrast, Connecticut and New Mexico had no inmates sentenced prior to 1987.

**Appendix II. Federal laws providing for the death penalty**

Since the Supreme Court's decision in *Furman v. Georgia* in 1972 striking down the death penalty as then applied, two death penalty statutes have been enacted by the Congress:

• Espionage by a member of the Armed Forces: communication of information to a foreign government relating to nuclear weaponry, military spacecraft or satellites, early warning systems, war plans, communications intelligence or cryptographic information, or any other major weapons or defense strategy (10 U.S.C. §906(a)).

Appendix table 1. Reasons for removal from death row and number of prisoners on death row at yearend 1987, by year of sentencing

Year of sentencing	Number sentenced to death	Number of prisoners removed from death row							Under death sentence on December 31, 1987
		Executed	Died	Appeal courts overturned Death penalty statute	Conviction	Sentence commuted	Other or unknown reasons		
Total, 1973-87	3,404	93	58	455	251	458	99	6	1,984
1973	43	2	0	14	9	9	9	0	0
1974	153	7	4	66	12	26	22	0	16
1975	305	5	3	170	23	60	19	6	19
1976	243	8	4	137	21	37	15	0	21
1977	145	11	1	41	24	27	6	0	35
1978	189	18	3	22	33	49	8	0	56
1979	160	5	7	2	24	42	5	0	75
1980	192	10	9	2	30	37	3	0	101
1981	243	10	7	0	30	43	3	0	150
1982	276	7	6	0	16	42	4	0	201
1983	262	5	3	1	11	29	2	0	211
1984	295	4	4	0	13	29	3	0	242
1985	289	0	2	0	5	19	0	0	263
1986	310	0	4	0	0	7	0	0	299
1987	299	1	1	0	0	2	0	0	295

Appendix table 2. Prisoners under sentence of death on December 31, 1987, by the year of their sentence

State	Year of death sentence															Under sentence of death, 12/31/87
	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987		
Total sentenced and remaining on death row 12/31/87	16	19	21	35	56	75	101	150	201	211	242	265	299	295	1,984	
Florida	6	10	8	5	16	16	17	16	25	22	30	25	37	44	277	
Georgia	7	3	3	15	10	4	8	9	7	7	10	7	11	15	116	
Texas	2	2	4	7	11	7	15	20	23	31	20	37	41	36	256	
Utah	1									1	1	3		1	7	
Montana		3								1		1		1	6	
Nebraska		1	2		4	1	1	1			2		1		13	
Alabama			1		1	1	2	9	19	13	11	12	8	13	90	
Arizona			1	1	1	9	9	4	10	6	7	7	6	12	73	
Arkansas			1	2		1	1	8	2	1		4	4	4	28	
Mississippi			1	3		1	3	7	7	3	1	3	9	12	50	
Nevada				1		3	1	3	4	5	6	7	3	5	38	
Oklahoma				1	2	3	3	3	4	8	18	13	16	15	86	
California					2	10	5	22	35	32	27	16	24	27	200	
Indiana					1	1	3	4	3	6	6	10	6	4	44	
Kentucky					1		1	2	5	5	2	5	8	3	32	
Louisiana					1		2	1	4	3	8	11	3	9	42	
Tennessee					5	1	4	5	6	5	7	12	8	9	62	
Virginia				1	3	1	2	3	3	3	8	1	10	6	38	
Illinois					5	12	10	6	13	11	15	25	11		108	
Maryland					1		4	5			6		1		17	
Missouri						2	3	6	6	2	6	9	9	9	52	
North Carolina						2	4	4	3	7	10	19	11	16	76	
South Carolina						4	3	4	1	8	6	6	12	1	45	
Delaware							2		2				1	1	6	
Pennsylvania							1	5	9	12	10	13	17	13	80	
Idaho								1	5		5	1	1		13	
Ohio									3	13	17	18	17	12	80	
Washington									2	2		1	2	1	8	
Wyoming									2						2	
New Jersey										2	6	7	6	7	28	
Colorado											1			2	3	
Oregon													2	3	5	
Connecticut														1	1	
New Mexico														2	2	

- Death resulting from aircraft hijacking (49 U.S.C. §§1472 and 1473).

At the end of 1987, two males were awaiting execution under a military death sentence for murder. The following capital punishment provisions, which were enacted prior to the Furman decision, remain in the U.S. Code:

- Murder while a member of the Armed Forces (10 U.S.C. §918).
- Destruction of aircraft, motor vehicles, or related facilities resulting in death (18 U.S.C. §§32, 33, and 34).
- Retaliatory murder of a member of the immediate family of law enforcement officials (18 U.S.C. §115(b)(3) [by cross-reference to 18 U.S.C. §1111]).
- Murder of a member of Congress, an important executive official, or a Supreme Court Justice (18 U.S.C. §351 [by cross-reference to U.S.C. §1111]).
- Espionage (18 U.S.C. §794).
- Destruction of government property resulting in death (18 U.S.C. §844(f)).
- First-degree murder (18 U.S.C. §1111).
- Mailing of injurious articles with the intent to kill or resulting in death (18 U.S.C. §1716).
- Assassination or kidnaping resulting in the death of the President or Vice President (18 U.S.C. §1751 [by cross-reference to 18 U.S.C. §1111]).
- Willful wrecking of a train resulting in death (18 U.S.C. §1992).
- Bank robbery--related murder or kidnaping (18 U.S.C. §2113).
- Treason (18 U.S.C. §2381).

#### Methodological note

The statistics reported in this bulletin may differ from data collected by other organizations for a variety of reasons: (1) Inmates are originally added to the National Prisoner Statistics (NPS) death-row counts not at the time the court hands down the sentence but at the time they are admitted to a State or Federal correctional facility. (2) Subsequently, admissions to death row or releases as a result of a court order are attributed to the year in which the sentence or court order occurred; prior year counts are, therefore, adjusted to reflect the actual dates of court decisions (see note, table 4). (3) NPS death-row counts are always for the last day of the calendar year and thus will differ from counts for more recent periods.

#### 1987 U.S. Supreme Court decisions cited

- California v. Brown, 107 S. Ct. 837 (1987)
- Tison v. Arizona, 107 S. Ct. 1676 (1987)
- Hitchcock v. Dugger, 107 S. Ct. 1821 (1987)
- McCleskey v. Kemp, 107 S. Ct. 1756 (1987)
- Arizona v. Mauro, 107 S. Ct. 1931 (1987)
- Gray v. Mississippi, 107 S. Ct. 2045 (1987)
- Booth v. Maryland, 107 S. Ct. 2529 (1987)
- Sumner v. Sherman, 107 S. Ct. 2716 (1987)
- Ricketts v. Adamson, 107 S. Ct. 2680 (1987)
- Burger v. Kemp, 107 S. Ct. 3114 (1987)

#### State notes

Colorado--Amended 16-11-103(6)(g) to include felony murder as an aggravating circumstance. Effective date 4/30/87. Subsequent amendments in 1988 classified escape as a felony for felony murder circumstances, changed the method of execution to lethal injection, and added language permitting sentencing juries to consider nonstatutory aggravating circumstances. These changes became effective 7/1/88.

Illinois--Amended IRS, Chapter 38, 9-1(b)(3), to refine language defining aggravating factors relating to multiple murders in which the defendant demonstrated either an intent to kill more than one person or engaged in separate acts that would cause death or create a strong probability of death or great bodily harm to the murdered individual or another. The language added was introduced to replace the use of the word "premeditated." Effective date 1/1/88.

Indiana--Amended IC 35-50-2-3(b) to raise the minimum age for which a death sentence may be imposed to 16. Amended IC 35-50-2-9 to add as an aggravating circumstance murder victims under 12 years old and as a mitigating circumstance offenders under 18 years old at the time of the murder. Effective date 9/1/87.

Kentucky--Amended KRS 640.040(1) to prohibit capital punishment for persons under 16 years old at the time of the murder. Effective date 7/1/87.

Maryland--Amended Article 27, Section 412(b), (d), and (e), to include a life sentence without the possibility of parole as a sentencing option for murder. Amended Article 27, Section 413(e)(3), to redefine the term "law

enforcement officer" in the enumerated aggravating circumstances to include probation and parole officers, law enforcement officers of jurisdictions outside of Maryland, probationary police officers, and law enforcement officers while privately employed as a security officer or special policeman. Amended Article 27, Section 412(f), to establish 18 years as the minimum age to receive a death sentence. Effective date 7/1/87.

Montana--Amended 46-18-303(7) to include as an aggravating circumstance the death of a kidnaping victim or a person rescuing or attempting to rescue a kidnaping victim. Effective date 10/1/87.

New Hampshire--Amended RSA 630:5 (987 Supp.) to replace hanging with lethal injection as the method of execution. Effective date 1/1/87.

North Carolina--Amended NCGS 14-17 to limit capital sentencing to defendants age 17 or older unless the defendant is convicted of murder while serving time in a correctional facility for a prior murder. The minimum age in such cases would be 14. Effective date 7/29/87.

Washington--Amended RCW 10.95.200 to provide procedures for issuing a new death warrant in the event that a scheduled execution is not carried out. Effective date during 1987 not specified.

Bureau of Justice Statistics Bulletins are written principally by BJS staff. This bulletin was written by Lawrence A. Greenfeld, corrections unit chief. Frank D. Balog edited the bulletin. Marilyn Marbrook, publications unit chief, administered report production, assisted by Christina Roberts, Betty Sherman, Yvonne Shields, and Jeanne Harris. Data were collected and tabulated by Arlene Rasmussen and other staff of the U.S. Bureau of the Census under the supervision of Larry McGinn and Gertrude Odom.

July 1988, NCJ-111939

The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.



An Affiliate of the American Civil Liberties Union

MAR 6 1989

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Office Location:  
310 K Street  
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Date: March 1, 1989

To: Members of the Alaska State Senate  
From: Jamie Bollenbach, Executive Director, AkCLU  
Re: SB 17

Jamie Bollenbach  
Executive Director

Enclosed is information on the costs, deterrence factor, and legality of capital punishment. For many of the reasons outlined herein, the ACLU opposes SB 17. Please contact myself at the AkCLU office or Paul Grant at 586-2701 if we may be of any service.

The following is a summary of the enclosed material:

1. In every state with the death penalty, the costs to the state to try and execute a prisoner far exceed the costs of lifetime incarceration. In Florida, costs for each executed prisoner (\$3.18 million on average per execution since 1982) were six times more than incarceration for life. The Office of Public Advocacy projects costs per execution in Alaska exceeding \$2.5 million per prisoner.

The U.S. Supreme Court requires "super due process" in capital cases to ensure that the trial and execution is fair. This greatly increases the costs of investigation, prosecution, and defense (the state increasingly bears the burden of representing the accused in capital cases.) The money for prosecuting capital cases comes directly out of other law enforcement efforts, and seriously hinders prosecution of non-capital cases as a result. Additional costs include construction of death row and execution chambers, and training of special security personnel.

2. The overwhelming evidence is that the death penalty does not reduce criminal homicide rates. Death penalty states as a group do not have lower rates of criminal homicide. Police officers in non-death penalty states do not suffer a higher rate of criminal assault and homicide than in death penalty states. Prisoners and prison personnel in abolition states do not suffer a higher rate of criminal assault and homicide from life-term prisoners than they do in death-penalty states. In neighboring states, the ones with the death penalty do not show a lower rate of homicide than those without it. (See enclosed ACLU publication for citations.)

Criminal justice studies point towards the certainty of punishment rather than the severity of punishment as the real deterrent. The only constitutional system of imposing capital punishment available makes the certainty of punishment very low. Evidence also exists that juries are less likely to convict with a death penalty, further reducing the likelihood of punishment.

A substantial revision of the system intended to reduce costs or substantially speed up the imposition of death would not meet the test of current constitutional law, and it would greatly increase the risk that the state would mistakenly terminate innocent men, women, and children.

3. Although capital punishment has been judged to be permissible under the federal constitution (because of the availability of extensive due process and appeals,) it is an open question whether the Alaska Constitution allows the state imposition of the penalty of death.

# Capital punishment in paralysis

## Huge caseload bloats lethargic, costly system in Florida, U.S.

By DAVE VON DREHLE  
Herald Staff Writer

On a whim during a burglary, Charles Proffitt murdered Joel Medgebow on July 10, 1973. He plunged a bread knife into his sleeping victim's chest, "just to see what it felt like."

Three years later, using *Proffitt vs. Florida* as its test case, the U.S. Supreme Court upheld Florida's death penalty. Proffitt could be dead in six months, Attorney General Robert Shevin predicted.

Today, 15 years after the murder, Charles Proffitt is alive and well, sewing uniforms for inmates at Florida State Prison. The Florida Supreme Court reduced his sentence to life last year.

The state of Florida spent at least half a million dollars over a decade and a half trying to execute Charles Proffitt. It failed.

For Florida, and the 36 other states that impose the death penalty, *Proffitt vs. Florida* is still a test case. And the death penalty fails the test. The death penalty is costly, slow and inefficient.

### THE DEATH PENALTY

A FAILURE OF EXECUTION  
First of a series

Apart from any arguments about the morality of capital punishment, there is something terribly wrong with the system.

● **Costly:** The death penalty costs much more than life imprisonment without parole. It has cost Florida at least \$57 million since 1973, according to conservative calculations based on independent studies.

● **Slow:** 36 inmates on Florida's Death Row have been there more than 10 years. Florida's senior Death Row resident, Howard Douglas, is in his 15th year — and his execution is nowhere in sight.

● **Inefficient:** Half of all death sentences are overturned on appeal, usually after years of expensive litigation. For every execution in America, courts sentence 13 more people to die.

The statistics speak for themselves: Death Row is going to get bigger, the wait for execution is sure to get longer, and the cost is bound to get higher. Experts are coming to the grim conclusion that little or nothing can be done to make the system work. It is a failure of execution.

Nowhere is this fact more clear than in Florida: a

### A WHOPPING BILL



▶ Spent by Florida taxpayers on the death penalty since 1973: at least \$57,215,210.

▶ Executions: 18.

▶ Cost per execution: at least \$3,178,623.

▶ Cost of life in prison (40 years): \$515,964.

▶ The appeal process: at least \$36.1 million, just for government-paid lawyers.

servently pro-execution state that has always been among the first to arrive at death penalty milestones.

Here — where 296 convicted killers make up the largest Death Row in the nation — judges, prosecutors and politicians are quietly lowering their sights, giving up on swift and sure justice, and learning to live with a bloated system that splutters and wheezes.

"I don't know if we're ever going to catch up," says Carolyn Snurkowski, Florida's chief appellate prosecutor. The best the system can hope for, she says, is to "keep plodding along."

For capital punishment advocates, this is a bitter pill. Just two years ago, former Florida Attorney General Jim Smith pumped up his

campaign for governor by promising two executions a month or more. "This delay couldn't go on forever," he said.

Today, the numbers refute such predictions. Even though the public solidly supports the death penalty, Florida has executed but two men in the past two years. Nationwide, the number is just 39.

In the same two years, Florida courts sent 89 people to Death Row. Nationwide: some 600.

"We're not going to clear out Death Row any more than we're going to pay off the national debt," says former Florida Bar Association President James Rinaman of Jacksonville. Rinaman, a death penalty advocate, has labored for more than three years to speed up the system.

## Failure clearly visible

The failure of the death penalty is visible from one end of the nation to the other.

● More than 2,100 people live on America's Death Rows. At the current execution rate, it would take 82 years to kill them all. And the Death Row population is likely to double by the turn of the century.

● In Dade County, the public defender is under court order not to take on any more death penalty cases — the caseload is too great. Private attorneys must be appointed — and paid for — by the courts. "The system doesn't have the resources to handle the workload," says Public Defender Bennett Brummer.

● The number of capital cases on appeal in the federal courts will more than triple in the next two years, according to a study prepared for the federal judiciary. Lawyers to handle these appeals will cost the nation's taxpayers \$30 million a year, the study concluded.

California, for example, has 234 prisoners on Death Row — the third-largest population in the country. Its last execution was in 1967. Yet the taxpayer-funded budget for defense attorneys there is more than \$2 million a year.

● Even Bob Graham, the former Florida governor who signed more death warrants than anyone in the state's history, pronounces the death penalty system a "quagmire."

"And if the definition of justice is a system that administers equal and predictable results, then capital punishment in the United States today falls short," Graham says.

It was not supposed to be this way. Not after millions of dollars and years of effort spent trying to make the death penalty work.

## The heyday

The heyday of the death penalty in America came in the 1930s. Hanging judges and biased juries too often used the penalty as little more than a legal lynching.



Proffitt

Bundy

---

**'If the definition of justice is a system that administers equal and predictable results, then capital punishment in the United States today falls short.'**

Son, Bob Graham

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Gradually, the numbers subsided: there were fewer executions in the '40s and fewer still in the '50s. Legal assaults on the fairness of the death penalty system stopped executions altogether in Florida in 1964. In 1965, a commission to revise New York's penal code found that "whatever aspect of the death penalty one examines, one finds nothing but obstruction, confusion and waste."

Two years later, executions ceased across the country.

In 1972, a narrow and fractured majority of the U.S. Supreme Court concluded the death penalty, as it existed in America, was unconstitutional.

Justice William Brennan wrote that capital punishment depends on "a system in which the punishment of death is invariably and swiftly imposed. Our system, of course, satisfies neither condition. A rational person contemplating a murder is confronted, not with the certainty of

a speedy death, but with the slightest possibility that he will be executed in the distant future."

Although Brennan and Justice Thurgood Marshall said the death penalty would always be unconstitutional, the seven other justices encouraged the states to draft new laws that would meet the constitutional test.

## 'A back-breaker'

Florida obliged within six months. Texas, Georgia, Louisiana and others were close behind. Courts and legislatures in 37 states have tinkered ceaselessly ever since, trying to make the death penalty fair, rational and swift.

But instead of fair, rational and swift, all this tinkering is making the law ever more complicated. And complicated means slow. It means expensive.

"There is no question that it's a back-breaker," says Sandy Weinberg, a former federal prosecutor. Recently, Weinberg helped win freedom for Death Row inmates William Riley Jent and Earnest Lee Miller. "It takes eight years or more of litigation to execute someone, and the process just can't go faster."

"The Supreme Court has said 'death is different,'" says Bob Spangenberg, a Boston-based consultant who has studied legal costs and the death penalty for 24 state and federal agencies. "The court has said everyone must follow extensive procedures to guarantee the process is fair. And that takes a lot of time. In every case."

As judges anguish over each case, more and more pile up behind. The backlog is infinite. With 300 new cases every year, the U.S. could execute one person every day, and it would take more than 30 years to empty all the Death Row cells.

No one familiar with the system believes that is possible. Daily executions are unprecedented in American history. The executioner's busiest year was 1935, when there were 199 executions.

That record rate, given the current pace of death sentencing, wouldn't make a dent in America's Death Row. At that rate, Death Row would keep on growing.

Last year there were 25 executions in America, the most in a quarter century. Yet the system is barely plodding along, falling further and further behind.

Even that great motivator of balky government — community outrage and pressure — cannot speed the system. No murderer is more loathed and notorious than Theodore Robert Bundy. In 1978, Bundy slipped into a Tallahassee sorority house and bludgeoned two sleeping women to death, then killed a 12-year-old girl in Lake City.

He was sentenced to die three times in 1979. Nine years later, Bundy is alive and well on Death Row.

For five of those years, his case sat before the Florida Supreme Court. Like all capital cases in Florida, Bundy's sentence went to the state high court for a mandatory review. Court justices insist they weren't dragging their heels. The backlog was just too big.

Florida high court justices plow through 70 mandatory reviews each year, consuming at least a third of their time. On top of that, the justices are hit with 30 to 40 last-minute appeals.

"Let me put it this way: Capital cases are a very small part of the caseload of the Court, but we must spend a very, very, very substantial amount of time on them," says Justice Gerald Kogan. "The workload is far out of proportion with the actual number of cases."

Chief Justice Parker Lee McDonald: "If I could figure out a way to make this better or easier or quicker, I would. But I can't."

## Executing Ted Bundy

Bundy's federal appeals couldn't even start until the state Supreme Court made its ruling. Once the federal appeals were filed, they immediately bogged down in another backlog.

Last week, the 11th Circuit Court of Appeals in Atlanta turned down a Bundy petition. The court took almost two years to decide. Some think the end is in sight for Ted Bundy. They've been wrong before.

There's nothing unusual about Bundy's case. Indeed, there are 55 death cases in Florida alone that have been in the system longer than Bundy's.

And it's getting worse. A year ago, only 275 of the 2,100 death penalty cases in America — 13 percent — had reached the federal level of appeals. Almost all of them were from Southern states. They consumed about a third of the judges' time in the 11th Circuit Court of Appeals and the Fifth Circuit in New Orleans.

From those 275 cases, the federal caseload will increase to 1,000 by 1990, according to Spangenberg, the Boston analyst. He talks of "a tidal wave" of death penalty cases about to swamp courts that have little or no experience with such appeals.

Specifically, the federal courts in California have but a single death penalty case on their dockets. Soon, the caseload will be 80. After the wave hits California, it will hit Ohio. Then Illinois, Pennsylvania, Arizona.

"What was once a Southern problem is soon going to become a national problem," Spangenberg says.

Across the nation, federal judges are looking toward Florida to size up the future. They see a 300-person

Death Row. They see a five-year court backlog. They see Charles Proffitt sewing uniforms and Ted Bundy reading legal briefs.

"The judges are beginning to realize what is happening," says Spangenberg. "And they're asking: 'What the hell are we going to do?'"

# Bottom line: Life in prison one-sixth as expensive

By DAVE VON DREHLE  
*Herald Staff Writer*

At first glance, executions appear cheap.

Funeral suit from Jim Tatum's Fashion Showroom in Jacksonville — "We Fit Them All, Big and Tall" — costs \$150. Florida's budget for the last meal: \$20. Executioner's fee: \$150. Undertaker: \$525, box included.

But the true cost of an execution is closer to \$3.2 million.

To execute a prisoner, the state of Florida spends six times as much money as it would to keep him in prison until he dies of natural causes.

How come? Why does the death penalty cost so much more than life-without-parole?

Government agencies and independent analysts in eight states have scrutinized the ledgers. Said Michael Gradess, who calculated the cost of a proposed death penalty in New York: "People in states that have the death penalty kept telling me, 'I hope you're ready to go bankrupt.'"

Although the numbers vary, all the studies agree that death penalty cases cost more than life-in-prison cases at every level — from pretrial investigation to last-gasp appeals.

To begin with, death penalty cases almost always require a trial. They usually generate a lot of publicity, making prosecutors reluctant to plea bargain. And only a suicidal defendant pleads guilty when facing death.

And death penalty trials take longer. Attorneys have unusual freedom to question potential jurors one by one — a very time-consuming process. Fighting for their clients' lives, defense attorneys file twice as many pretrial motions as in the

average nondeath murder trial, a California study found.

Once the defendant is found guilty, the law requires a second trial to decide if the prisoner should live or die.

To show why they should live, defendants often call as witnesses psychiatrists, family members, former teachers, even accomplices in past crimes. The witnesses have to be located, which can take months of expensive investigation.

To show why the defendant should die, the state tries to persuade the jury that he is hopelessly evil, a permanent danger to society. For this, prosecutors rely heavily on high-priced psychiatrists.

The total additional cost for trial and sentencing over a no-execution murder trial: at least \$36,000, a Maryland study showed. A similar study in Kansas figured the additional costs at \$116,700.

After sentencing, every death verdict must be reviewed by the state Supreme Court. The U.S. Supreme Court requires it. And every defendant is entitled to a state-paid lawyer.

Bob Spangenberg, a consultant for the American Bar Association, surveyed more than 150 capital cases across the country. For defense alone, these mandatory reviews cost an average of \$34,740 each, Spangenberg computed.

That's just the beginning. After the mandatory review there are at least six levels of appeals. Spangenberg calculated these costs. Average cost for government-salaried defense lawyers: \$137,410.

This is a bargain compared to costs racked up by prestigious volunteer lawyers handling death penalty appeals. Wilmer, Cutler and Pickering, a big-name Washington firm, figures it has already laid out

\$1.2 million in attorney time and \$173,000 in hard cash arguing federal appeals for serial killer Ted Bundy.

There are two sides, of course, to every appeal. The prosecution needs lawyers, too. Repeated studies show that prosecutors match defense attorneys dollar-for-dollar.

In Florida, state-paid prosecutors and defense attorneys received about \$3 million last year — to fuel a system that executed only one man, Willie Darden.

James Rinaman, former president of the Florida Bar Association, has studied the process at length, hoping to speed it up. He believes more lawyers are needed. To keep up with the demands of Florida's enormous death-penalty system, Rinaman estimates, taxpayers should be shelling out \$12 million a year for lawyers alone.

"It boggles the mind," he says.

Analyst Spangenberg estimates the cost of appellate lawyers will soon top \$30 million a year nationwide.

In the past, states kept costs down by relying on volunteer defense lawyers. Now there are too many cases and too few lawyers.

Says Clearwater's Pat Doherty, one of Florida's busiest volunteer capital attorneys: "It isn't good publicity. If you're going to do volunteer work, you're better off representing the Poor Clares."

Then comes the expense of prison. Death Rows cost more to run than ordinary maximum security cell blocks, according to studies in Kansas and Alaska. Florida prison officials say specific calculations are impossible.

Florida officials calculate one cost, however. When the governor signs a death warrant and an inmate's execution is scheduled, the doomed man is moved to a cell near-

# THE PRICE OF VENGEANCE

The death penalty costs more than life in prison. Here's how much more. The numbers show the range of estimates.



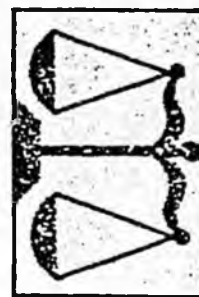
## TRIAL & SENTENCING: \$36,000-\$116,700

The average death penalty case requires more investigation, more pretrial motions, more expert witnesses and a longer jury selection process. A separate sentencing trial is also required — not required in nondeath cases.



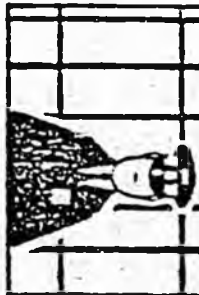
## MANDATORY STATE REVIEW: \$69,480-\$160,000

Every death sentence must be reviewed by the state Supreme Court — not required in nondeath cases.



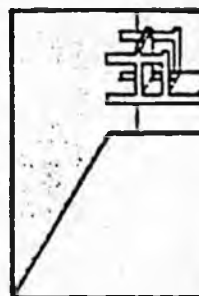
## ADDITIONAL APPEALS: \$274,820-\$1 million-plus

After conviction is affirmed by the state Supreme Court, at least six levels of appeals remain open.



## JAIL COSTS: \$37,600-\$312,600

Death Row requires extra guards for high security.



## EXECUTION COSTS: \$845

Florida pays \$150 for the executioner, \$150 for a death suit, \$20 for the last meal and \$525 for burial.

SOURCES: Miami Herald research; Florida Department of Corrections; Florida attorney general; Florida Office of Capital Collateral Representation; American Bar Association Post-Conviction Death Penalty Representation Project.

ject; Criminal Justice Act Division, Administrative Office of the U.S. Courts; Committee to Study the Death Penalty in Maryland; Kansas Legislative Research Department; Alaska Department of Corrections; Capital Losses, a report to

the New York Assembly Ways and Means Committee; The Cost of the Death Penalty, in the University of California-Davis Law Review

er the electric chair. For 30 days, guards keep a round-the-clock watch to make sure the inmate doesn't kill himself.

The cost in overtime for guards each time a warrant is signed is \$13,800.

There have been 199 warrants signed in Florida since 1973. Sometimes the state saves money because the guards can watch several doomed men at once.

Merely feeding and housing a Death Row prisoner long enough to execute him costs, on average, \$108,000.

To put it up.

Florida taxpayers have paid more than \$57 million for the death penalty since 1973. This number is based on the most conservative figures available. The real cost could easily be twice that or more.

Divide the \$57 million by 18 executions. The bottom line: at least \$3.2 million per execution. And the cost is growing.

Bob Spangenberg, the bar association consultant: "The costs are going to add and add and add and add. It's going to add up until something gives."

Michael Gradess, who studied the issue for the state of New York: "You're going to see a death penalty that costs a billion dollars nationwide."

But the idea of an ironclad life sentence instead of death is popular among Americans, according to several recent polls.

When asked simply whether or not they support capital punishment, 70 percent of Americans say yes. But when asked whether they prefer the death penalty over life-without-parole, the answers are evenly split.

And by a narrow majority, Americans *prefer* a life sentence — provided the defendant is made to work and his prison wages go to a fund for survivors of murder victims.

Some individuals, of course, stand by the death penalty as a matter of principle. No failures of execution will ever convince them to abandon it.

Gov. Martinez makes the case: "There must be an ultimate penalty. The death penalty is an expensive instrument — but it's an instrument of justice. And there should not be a cost factor on justice. You can't put a value on it.

"Even just one execution in a year shows that justice is being done, that it can work," says the governor.

For others, though, the time has arrived to put the death penalty on trial.

"It is a public policy question that must be decided," says Bob Spangenberg, a Boston lawyer who has advised 24 state and federal agencies on legal costs and the death penalty.

"The question is: When it gets down to decisions about health, education, law enforcement, highways — is the death penalty worth it?"

## Price tag changed minds in Kansas

By DAVE VOIT DREHLE  
*Herald Staff Writer*

Kansas state senators voted for the death penalty when they knew the governor would veto it. But when they got a new governor, pro-death penalty, the senators decided they had better take a hard look at the price tag.

What they saw made them change their minds.

Faced with a sagging farm economy, the conservative senators couldn't stomach the waste and expense of the modern-day American death penalty.

"I voted against it, and some people have tried to say I coddle criminals. Well, I don't coddle criminals," drawls Frank Gaines, a 16-year Senate veteran, one of the last of a dying breed of populist Kansas stump orators.

"It costs a lot more money to have capital punishment, and frankly, I think life in prison is just as tough a penalty," says Gaines. "You just get yourself a confining building and put all them animals in there together. If it was me, I'd rather be put out of my damn misery than have to live like that."

Senators who voted no had nightmares of political disaster. After all, the new governor,

Mike Hayden, had made support of the death penalty a major part of his campaign. And voters gave him a solid victory.

But the backlash hasn't come.

"I never received as much mail as I did on that issue — but it was thank-you mail. That's real unusual," says Senate President Ross Doyen, who changed his mind after years of supporting the death penalty. "I think a lot of people say they favor it, but when you pin 'em down on the specifics, they're not so sure."

The most eye-opening specific was the bottom line: \$11.5 million for the first year of the death penalty alone, according to the Legislature's researchers.

"And those costs are deceptive," says researcher Mary Galligan. "They stack up over the years."

The Senate killed the death penalty initiative. Doyen, the Senate president, doesn't expect the issue to decide any future elections.

"Some people will be upset with you because you support it, and some will be upset because you don't. But it's no pendulum swinger.

"I think this issue is greatly overplayed."

# Execution Does Not Pay

*Barbarism Aside, the Death Penalty Simply Isn't Cost Efficient*

The Washington Post

Sunday, February 28, 1988

By Jonathan E. Gradess

FIFTEEN years ago the Supreme Court ruled that the death penalty as then applied in the United States was unconstitutional (*Furman v. Georgia*). One brief sentence in Thurgood Marshall's opinion, overlooked by many, noted that "when all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life."

Today, there are more than 1,900 men, women and children as young as 16 on death row, and American policy makers, political officials and criminal justice experts are beginning to regret skipping so lightly over Justice Marshall's comment.

In 1982, my office conducted a national survey to determine the cost of capital litigation. We examined the nature of capital cases, identified 11 levels of review and defined a minimum of 144 "cost centers" that determine the total price-tag of capital litigation. Based on proposed but never enacted legislation to reinstate the death penalty in New York, and using conservative estimates, we projected the potential costs of litigating a model New York capital case across just the first three levels of review—the trial and penalty phase, the appeal to the New York State Court of Appeals, and subsequent review in the United States Supreme Court. The cost of that limited process: \$1.8 million per case. The cost of life imprisonment for 40 years: \$602,000.

Since then, many more states have looked at the cost of capital punishment, including Maryland, Alaska, Hawaii, Vermont, Texas, Florida, Kansas, Ohio and New Jersey. Some authorities have estimated that capital cases cost 10 times as much as non-

capital cases. A Pennsylvania journalist has estimated the cost of a single capital case at \$5 to \$7 million. There is no longer any doubt that criminal-justice systems with a death penalty cost inordinately more to maintain and expand than criminal-justice systems without a death penalty.

Before policy can change, however, the American people need to understand why capital cases cost more than non-capital cases, why there is no chance that costs can be reduced, and why we can expect that they will exponentially increase yearly until the death penalty is abolished.

Capital cases are more expensive than non-capital cases essentially for three reasons: they are *practically* different than non-capital cases; they are *legally* different; and they are *reviewed* more thoroughly.

■ *The practical difference.* For more than a century, capital cases have been treated differently from non-capital cases. They take longer. Frequently more than one attorney is appointed for a capital defendant. Because life is at stake, trial judges provide more latitude and appeal judges search more carefully for reversible error. (The reversal rate is about 50 percent for death cases and about 7 percent for non-capital cases.) Because the decision to kill is unpleasant, responsibility in capital cases is often diffused—which makes for longer trials, lengthy delays and frequent reversals.

■ *The legal difference.* Ten years ago, the Supreme Court made it clear that heightened standards of due process must be applied to death penalty cases. Consequently, a new jurisprudence—a "super due process"—has evolved governing the trial and appeal of such cases. The investigation is more extensive, the number of pro-

ceedings is substantially increased, and jury selection takes longer. After conviction, a separate "penalty phase" is conducted to determine the sentence. Because mandatory death sentences have been ruled unconstitutional, the sentencing jury must consider a defendant's individual characteristics. Preparation for this phase is extensive; in essence, it is a trial for life. The defense commonly tries to talk with as many of the defendant's friends, associates, teachers and co-workers as it can reach, to trace his life history, to visit all of the places he has lived and to vigorously pursue all leads in the search for mitigating evidence.

■ *Longer review.* Any defendant convicted in a state court has the right to initiate judicial review at 11 different levels. However, the Supreme Court's ruling that poor people are entitled to appointed counsel applies to only the first two stages; representation in the remaining nine stages essentially depends on volunteer counsel. Ordinarily, lawyers do not volunteer to represent an indigent robber, burglar or non-capital murderer at those stages, but they routinely do so for death-penalty defendants. While these lawyers are not paid, the final stages of a capital case can last a decade or more and generate enormous litigation costs. Police officers and witnesses are brought in. State attorneys general are called upon to respond. Judges must preside. Court time is used up. The United States Court of Appeals for the 11th Circuit in Atlanta, deep in the heart of the nation's death-penalty belt, complains that more than 30 percent of its docket is tied up with death-penalty cases. And all the while, the prisoner is held in a costly high-security death-row cell year after year.

What, then, is the answer? Short-

circuit the process and step up the pace of executions? Most Americans recognize that our sophisticated appellate-review process, though seemingly laborious, is a fundamental part of our legal system and protects our citizens against government error and abuse. Even with 11 levels of review, we still convict and condemn the innocent. A study in the November 1987 *Stanford Law Review* cites more than 100 examples of innocent people sentenced to death since 1900, of whom 23 were executed.

Nor is it reasonable to expect a significantly quickened pace of execution. Since 1977, when we reintroduced the idea of slaying citizens to stop crime, there have been more than 200,000 homicides in the United States, about 2,000 death sentences but fewer than 100 executions. Not even death-penalty proponents believe the American people would tolerate the wave of executions needed to empty death row and keep it that way.

Since both the Constitution and a permanent death-row population are likely to be with us for some time, the cost of the death penalty is certain to grow at an ever-greater rate. The numbers of capital-sentenced defendants will continue to increase. As cases are appealed, new issues decided in favor of death-penalty defendants will affect all cases not yet final. As issues increase in scope and complexity, costs will escalate. And these factors will combine with the high costs of death-row construction and security.

The cost of the death penalty is emerging as one of our most serious public policy questions. In Kansas last year, the newly-elected governor promised Kansans a death penalty while simultaneously calling for bud-

get cuts for each state agency. The high cost of capital litigation, the establishment of a death row, maintenance of death-row prisoners, the high costs and inordinate delays of the appellate process were debated not only by politicians but by university professors, governmental research units and by Kansas citizens. Opponents cited racial discrimination in the conduct of capital punishment, its lack of deterrence, its inability to stop crime, its potential for erroneous convictions, its immorality and—not least—its high cost. In the end, massive numbers of citizens declared "no" to the reintroduction of the capital sanction and the death penalty was defeated.

Other Americans will eventually realize, as did the citizens of Kansas, that there is not an endless supply of money for the criminal-justice system. Policy choices need to be made. From a conservative cost-benefit analysis, we must declare the death penalty an inordinate waste of resources that deprives our citizens of adequate police protection and reconciliation systems to make both victims and offenders whole.

As the New Jersey public defender budgets more than \$100,000 per capital case and anticipates total defense costs in the millions, as the federal judiciary bemoans the resource drain caused by capital litigation and as California prosecutors declare cases non-capital at the outset to save money, the dollars and cents of the death penalty may in fact be the clarion call that sounds the defeat of this archaic and brutal policy.

Jonathan Gradess is executive director of the New York State Defenders Association.

# Death Penalty Costs Are Adding Millions to State Government Expenses Across the Nation

*The following information is condensed from testimony by Professor David Gottlieb of the University of Kansas School of Law before the Kansas Legislature on Feb. 21, 1987. The Kansas Legislature decided against reinstating the death penalty in that state shortly thereafter.*

While on the surface it might seem reasonable to assume that it is less expensive to execute a person than to imprison him for life, that assumption is wrong. As Supreme Court Justice Thurgood Marshall explained in *Furman v. Georgia* in 1972:

"As for the argument that it is cheaper to execute a capital offender than to imprison him for life, . . . it is simply incorrect. A disproportionate amount of money spent on prisons is attributable to death row. Condemned men are not productive members of the prison community, although they could be, and executions are expensive. Appeals are often automatic, and courts admittedly spend more time with death cases.

"At trial, the selection of jurors is likely to become a costly, time-consuming problem in a capital case, and defense counsel will reasonably exhaust every possible means to save his client from execution, no matter how long the trial takes.

"During the period between conviction and execution, there are an inordinate number of collateral attacks on the conviction and attempts to obtain executive clemency, all of which exhaust the time, money and effort of the state....

"When all is said and done, there can be no doubt that it costs more to execute a man than to keep him in prison for life."

Every study that has been done since Justice Marshall's writing supports his assertion. Capital cases are very

expensive. There are at least four reasons why this is so.

First, capital cases take far more time to litigate. Because the stakes are life and death, guilty pleas are a rarity. Virtually every case is taken to trial. For similar reasons, the defense contests every potential issue. Preparation for trial of a death penalty case is generally far more extensive, with two to five times as many pretrial motions. Jury selection takes longer, since the jury must be qualified not only to rule on the question of guilt, but also to decide on the death penalty. The trial itself takes up to three times as long as an ordinary first degree murder case, with far more extensive use of experts and investigators.

Second, death penalty cases require a second, separate trial on penalty if the jury returns a guilty verdict. There is no equivalent to this procedure in a regular murder case. The jury must sit for days, in some cases weeks, to hear evidence concerning whether the defendant should live or die. A host of expert witnesses may be required for this determination. As a result of this second phase, the time taken for a death penalty trial is further expanded, while a non-capital trial lasting even a week is fairly atypical, a typical death penalty case may last from three to eight weeks.

Third, if the jury imposes a death sentence, a long appeal process will begin. The process includes a direct appeal to the state supreme court, a petition for certiorari to the U.S. Supreme Court, post-conviction applications in state courts, appeals of those applications, post-conviction applications in federal courts, appeals of those applications in a U.S. Circuit Court of Appeals, second and sometimes third appeals to the U.S. Supreme Court, and finally a petition for state clemency. The process can take more than 10 years. The cost may be 10 times the ordinary murder conviction appeal. Obviously, a defense attorney will be obliged to pursue every possible legal means to avoid execution; unlike the normal case, there is no place for an attorney to recommend

to his client that he not take further appeals.

Fourth, during the time of these appeals, the defendant is housed on death row. Death row costs money to build and is more expensive to staff than an ordinary prison facility. The defendant is housed in a single cell and is unable to contribute to the prison by working in a prison industry.

## Defense Costs at Trial

The Kansas public defenders' office estimated that the trial costs of defense services in capital cases could reach \$31,000 per case, more than six times that state's current first degree murder case defense costs. Their estimate was based on the assumption that the defense of a death penalty case would require 800 hours of attorney time for an average bill of \$26,000. They estimated expert services would cost \$3,000 per trial and investigative services \$2,000. They predicted 80 first degree murder cases per year for a total bill for trial-level defense services at \$2,480,000.

The Kansas projections were well below actual figures being spent in many other states. In 1983, the New Jersey public defenders' office budgeted \$100,000 for each capital case. The Ohio public defenders' office estimates the actual cost of capital cases (trial plus appeal) is \$60,000. The Kentucky public defenders' office estimates a typical capital case involves \$10,000 to \$15,000 in expert and investigative fees over and above those in a normal case. The National College of Criminal Defense estimates the investigation costs alone in a capital case at \$10,000 per case. A New York study puts the figure even higher, at \$40,000 for investigative costs.

## Prosecution Costs

Just as the defense must file more pretrial motions in a capital case, the prosecution must answer them. The prosecutor, as well as the defense

(See Costs, page 4)

## Costs (continued from page 3)

attorney, must be present for voir dire of the jury, for the expanded trial, and for the additional sentencing proceeding. Capital cases will take four times as long for prosecutors if they take four times as long for defense attorneys. Moreover, if the defense presents experts and uses investigators, there is no doubt the prosecutor will utilize such resources as well.

In most states, far more money already is spent on prosecution than is spent on defense. States have estimated the disparity between prosecution and defense resources as anywhere from two to one to as high as 10 to one. The most conservative estimate is from a recent study in Maryland, which found that prosecution and defense costs there were virtually identical. Taking the Maryland figure, Kansas estimated prosecution costs in that state would be \$2,500,000 per year.

### Judicial Costs

There are at least three kinds of judicial costs in a trial: jury costs, security costs and the costs of the judges and court personnel.

The Kansas public defenders' office estimated a substantial increase in juror costs for capital trials. Figuring 80 first degree murder cases per year and three weeks longer per trial than in ordinary cases, they projected additional juror costs of \$168,000 per year. If the voir dire panel is 150 instead of 100 persons and voir dire lasts two days instead of one, the additional cost would be \$160,000. The total increase in jury costs would be \$328,000 per year.

Kansas did not develop figures for increased security costs of capital trials, but projected that such additional costs certainly would occur.

The increase in trial time required increases the judicial resources needed. In states where the judiciary chooses not the ask for new judges, the "costs" are borne

at the outset by all those litigants who do not have capital cases. These litigants can expect less time devoted to their cases and increased backlogs. But as backlogs mount, state legislatures eventually are forced to supply additional judges. It costs approximately \$115,000 to staff a courtroom full-time. If five additional judges are added in a state because of backlogs created by capital trials, the additional cost to the state would be \$575,000 per year.

### Appellate Defense Costs

The Kansas public defenders' office estimated appellate defense cost increases (for the projected 80 cases) of \$135,000 per year in attorney fees and \$120,000 per year in additional transcript fees. Their estimate was based on a projection that of the 80 cases only 16 would actually result in death sentences and that one attorney could handle four death penalty direct appeals a year. The cost for four additional defense attorneys and one secretary was estimated at \$135,000.

In other states, the cost of each direct appeal has been estimated as an additional \$20,000 in Kentucky and California and up to \$50,000 in New Jersey. Moreover, the estimated amount of time reported in other states was up to six months of attorney time for each appeal.

### Prosecution Appellate Costs

As with trial-level costs, the increase in prosecution costs for appeals is similar to the increase for the defense. Thus, Kansas estimated an increase of at least \$135,000 a year in prosecution costs based on 16 death penalty appeals in any one year.

### Post-Conviction Costs

After completion of state direct appeals, a series of collateral appeals follows. Post-conviction application are made in state courts and those applications are appealed; post-conviction

applications are made in federal courts and those applications are appealed; final appeals are made to the U.S. Supreme Court and a final petition for state clemency follows. Additional defense and prosecution staff and time are required for these.

The State of Florida, which provides state funding for post conviction appeals, is spending more than \$1,000,000 per year for post-conviction defense alone.

### Corrections Costs

Finally, a state with a death row is required to spend millions on housing those convicted of capital crimes. A death row capable of housing 100 inmates (Georgia currently has more than 100 inmates on death row) in maximum security confinement is more than \$7,500,000. According to former Kansas Secretary of Corrections Michael Barbara, construction costs for maximum security are greater than for medium security and run from \$75,000 to \$100,000 per bed. At that rate, a 100-person death row costs from \$7,500,000 to \$10,000,000. The State of Alaska predicted capital expenses of more than \$2,000,000 to construct a 20-person death row facility, a cost of more than \$100,000 per bed.

In addition to the costs of construction, a Department of Corrections is forced to incur additional staffing expenses. Studies have concluded that it costs far more to house an inmate in death row confinement than in the prison's general population. The costs reflect the need to house each inmate in an individual cell, to separate the inmate from the general population, to provide separate recreation, and to increase security. According to representatives of the Florida Clearinghouse on Criminal Justice, during the eight to 10 years involved in post-conviction review, an extra \$15,000 per inmate probably will be required.

THE HOUSTON POST  
12/7/86/3B

# Death, dollars and the scales of justice

## Weighing the costs of capital punishment, life imprisonment

By DAN GROTHAUS  
Post Reporter

What does capital punishment cost the state? The state doesn't know. Conventional criminal justice wisdom says it costs more to keep 'em than to kill 'em.

But in reality, it costs the state more to execute an inmate convicted of capital murder than it would cost to convict the same suspect of non-capital murder and lock him up — literally — for life.

Considering the current prison housing shortage, the state could build a new prison holding 2,250 inmates for what it has spent to place 212 inmates on death row since 1980 and keep them there.

Since executions began again in 1982, Texas has executed 19 inmates, more than any other state.

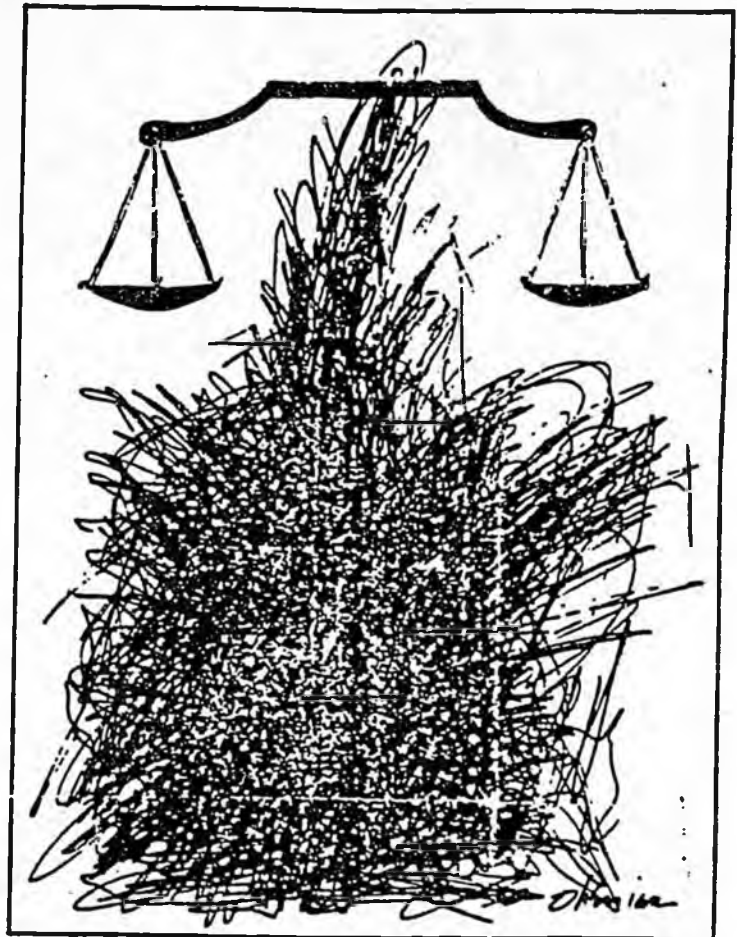
In Harris County alone, the pursuit of death sentences in the 245 capital murder trials held since 1980 represents approximately \$86.3 million, or about \$1 million per death row inmate sentenced in Harris County. Only 88 death sentences were granted in those 245 capital murder trials. If those cases had been prosecuted for non-capital murder and the 88 death row inmates were instead locked up until age 65, the cost would have been \$40,672,370. The difference would be \$45.6 million.

However, no one at the state or county level has ever attempted to determine the cost of capital punishment.

### Management questions

"You're asking for basic management questions," answered Scott McCown, the Attorney General's law enforcement chief. "And the state gives us no money to provide answers like that. We're just inundated with (appellate) work."

However, the question of capital punishment's cost-effectiveness is gaining attention in other parts of the country. Last year the American Bar Association endorsed a research project that developed a formula to determine the actual cost of capital punishment.



Since 1978, the only three studies that assessed the cost of capital punishment concluded that the death penalty was not cost-effective. "The argument that the death penalty costs less to punish than does life imprisonment is erroneous," concluded a heavily documented article published in 1985 in the University of California-Davis Law Review.

Statewide, since 1980, only 40 percent (212) of the state's capital murder trials (519) have resulted in a death sentence.

Of those death sentences, the Court of Criminal Appeals, since 1972, has reversed 30 percent of all death penalty cases it has reviewed. That court currently has 122 cases pending on appeal.

Using Harris County cost figures, the state's pursuit of the death penalty has cost taxpayers \$183.2 million.

If these same suspects had been prosecuted for non-capital murder and placed in prison until their 6th birthday rather than sent to death row it would have cost the state \$103.6 million, or \$79.6 million less. The projected costs of building the new prison in Palestine, for 2,250 inmates, is \$67 million.

These figures were derived from computerized averages of capital murder trials in Harris County, actual cost figures from the Texas Department of Corrections and estimates of average appellate costs based on more than 30 interviews at the county, state and federal level.

In Harris County, the average capital murder trial costs \$305,825. The average appellate process and death row incarceration costs an additional \$176,305. The total: \$482,130.

### Figuring the cost

The cost of capital punishment includes court costs, court-appointed attorneys' fees, average appellate costs at the county, state and federal level, housing costs during the average six years spent on death row awaiting execution and the \$36.95 cost of the lethal injection.

The cost of capital punishment was compared to the county court administrator's average cost of a non-capital murder trial (where life is the maximum penalty) and TDC's costs of locking up someone until age 65. The average capital murder suspect in Texas is 27 at the time of conviction.

The average cost of a non-capital murder trial is \$22,640. The TDC says incarceration costs \$11,388 per inmate per year, or \$432,744 for 38 years. The total: \$455,384.

Harris County District Attorney John E. Holmes said he was "not surprised" at these cost figures or the results of this comprehensive yet "unscientific study."

"But the cost doesn't enter into it when I look at pursuing the death penalty," Holmes said. "That should be a factor for the Legislature to question: Should we have a death penalty, or is it too costly a luxury?"

State Sen. Ray Farabee of Wichita Falls, who serves on the state affairs and criminal justice committees, said he supports the feelings of his constituents, no matter how much it costs the state to execute a convicted killer. "I'm not surprised at those figures (almost \$500,000 to gain and affirm a death sentence), but my constituency is overwhelmingly in favor of the death penalty," he said.

Referring to the statewide cost of capital punishment since 1980 compared to the cost of a new prison, he said, "That's an impressive comparison, but it still costs more to keep them in prison than execute them."

"It ought to be a capital offense to use that kind of logic," said Henry Schwarzschild, with the American Civil Liberties Union. "The notion that executing two people will save \$30,000 from next year's prison budget is laughable."

### Favor executions

The vice chairman of the House committee on law enforcement also feels Texans want capital punishment no matter what the cost. State Rep. Allen Hightower of Huntsville, when told the cost of the state's 21% death sentences since 1980 would more than pay for the new prison being built in Palestine, said, "I think you'll find the people in Texas would still rather pursue the death penalty regardless of the cost."

There are currently 341 inmates awaiting execution on the state's death row, including 81 from Harris County.

TDC's death row population in Huntsville ranks second only to Florida. If Harris County were a state, its death row population would rank sixth in the nation.

Texas ranks first in modern-day executions with 19. Five of those executed inmates were convicted in Harris County.

The 1986 Texas Crime Poll, released Nov. 19 by the Criminal Justice Center at Sam Houston State University, showed that 85 percent of those questioned favored the death penalty. Nearly 75 percent, the survey stated, believe too few criminals have been executed.

Although popular support of the death penalty where capital punishment exists hasn't diminished, there is a small movement around the country to re-evaluate the actual cost of capital punishment.

One study, completed in 1982 by the New York State Defenders Association, was based on hypothetical figures drawn from proposed capital punishment legislation. The executive director of that association said the total costs may vary from state to state but the cost difference between pursuing a death or a life sentence remains the same.

"The cost ratio of 10 to 1 (\$500,000 to \$50,000) for a capital murder trial versus a non-capital murder trial is what we found in New York and what we would expect to find anywhere else," said Johnathon Grades.

In the most recent study, Margot Garey concluded that the minimum cost of carrying out one execution was \$600,000.

"Although the cost of life-long incarceration surely would be high, the cost of execution with constitutional protections is staggering," said Garey in a lengthy, heavily documented article, published July 1985 in the University of California-Davis Law Review. As a result of these

questions being raised, the American Bar Association has decided it is time to provide factual answers to questions on the cost of capital punishment.

### Research formula developed

Last year, a committee of prosecutors, defense attorneys and judges developed a research formula to determine the actual expense of seeking the death penalty.

"We did it because no one had ever done it before," said North Carolina Supreme Court's Chief Justice-elect James Erum. The conventional wisdom that an execution was ultimately less expensive than a life sentence has never been tested against an actual study, he said.

Erum hopes to use the formula next year to assess the cost of capital punishment in North Carolina.

The project's director, Richard Van Dulzend of the National Center for State Courts in Virginia, refused to speculate on what he expects will be "the actual cost of capital punishment."

District Attorney Holmes, who has sent more convicts to death row than any other prosecutor in the state, believes in the death penalty, although he is not a zealous proponent of executions.

Holmes said the death penalty serves as a deterrent, "even if it keeps just one guy from killing an innocent person."

But if there were such a thing as a life sentence without parole, Holmes believes most citizens and juries would prefer assessing life in prison rather than death sentences, "especially if it's not cheaper to kill them..."

However, Holmes believes there is another factor supporting the death penalty, regardless of the cost: "It comforts people to know that that retribution (the death penalty) is available. If we don't have that option, society may decide to scratch that itch itself, like Bernard Goetz did in the New York subway."

One last factor to be considered is the cost of irreversible error.

Following last Thursday's execution of a convicted killer out of Dallas, Attorney General Jim Mattox said he believes one of the 19 inmates executed since 1982 may have been wrongly sentenced to die. He refused to identify the dead man.

Mattox also told reporters there are "legitimate questions" involving the death sentences of two other unidentified inmates currently on death row.

"I think there are cases that it could be argued the punishment chosen was not the proper one, but I don't think I've seen any glaring abuse," Mattox said.

## Price of Executions Is Just Too High

By RICHARD MORAN  
And JOSEPH ELLIS

When people argue that the death penalty costs too much, they are usually speaking about the human and social costs of the state's decision to take a life. While these costs are undoubtedly great, when we say that the death penalty costs too much we mean quite literally that it is much more expensive than life imprisonment. Here is the reason.

In 1972 the Supreme Court in *Furman v. Georgia* held that "arbitrary" and "capricious" application of the death penalty violated the Eighth Amendment's prohibition against "cruel and unusual punishment." This meant that a defendant had to be prosecuted and convicted in a way that was extraordinarily rigorous and free of any kind of prejudice. Since then the Supreme Court has fashioned what is generally called a "super due process" model for death penalty cases. In a series of subsequent decisions, involving effectiveness of counsel, the right to a fair and impartial jury, as well as "cruel and unusual punishment," the court has held consistently that special substantive and procedural protections are required before a state court can impose the death penalty.

The "super due process" requirement has made the prosecution of death penalty cases enormously expensive. In a recent University of California at Davis law review article, Margot Garey has calculated that it costs a minimum of \$500,000 to complete a death penalty trial in California. And between August 1977 (when the current law took effect) and December 1985, only 10% (190 of 1,847 cases) have actually resulted in a death sentence.

Since statistical evidence is notoriously

subject to manipulation, there are a number of ways to figure the costs. We think it is fair to say that it costs the citizens of California about \$4.5 million (\$500,000 x 0.90 failure-rate) to sentence one person to death. Data from New York state suggest that if it adopted the death penalty the cost would be \$1,828,100 per capital trial. Assuming even a 0.75 failure-rate, it would cost about \$7.3 million to sentence one person to death in New York.

And, of course, not all people sentenced to death will be executed. Many if not most will have their sentences commuted to life imprisonment. Even if we do not include the costs of keeping a man on death row for an average of four years prior to his execution (about \$160,000), or the cost to maintain and operate the gas chamber or the electric chair, and if we naively assume that all people condemned to die will be executed (all 55 cases in California have been overturned), it will still cost \$4.5 million to execute one felon in California, and \$7.3 million in New York.

Nor can these costs be significantly lowered. Since each trial is unique, and most of the costs are incurred in the trial phase—not on appeal—there really is no economy of scale. The \$4.5 million and \$7.3 million figures do not include appeals that average only \$100,000. When a defendant faces a possible death sentence, more time is spent investigating the facts of the case, more pre-trial motions are filed, the trial tends to last much longer, more expert witnesses are called to testify, and there are, of course, many legal objections and appeals. Most of all, there is no cost-saving plea bargaining when the prosecution seeks the death penalty.

Because of the Supreme Court's rulings, there is no way to streamline this elaborate process. Any attempt to do so would deny a defendant the protections guaranteed under the Constitution and increase the possibility of sending innocent people to their death. And the recent decision in the case of Alvin Ford—that a condemned man is entitled to a court hearing on the question of his mental competence before he can be executed—can only further the delays and increase the costs. Like it or not, the Supreme Court has made it abundantly clear that shortcuts to justice are legally unacceptable.

Nationally, the average offender who is sentenced to death is about 30 years old. Let's say he lives to 70—40 more years. At \$20,000 a year to keep him in prison that adds up to \$800,000. Indeed, if all people charged with capital offenses were actually sentenced to death, then the death penalty would be slightly cheaper in some states. But, in California, for example, only one out of 10 is sentenced to death—so 90% of the cases bear the costs of both a capital trial and life imprisonment.

It isn't necessary to be an accountant to realize that if you substitute life imprisonment for the death penalty, you will save almost \$500,000 per trial for first-degree murder in California, and \$1.8 million in New York. And since there are about 250 such trials in California per year, the abolition of the death penalty would save the taxpayers about \$125 million a year. In New York it has been estimated to be \$75 million. Put another way, the death penalty consumes a disproportionate share of our criminal justice dollars.

No one should mistake the above argu-

ment as a reduction of a great moral and philosophical issue to a question of accounting. Behind our simple economic argument lies a more haunting moral and legal complexity that has made these costly and cumbersome constitutional protections necessary. The dollars reflect doubts. Not even the most avid supporter of the death penalty wants to execute people capriciously. But the costs incurred in easing our doubts and assuring fairness in capital cases have now reached the point at which they constitute eloquent testimony in their own right. Until scholarly research can prove that the death penalty is more cost effective in deterring murder than life imprisonment, we think that our elected officials might do well to choose the cheaper option.

Mr. Moran is professor of sociology at Mount Holyoke College, where Mr. Ellis is professor of history and dean of faculty.

# Executions cost state \$57 million

MIAMI (UPI) — Florida taxpayers spent \$57.2 million to execute the 18 men who have died in the electric chair since capital punishment was reinstated, more than six times what it would have cost to imprison them for life, The Miami Herald reported Sunday.

The newspaper calculated the cost of keeping a prisoner in jail for life, about 40 years, at \$515,964. But Florida spent at least \$3.17 million for each execution, largely due to the cost of years and years of appeals.

The report concluded the death penalty is costly, slow, inefficient and falling, noting that 36 Florida Death Row inmates have been there more than 10 years.

"Death Row is going to get bigger, the wait for execution is sure to get longer and the cost is bound to get higher," the newspaper said.

Half of all death sentences are overturned on appeal, usually after years of expensive litigation, the paper said. And for every execution in America, the courts sentence 13 more people to die.

Florida has the nation's largest Death Row, with 295 convicted killers awaiting execution. Although the Florida public solidly supports the death penalty, the state has executed only two men in the past two years. In the same two years, 89 people were sentenced to die.

"I don't know if we're ever going to catch up," said Carolyn Snurkowski, Florida's chief appellate prosecutor.

In Miami, the public defender is under court order not to take on any more death penalty cases because of the backlog.



Justice Gerald Kogan says the workload on Death Row cases is out of proportion.



Ted Bundy, sentenced to die three times in 1979, is still alive and well on Death Row.

cause the caseload is already too great. That means private attorneys must be appointed and paid for by the courts.

"The system doesn't have the resources to handle the workload," said Public Defender Bennet Brummer.

Critics blame the lengthy appeals process for the backlog.

"The Supreme Court has said 'death is different,'" said Bob Spangenberg, a Boston consultant who has studied legal costs and the death penalty for 24 state and federal agencies. "The court has said everyone must follow extensive procedures to guarantee the process is fair. And that takes a lot of time. In every case."

Ted Bundy, for example, was sentenced to die three times in 1979, but nine years later is still alive and well on Death Row. His case lingered before the Florida Supreme Court for five years because of the huge backlog.

Florida high court justices plow through 70 mandatory reviews each.

year, consuming at least a third of their time.

"Capital cases are a very small part of the caseload of the court, but we must spend a very, very, very substantial amount of time on them," said Justice Gerald Kogan. "The workload is far out of proportion with the actual number of cases."

Analysts are predicting the federal court will experience similar frustrations as the cases move through the state appeals processes and into the federal courts. There are 2,100 people on America's Death Row. A year ago, 275 of their cases had reached the federal level, mostly from southern states. By 1990, 1,000 cases will reach the federal level, Spangenberg predicted.

"What was once a Southern problem is soon going to become a national problem," he said. "The judges are beginning to realize what is happening. And they're asking, 'What the hell are we going to do?'"

Tampa Tribune  
Monday 7/11/88

## CONCLUSION

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Throughout this paper we have suggested the existence of certain indirect costs or made reference to specific costs we do not calculate.<sup>64</sup> These include court costs, jury sequestration, security costs for local correctional facilities, the cost of hiring special penalty phase counsel, and millions of dollars that will be associated with state and federal post-conviction review.

It should by now be clear that government has failed to look at the actual costs of defending and prosecuting capital cases. It has failed to examine the impact of the death penalty on the state's correctional system. It has no idea what the price tag for capital litigation by the Attorney General's office will be.

While prosecution costs in capital cases will probably bankrupt some counties, local governments, already caught in a quagmire over a jail crisis, have yet to examine the impact of capital case security requirements on local correctional facilities.

All these issues must be confronted without appeal to bloodlust. Bloodlust in the name of the public good is a political lie.

And the public? The public is concerned with security on the streets, in homes, at school, in offices. The public is, at best, overlooked by a government's death-bent myopia and, at worst, disregarded.

Crime and justice need to wear a common yoke. The death penalty permanently disengages them one from the other. There can be no murder in the name of justice.

Capital cases do not need to exist. The expenditures outlined in this paper are not necessary. Millions of dollars directly attributable to a death penalty and capital litigation can be instantly saved and redirected by not reinstituting capital punishment in New York State. This is not a choice ordinarily posed to voters or those others who live petrified and diminished by the fear of crime.

Political rhetoric, however, should not be permitted to obscure the true pain of the families of homicide victims. They need closure. For capital defendants, delay and legal review mean life. For the families of homicide victims, delay and legal review mean pain. For both, the process is agonizing.

While many have voiced concern over victims or perpetrators, few seem to know the true agony of either—the agony that comes from the notoriety of five or six appeals, from two or three reviews by the Supreme Court, from being dragged, alone, through the cruel and unusual punishment of waiting.

For the victim's family, it is the seemingly endless grief, memories of the morgue, recounting the report of death, refeeling aloneness.

The death penalty perpetuates victim pain. It also eats at the innards of the accused. Death row:

"... is set up with one thing in mind: to hold a person until execution. None of the programs of education or rehabilitation available to others in even the strictest of prisons are available to death row inmates. The prison is required only to house, feed and then kill the inmate. This makes life on death row far more depressing and meaningless than life normally is in prison. . . . [D]eath row, . . . a ghastly zoo organized and wholly devoted to carrying out the most sordid act imaginable \*\*\* is just barely living. It is instinctive existence where the days are stitched together by a thin thread of hope that either the laws under which the penalty was decreed will be ruled unconstitutional or one's conviction will be reversed for some reason. The effects of years of isolation and deprivation, the lack of human contact, touch, and

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<sup>64</sup> See nn. 25, 26, 29, 30, 38, 47, 52, 53, 54, *supra*, and text accompanying them.

sexuality builds unrelievable pressures. The constant possibility of execution added to those pressures makes for a grinding, withering life that is all but intolerable—a 'slow coming dark.'<sup>65</sup>

The debate on the death penalty has become sordid and loud. It has diminished us all. We have come very far down the road from morality. Too far. The distance is shamefully represented by the theme of this paper—cost. Capital litigation and the costs of the death penalty, however, will not go away until the death penalty is abolished.

As can be seen from Table 5 below, some of the costs of the first three stages of capital litigation will total no less than \$1,828,100.

**TABLE 5**  
**COST OF STATE I**  
**(Trial, Appeal, Supreme Court)**

	Defense	Prosecution	Court	Correction	Other	TOTAL
State Charge	\$517,700	—0—	\$300,000	?	?	\$817,700
County Charge	—0—	\$1,010,400	—0—	?	?	\$1,010,400

STATE \$817,700  
COUNTY \$1,010,400  
TOTAL \$1,828,100

By the time the first 40 New York death cases have been tried to verdict, over \$59 million will have been expended. By the time the first 21 New York death cases have reached the United States Supreme Court, New York State and its counties will have expended as much as the Governor, in his February crime message, deemed appropriate for the entire statewide Major Offense Prosecution Program. An amount exceeding the Legislature's fiscal year 1982-83 local criminal justice assistance budget will rapidly be spent to pay for the death penalty in New York.

A recent analysis of the criminal justice system<sup>66</sup> indicates that the cost of the system has increased by 120 percent every five years since the early 1900's, while the rate of inflation has only increased by 40 percent every five years. A capital case, therefore, that necessarily taps resources from all facets of the criminal justice system, can be estimated to increase in cost at a similar rate. If 20 percent of the murder cases in New York (251 convictions in 1980)<sup>67</sup> are prosecuted through three stages of litigation as capital offenses at an average cost of \$1.5 million, then in current dollars the death penalty will generate costs of approximately \$75,000,000. If we assume that the cost will grow in proportion to the cost of the criminal justice system as indicated by the study, then in the year 2000 A.D., the death penalty will cost \$1,075,000,000 annually. Perhaps that is what the Temporary Commission on Revision of the Penal Law meant

<sup>65</sup> D. MAGEE, SLOW COMING DARK: INTERVIEWS ON DEATH ROW 5, 6 (1980).

<sup>66</sup> Sepler, *The Next Twenty-Five Years Facing the Criminal Justice System: Using Standard Celeration Charting for Systems Analyses*, 6 AM. J. CRIM. LAW 47, (1979).

<sup>67</sup> *Annual Report '80—Crime and Justice*, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, at 224.

in 1965 when, regarding the death penalty, it found "nothing but obstruction, confusion and waste."<sup>68</sup>

We have not detailed the costs of an actual execution. They singularly generate inordinate, almost uncontrollable, expense. The state of Georgia, which executes by electrocution, spent more than \$250,000 solely for the anticipated, but aborted, execution of Jack Howard Potts in 1980.<sup>69</sup>

Special telephone lines running from the prison to the United States Supreme Court and to the Governor's office are necessary. The cost of extra police personnel for crowd control, helicopter security and the shutdown of federal air space over the prison are but a few items of the irrational cost that will be generated in the rare handful of cases that ever reach the execution stage.

It is our hope that a rational discussion of the costs of the death penalty will lead New York State to a rational conclusion. ■

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<sup>68</sup> Sec n. 8, *supra*.

<sup>69</sup> *Atlanta Journal*, Feb. 11, 1982, at 1, col. 1.

# Death penalty: executions said more costly than life terms

By STEPHEN MAGAGNINI  
McClatchy News Service

SACRAMENTO — If California's death penalty law were abolished tomorrow, taxpayers could save \$90 million a year. It now costs the state much more to attempt to execute someone than to lock the person up for life without parole.

If California resumed executions today at its historical rate of six a year, the total costs of having capital punishment — defense and prosecution fees, court costs and incarceration on death row — would come to at least \$15 million per execution, according to figures compiled by The Sacramento Bee.

On the other hand, it costs about \$30,240 to imprison an inmate for life, based on an average life expectancy of 40 years in

prison, according to figures supplied by prison officials.

Eleven years ago, California enacted the death penalty. Since that time, prosecutors have filed death-penalty charges against more than 2,000 defendants, according to the California Appellate Project, which finds attorneys to handle appeals for death-row clients.

But while Californians clamor for fresh executions, the state's current death-penalty law has so many protections built into it that it's nearly impossible to execute someone who has a good lawyer.

Earlier this year, Texas inmate Robert Streetman was executed six days after he was finally assigned an attorney. "By then it was too late for the attorney to do anything," said University of Texas law professor Scott Howe.

But in California, the state Supreme Court spends \$3.6 million a year on experienced death-penalty defense lawyers to make sure accused murderers get a fair shake.

The investment has paid off. There is no evidence that California has executed an innocent person this century, according to a recent Stanford Law Review study.

But a review of thousands of pages of court documents, coupled with dozens of interviews with prosecutors, defense attorneys, law-enforcement experts and court officials, reveals an expensive capital-punishment system clogged at every level.

Gov. George Deukmejian said costs are secondary to the government's need to protect the public from murderers.

"The victim of a murder has lost everything, and his family also suffers a great loss," Deukmejian said. "The costs of crime and the costs of punishing criminals both carry a high price tag."

To help ease the financial burden created by death penalty trials, California spends \$10 million a year reimbursing counties for expert witnesses, investigators and other death-penalty defense costs, plus \$2 million more to help pay for the overall cost of

murder trials in smaller counties.

But despite this infusion of state funds, many financially strapped smaller counties still can't afford to prosecute complicated death-penalty cases, district attorneys said.

Some small counties have only one prosecutor with little or no experience in death-penalty cases; no investigators; a single Superior Court judge, and not enough unbiased people to qualify as potential jurors.

Other criminal cases are delayed for years while death-penalty cases are decided. Ironically, Sierra County has had to cut police services to pick up the tab.

For prosecutors, taking on a death-penalty case is a high-stakes gamble with low odds of success. Only one in 10 capital cases filed in California results in a death verdict, according to the California Appellate Project.

Every death verdict is automatically appealed to the California Supreme Court, which now spends more than half its time reviewing death cases, experts noted. Nearly 200 death cases are currently under review by the high court, which gets about 30 new such cases each year.

The current California Supreme Court, headed by Chief Justice Malcolm Lucas, is deciding death

cases at twice the rate of the previous court headed by Rose Bird.

But even at the current court's accelerated pace, it will be impossible to erase the backlog. The Supreme Court, which has more than 400 criminal and civil cases pending, is reviewing ways to speed up its work; one proposal is to hire a pool of lawyers to work exclusively on death-penalty cases for the court.

Only 12 inmates on San Quentin's death row have had their verdicts affirmed by the California Supreme Court. Those cases have kicked around the courts for an average of eight years. They have cost the taxpayers an aver-

age of \$1.7 million each, according to information compiled by San Quentin information officer Dave Langerman, and the meter is still running.

State officials said the case of Earl Lloyd Jackson, convicted of murdering two elderly Los Angeles women in 1977, has already cost more than \$5 million.

"The cost of a death-penalty case could range from \$750,000 to — the sky's the limit," said Deputy Attorney General Michael Wellington. His boss, Chief Assistant Attorney General Steve White, estimated that each death-penalty case has cost at least \$1 million to prosecute so far at both the trial and appellate levels.

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Charles Campbell  
3020 Douglas Highway  
Juneau, Alaska 99801

MAR 6 1989

March 6, 1989

Senator Rick Uehling, Co-Chairman  
Senate Finance Committee  
Alaska State Senate  
Juneau, Alaska

Re: CS SB 17 The death penalty

Dear Senator Uehling:

In 1980, while serving as Director of Corrections, I was assigned to do some research on the death penalty question and work on a position paper for Governor Hammond. Although I had been in the criminal justice field for almost thirty years, I had not had occasion to learn much about this matter. The more I looked into it the more convinced I became that, quite aside from moral and philosophical considerations, the death penalty is a very bad idea. If you will read over the attached letters I have written to members of the Judiciary Committee, together with the position paper sent to you by the Anti-Death Penalty Information Network, you will have a pretty good idea as to our reasons for opposition to this bill.

Please let me offer these additional thoughts, specifically relevant to the concerns of the Finance Committee.

During the course of the several Judiciary Committee hearings conducted by Senator Faiks, no attempt was made to make a case for S.B.17, either by its principal sponsor or by a member of the committee. So far as I know there has been no articulation of a purpose to be served, a need to be met, a problem to be solved or an advantage to be gained by passage of this legislation. Especially at this time in the life of Alaska, I should think that every proposed piece of legislation that has any dollar cost attached needs to be strongly justified. If a reduction in the incidence of homicide is the object of the bill, the Judiciary Committee should have looked at the experience of other jurisdictions in the U.S. and throughout the world, and taken a more objective look at the empirical evidence. Had that occurred the Committee would have learned that no reduction in the incidence of homicide in Alaska could be expected from passage of the bill. Indeed, there are highly respected studies that indicate that the opposite might be the result. The two "expert witnesses" who testified by telephone from the east coast during one of the hearings appear to have been especially recruited in order to tell proponent of the bill what they wanted to hear on the question of deterrence. Both gentlemen expressed atypical views. The overwhelming consensus among criminologists and other social scholars who have studied the question is that the threat of execution is has no more value as a deterrent than life imprisonment.

Although its sponsors may have introduced S.B.17 in the belief that execution would be an efficient, inexpensive way of dealing with convicted 1st degree murderers, I am sure everyone following the hearings conducted by Senator Faiks has been disabused of such notions. The death penalty is enormously expensive, many times more expensive than life imprisonment. With respect to this question the Finance Committee will want to give close attention to the testimony of Laurie Otto of the Department of Law, Brant McGee of the Public Advocacy Office and John Salemi of the Public Defender Agency. Leaving aside the matter of dollar costs, we can be sure that an attempted implementation of the death penalty sanction in Alaska would

result in exceedingly grave costs in terms of protracted bitterness and division among the people of the state.

Incidentally, I am sure that there are members of the Legislature who privately have misgivings about the wisdom of reinstating the death penalty in Alaska, but are intimidated by the perceived overwhelming support for the death penalty on the part of the citizens of the state. I haven't seen any poll on death penalty attitudes among Alaskans, but a careful look at polls conducted elsewhere around the country provides some surprising insights. In Georgia, for example, one of the most death penalty prone states in the U.S., a recent study done for the Clearinghouse on Georgia Prisons and Jails indicated that while 75% of Georgians approve of the death penalty, 52% would favor abolition of the death penalty if replaced by life imprisonment with no parole eligibility for twenty five years, combined with a program of work with earnings going to compensation of the families of victims. A national survey commissioned by the Justice Department last year indicates that only 36% of respondents polled nationally choose the death penalty when given acceptable options. Another study, conducted last year among voters in Nebraska, has shown that the death penalty question may have far less political significance than has been generally believed. Voters in Nebraska were reminded that their unicameral legislature had voted on abolition of the death penalty during the previous session and were asked how their representatives voted. 95% of the respondents did not know or couldn't recall. Only 23% of them indicated that they would be less likely to vote for their representative as result of a vote to abolish the death penalty.

I am convinced that many of the seventy five or eighty percent of Alaskans who, according to reports, favor the death penalty, favor it because of inaccurate assumptions. I am furthermore confident that the death penalty, despite the appearance of great support throughout the country, is such an indefensible idea as to be destined to go the way of slavery within the next couple of decades.

I know you will give careful consideration to this very serious matter as it becomes before the Finance Committee on Wednesday. If I can be of any help to you don't hesitate to call me at 586 5793.

Sincerely,

C. Fleming

Charles Campbell  
3020 Douglas Highway  
Juneau, Alaska 99801

January 26, 1989

Senator Jan Faiks  
Chair, Judiciary Committee  
Alaska State Senate  
Juneau, Alaska

Re: Senate Bill 17, The Death Penalty

Dear Senator Faiks:

Thank you for letting me testify on Senate Bill 17 last Tuesday afternoon and for your courtesy to all of us who testified in person and by teleconference that day. I am writing to you now in order to get my views on the record and to expand on some of the observations I made on Tuesday.

I speak from the perspective of a private citizen who has had more than thirty years experience in the criminal justice field. I served as Director of Corrections for the State of Alaska for three years beginning in February 1979.

Senate Bill 17 proposes to reauthorize use of the death penalty in Alaska. For this reason I must state my opposition to the bill. I oppose the death penalty on moral grounds, but I intend here to comment on the pragmatic considerations, as I am convinced that reinstatement of the death penalty would be an exceedingly bad idea for Alaska from a purely practical standpoint.

Two arguments are advanced in favor of capital punishment- deterrence and retribution. A third argument, cost, has pretty much been laid to rest. Most people who are seriously interested in the death penalty question have come to recognize that the cost of legally putting an offender to death in the United States is astronomical. By comparison, the cost of maintaining an offender in close confinement for the term of his natural life, is insignificant. No matter what changes might occur in the personnel of the Supreme Court in the foreseeable future, the Court will not overturn Gregg v. Georgia or the other decisions that have given condemned prisoners so many avenues of appeal. For this reason and for other reasons as well, the cost of executions will continue to be astronomical.

And so we are left with two arguments for the death penalty- deterrence and retribution. With respect to deterrence- during the eight year moratorium following the decision in Furman v. Georgia, the U.S. Supreme Court considered reams of material on the issue of deterrence and was unable to conclude that there was a deterrent value to capital punishment. Indeed some of the studies found evidence that executions may have a negative effect, so far as deterrence is concerned. One of the more significant studies on deterrence was not published until 1980 and thus not considered by the Court. It was performed by Professors Pierce and Bowers of Northeastern University. They examined the effect of executions in New York State over a period of 60 years, looking at the incidence of murder during the months following each execution. The pattern they observed suggested that persons predisposed to violence were more likely to be incited to violence by executions than deterred. I mention this study because it was a carefully designed, major study and is highly respected in the academic community. Its findings cannot be viewed as incontrovertible, nor can the findings of any other study on the question of deterrence. There are too many variables. But the evidence it offers can hardly be ignored. In any case, it should suffice when we recognize that the whole body of research into this matter over the past twenty years fails to show credible evidence

that the death penalty has a deterrent effect. Among criminologists, it is hardly a matter of debate anymore.

Those who choose not to rely on the research done by academics, who feel that it is simply a matter of common sense— that it is only reasonable to assume that the threat of execution should deter most potential murderers, fail to recognize that the mental processes of individuals who are predisposed to vicious, pathological kinds of criminal acts, are completely different from the thought processes of emotionally healthy people. The thought processes of people predisposed to cold blooded, premeditated murder are bizarre. It really should not be surprising that the death penalty does not deter.

Proponents of the death penalty like to point out that the death penalty unmistakably deters those who are executed. This is true. It is also true that there are superior means of dealing with murders, means that do not carry the possibility of the tragic, irreversible mistake. With the exception of South Africa, every other industrialized country in the Western world has chosen other means, as have Australia, New Zealand and large numbers of developing countries such as Mexico and Nicaragua. Where the death penalty question is concerned we continue to keep company with such nations as Libya, Iraq, Syria, Iran and the Warsaw Pact nations.

Let me comment on the proposition that retribution is in itself an adequate justification for use of the death penalty. I have respect for those who honestly take the view that society has a need and a right to kill the perpetrators of vicious capital crimes, for no other reason than to exact retribution. I don't share such a view, but it is an honest view. I identify with— indeed I share, the outrage and the anger that are inevitable reactions when we hear of certain kinds of crimes. But we must remember that outrage and anger, however normal, however healthy, are emotions that, if nurtured and sustained, get in the way of wisdom. Those who subscribe to the validity of retribution as the sole justification for the death penalty— indeed whatever reasons they may have for wanting to see restoration of the death penalty in Alaska, should have these considerations in mind. Of the thirty seven states that chose to re-write and pass death penalty legislation after Gregg v. Georgia, only thirteen have carried out executions. Three quarters of all executions carried out in the U.S. during the past twenty years were done in only four states, Texas, Louisiana, Florida and Georgia, all states with exceptionally large minority populations. There is an appalling unevenness in the use of the death penalty. The racial and cultural bias in the use of the death penalty has been proven. Ted Bundy, who was executed last Tuesday morning, became something like a celebrity because he was a serial killer, but also because he was a college educated white man. How many of us can recall the name of a single other one of the 105 people who have been executed since Gary Gilmore went down in what he considered to be a blaze of glory twelve years ago? The overwhelming majority of that anonymous 104 were poor, undereducated if not illiterate, and not serial killers like Ted Bundy. Many were poorly defended at original trial by appointed counsel. A disproportionate number of them were black. Most of them were victims of the luck of the draw. It was a matter of how circumstances fell for them. Even in those states that execute a lot of people, like Texas, Florida, Louisiana and Georgia, there are hundreds of people serving prison sentences whose crimes were more vicious than many of those who have been executed. There is an intrinsic capriciousness in use of the death penalty, and there's no way to correct it.

We must think about these problems, and consider the forces of discord and despair that would be unleashed within the small, racially diverse community of people who comprise our state's population. We do not have a problem that would be addressed by restoration of the death penalty. If ever imposed, it would create a morass of ugly, culturally divisive, costly problems for us. There are far better, more civilized, more reasonable ways

to respond to serious criminal acts. It cannot be reasonably argued that there would be one iota of improvement in the safety, the happiness or the general welfare of the people of Alaska resulting from restoration of the death penalty. Alaska will save itself a lot of grief by remaining in the company of those staunch thirteen states of our nation where the death penalty is not authorized.

I deeply hope that you will use your influence to see that the Senate does not move forward with this bill.

Sincerely,

Charles Campbell  
3020 Douglas Highway  
Juneau, Alaska 99801

February 6, 1989

Senator Jan Faiks  
Chair, Judiciary Committee  
Alaska State Senate  
Juneau, Alaska

Re: Expert testimony on Senate Bill 17

Dear Senator Faiks:

I regret not having been able to attend the Senate Judiciary Committee hearings on Senate Bill 17 last week, during which Professors van den Haag and Layson testified by telephone from the east coast. I have read the Associated Press account of their testimony and talked to people who attended the hearing. I also know something of both Professor Layson and Professor van den Haag. They are advocates of the death penalty, and presumably competent to give informed views on one side of the question. However, you could hardly expect to gain a comprehensive and objective understanding of the death penalty question by relying on them alone as expert witnesses.

My impression is that you have taken a position of unalterable support for getting a death penalty law on the books. Your deep convictions on the matter are to be respected. I have such convictions on the other side of the question. In any case, given the serious implications posed by the prospect of death penalty legislation in Alaska, I urge you to delay moving further with Senate Bill 17 until more information and better education on the issue can be obtained. Any number of experts on the death penalty are available who would be able to give a different perspective on the question than that provided by Professors Layson and van den Haag. I should think the membership of the Senate would want to have a more balanced inquiry into this grave matter than will occur should you rely on them as the only expert witnesses.

Neither of the professors is a criminologist. I stick by the statement in my letter to you of January 16, 1988, that "the whole body of research into this matter (deterrence and the death penalty) over the past twenty years fails to show credible evidence that the death penalty has a deterrent effect." and that "Among criminologists, it is hardly a matter of debate anymore." By no means do I suggest that only criminologists are qualified to offer expert testimony on the death penalty question, but theirs is the discipline that specializes in doing empirical studies of crime, thus they are able to speak with more authority on the matter of deterrence.

Professor Layson is an economist, and one of the lonely few social scientists who still see value in attempting to study a social phenomenon like major, violent crime using an econometric research design. To his credit he apparently made it clear to the Committee that his findings were "inconclusive." I refer you to the National Academy of Science 1978 Volume entitled Deterrence and Incapacitation- specifically to the paper by Nobel Laureate economist Lawrence Klein. He is only one- perhaps the most distinguished- of the many scholars who warn us about giving credence to studies that use nationally aggregated data and econometric methods in studying subjective social phenomena like murder or other violent crime. The fact remains- the great weight of empirical evidence tells us that no deterrent effect from the death penalty has been shown, or is likely to be shown. Professors Layson and van den Haag are in a small minority of persons claiming expertise who believe in deterrence as a valid justification for the death penalty. Indeed, there are studies that provide disturbing evidence that use of the death penalty is more likely to incite

than deter persons who are predisposed to violent crime.

Professor van den Haag is not a criminologist nor, for that matter, a social scientist. As a law professor, he has training and experience in the criminal justice field, has looked into the death penalty question and has strong opinions about it. Since that description fits me about as well as it does Professor van den Haag, I can hardly do other than respect his right to his opinion, even though I differ from it. One significant difference in us, however, is that I know and love Alaska, and deeply care about the welfare of my fellow Alaskans.

According to the AP news account, Professor van den Haag made a couple of statements that, taken together, struck me as curious, to say the least. One of them was that "if we only deter one murder a year because of the death penalty, as opposed to life imprisonment, I think it is entirely worthwhile." He also conceded that "in all human institutions we must assume that errors will be made," and yet he insisted that fear that an innocent person might be executed is an insufficient reason to refrain from use of the death penalty. If Professor Van den Haag is concerned about the loss of innocent life, I am surprised that he would not recognize the inconsistency of these two observations. Furthermore, in response to a question about Alaska's constitutional requirement that the state's penal system be based on reformation, Professor Van den Haag is reported to have said "I don't believe it is any easier to reform a living murderer than it is a dead murderer." Could it be that Professor van den Haag, a professor of the law at Fordham University, does not know that murderers have for many years shown lower recidivism rates than all other offender groups?

I recognize the difficulty that sometimes is experienced in getting quoted accurately and in context. Perhaps, if given the chance, Professor van den Haag would be able to provide clarification on these puzzling offerings.

Professor Layson, despite his own views and conclusions about the deterrence question, is reported to have expressed to the Committee his doubts as to the value of the death penalty in Alaska. He cited the inordinate cost of the death penalty, as opposed to life imprisonment, (presumably taking into account the lack of a proven difference in the deterrent value of the two options.) My view is that the monetary costs involved in use of the death penalty, astronomical though they are, would be insignificant by comparison with the cost in disillusionment, discord and protracted controversy among the people of our state. Even those who may, in principle, approve of the death penalty in some circumstances, must realize that in our small, racially diverse, culturally complex population, implementation of a death penalty law would have a devastating effect on the feeling of neighborliness and unity that, in large measure, we have come to enjoy in our state. And again I must ask- where is the problem, that calls for such a drastic non-solution? There are better, more civilized ways of responding to serious crime. We must continue to incapacitate dangerous criminals by confinement, as we have done since 1950, and as have most nations of the western world and all but thirteen states of the U.S. for two decades.

Again I urge you to delay further action on this bill until additional expert testimony can be obtained. I would be happy to suggest the names of knowledgeable people whose testimony would serve to balance the views expressed by Professors Layson and van den Haag.

Sincerely,

cc: Senate Judiciary membership

Charles Campbell  
3020 Douglas Highway  
Juneau, Alaska 99801

February 20, 1989

Senator Drue Pearce  
Alaska State Senate  
Juneau, Alaska

Re: Death penalty legislation before the Senate

Dear Senator Pearce:

You have copies of my letters of January 26 and February 6 to Senator Faiks expressing my opposition to reinstatement of the death penalty in Alaska. I write to you on this occasion because of an extremely significant question you posed during the Judiciary Committee hearing last Thursday. In response to the rather devastating testimony that had been heard regarding the extremely high costs of death penalty proceedings, Senator Faiks was proposing that S.B.17 be revised, dropping the requirement that all first degree murder prosecutions be viewed as potential capital cases, giving discretion to the prosecuting attorney. In effect, your question was: What if a particular prosecuting attorney doesn't believe in the death penalty, or has misgivings about it- would this not mean that persons charged with first degree murder in his or her jurisdiction would escape the threat of the death penalty while defendants in other jurisdictions charged with similar crimes would go on trial for their lives?

It is highly significant that you did not get a satisfactory answer to that question. There is no satisfactory answer. Your question goes to the very heart of the matter. It lays bare the inevitable unfairness and capriciousness of the death penalty as a criminal sanction under the U.S. criminal justice system.

You heard Laurie Otto's testimony as to Florida's practice of controlling the number of death penalty trials by having prosecutors pick and choose among the thousands of homicide defendants in that state. As a result of that discretion, the same kind of discretion now being written into S.B.17, there are, alive and well in Florida's prisons, hundreds of offenders whose crimes were more egregious than some of those who have been put to death in that exceedingly death penalty prone state during the past twelve years. The same circumstances pertain, and will always pertain, in every state that relies significantly on selectively executing people. Everything must be favorable if prosecution of a capital case is to succeed. For this reason, selection of cases for death penalty prosecution invariably depends on quality of evidence, availability of witnesses and other such matters that may have little or nothing to do with the offense itself. Resources at hand can be a consideration. If a case is filed at a time when the prosecuting agency has funds and the staff isn't too busy, the death penalty option is more likely to be chosen than at a time when funds are tight and there is a work overload. There is nothing fair about the process and there is no way to make it fair.

Use of the death penalty in our system of justice is intrinsically unfair in other respects. How did it sit with you, for example, when Brant McGee told us about the requirement of a "death qualified" jury in capital cases- one in which there can be found "no taint of bias against the death penalty"? What this means, of course, is that the fate of a person on trial for his life is decided by a jury more likely to be conviction prone than juries that try non capital cases. And then there is the recent U.S. Supreme Court decision, McCleskey v. Kemp, that acknowledged racial bias in the use of the death penalty in Georgia, but allowed the execution in question to proceed, because racial bias was not proven in that particular case. Thus, the Court conceded that the death penalty convictions of an unspecified number of the men executed in Georgia since 1977 were tainted by

empirically proven racial bias. There have been no suggestions as to how those men might be brought back for new trials. You might want to think about this, keeping in mind the racial and ethnic composition of Alaska's population.

There are other matters that haven't been brought to the attention of the Committee. At present more than twenty two hundred individuals are on death row throughout the United States. Between two and three hundred are being added each year. And yet, an average of only about eight executions have been carried out each year since Gregg v. Georgia in 1977. I don't think Alaska wants to contribute to the unholy growth of this vast, festering snake pit. Death house population growth is a terrible problem for the states that have continued to use the death penalty. It is very much like disease that will become increasingly debilitating.

The prosecutors of Florida have been very dogged about serving up an offender for execution every eight or ten months since John Spenklink went to the chair in 1979. It has cost the state about 60 million dollars to execute about 20 people. No other state has been quite as aggressive about using its resources for this dubious purpose. Within a short while, a prison the size of Spring Creek will not be large enough to house their condemned prisoners. Meanwhile, the homicide rate in Florida continues to grow. Between them, Texas, Georgia and Louisiana have executed fifty. Virginia has executed seven. No other state in the union has executed more than three. The states that have been successful in executing significant numbers have not seen the slightest trace of a good result. There is no credible evidence that executions, on balance, deter capital crime. The better studies indicate that the opposite might be true. Among social scholars, the two gentlemen who testified by telephone for the Committee from the east coast a couple of weeks ago were thoroughly non-representative. The death penalty cannot be justified on the basis of deterrence.

The State of Alaska would be well advised to stay away from the morass of problems that would beset us should we adopt legislation authorizing the death penalty. In most questions of public policy there are pro and con considerations. Not so with this question. There would be absolutely nothing gained by passage of this legislation- aside from the possible political gains of those legislators supporting it. If ever there was an opportunity for a display of courageous political leadership, we have it here. I am disappointed that Senator Faiks did not act on my recommendation that she call expert witnesses to balance the dubious testimony of Professors Layson and van den Haag, but otherwise she is doing a good job of hearing from all sides and examining the question carefully. The more carefully the question is examined, the clearer it will become that the death penalty idea is a very bad idea- especially for Alaska. It will be difficult for legislators to vote against S.B.17 in the face of polls that suggest that 70% of Alaskans favor the death penalty. My conviction is that support of the death penalty in Alaska, and across the country, is a mile wide and an inch deep. Most people think that it is cheap and has deterrent value, and have no notion as to the terrible problems associated with it. They need help from people like you and the other legislators who are in process now of learning the sober truths about the death penalty. I have great hope that reason and courage will prevail over politics when a final decision is made by the Legislature on the grave question posed by S.B.17.

Sincerely,

Charles Campbell  
Former Director of Corrections for Alaska.



**"A TIME FOR PEACE"**

MAR 3 1989

"...alternatives to violent solutions exist...  
if individuals and nations organize themselves properly.  
moral force is stronger than physical force."

Coleman Mc Carthy

2-27-89

MAR 7 1989

Dear Senator Pearce

If this bill has moved beyond the Senate  
Judiciary Committee would you please forward this  
material to the appropriate people or let me  
know its status so that I can do so. Thank  
you.

Charles Young, Counselor  
A Time for Peace

Call him -

Say we'll make copies available to  
Finance members. ☺ = 0.

900118

Reaffirm Opposition to Capital Punishment

MAR 3 1989

SP 74.F

WHEREAS, there is a rising tide in the United States of America to reactivate capital punishment in all states; and

WHEREAS, in the last year there have been several executions of human beings by the penal system as punishment for crimes committed; and

WHEREAS, we are convinced that the rising crime rate is largely an outgrowth of unstable social conditions which stem from an increasingly urbanized and mobile population; from long periods of economic recessions; from a history of unequal opportunities for a large segment of the citizenry and from inadequate diagnosis of criminal behavior; and

WHEREAS, we believe the state cannot teach respect for human life by destroying human life; and

WHEREAS, the Holy Scriptures teach us that human life is both sacred and divine and that we bear the image of the incorruptible God; and

WHEREAS, Jesus Christ taught us love, forgiveness and reconciliation; and

WHEREAS, all Christians are under divine mandate to safeguard life and work for the salvation of all humankind;

*Therefore Be It Resolved*, that The United Methodist Church reaffirm strongly its position against capital punishment; and

*Be It Further Resolved*, that the General Board of Church and Society prepare and disseminate materials and work with each annual conference in developing a plan of action to impact capital punishment legislation in their state; and

*Be It Finally Resolved*, that the 1984 General Conference issue a national press statement which clearly states the church's opposition to capital punishment and its commitment to work for its abolition.

ADOPTED 1984

See related resolution: "Capital Punishment," p. 384.

## Capital Punishment

SP 74.F

In spite of a common assumption to the contrary, "an eye for an eye and a tooth for a tooth," does not give justification for the imposing of the penalty of death. Jesus explicitly repudiated the *lex tallionis* (Matthew 5:38-39) and the Talmud denies its literal meaning, and holds that it refers to financial indemnities.

When a woman was brought before Jesus, having committed a crime for which the death penalty was commonly imposed, our Lord so persisted in questioning the moral authority of those who were ready to conduct the execution, that they finally dismissed the charges (John 8:31f).

The Social Principles of The United Methodist Church condemns ". . . torture of persons by governments for any purpose," and asserts that it violates Christian teachings. The church through its Social Principles further declares, "we oppose capital punishment and urge its elimination from all criminal codes."

After a moratorium of a full decade, the use of the death penalty in the United States has resumed. Other Western nations have largely abolished it during the 20th century. But a rapidly rising rate of crime and an even greater increase in the fear of crime has generated support within the American society for the institution of death as the punishment for certain forms of homicide. It is now being asserted, as it was often in the past, that capital punishment would deter criminals and would protect law-abiding citizens.

The United States Supreme Court, in *Gregg V. Georgia*, in permitting use of the death penalty, conceded the lack of evidence that it reduced violent crime, but permitted its use for purpose of sheer retribution.

The United Methodist Church cannot accept retribution or social vengeance as a reason for taking human life. It violates our deepest belief in God as the creator and the redeemer of humankind. In this respect, there can be no assertion that human life can be taken humanely by the state. Indeed, in the long run, the use of the death penalty by the state will increase the acceptance of revenge in our society and will give official sanction to a climate of violence.

The United Methodist Church is deeply concerned about the present high rate of crime in the United States, and about the value of a life taken in murder or homicide. When another life is taken through capital punishment, the life of

February 18, 1989

MAR 3 1989

Senators Faiks, Szymanski, Halford, Pearce and Rodey:

WE THE UNDERSIGNED, IN SUPPORT OF THE POSITION TAKEN BY THE GENERAL CONFERENCE OF THE UNITED METHODIST CHURCH (ATTACHED) DECLARE OUR FIRM OPPOSITION TO THE USE OF THE DEATH PENALTY (CAPITAL PUNISHMENT) IN THE STATE OF ALASKA.

Printed Name                      Signature                      Address

Susan Holstein                      Susan Holstein                      P.O. Box 39402, Nimitchik, AK 99639

Robert D. Bowers                      Robert D. Bowers                      3608 BARANOF AVE, KETCHIKAN, AK 99901

R Kevin Seckel                      R Kevin Seckel                      4869 Knights Way Anchorage AK 99508

~~Paul L. Taylor~~                      ~~Paul L. Taylor~~                      ~~8701 Seaboard Ave Anchorage AK 99516~~

Thomas C. Taylor                      Thomas C. Taylor                      1909 Grenada Pl. Fairbanks AK 99709

David K. Fison                      David K. Fison                      6800 O'Malley Ranch, AK 99576

CHARLES YOUNG                      Charles Young                      1275 SUMMIT DENE FAIRBANKS AK 99712

Anne Wald-Martin                      Anne Wald-Martin                      6841 Cheryl St Anchorage AK 99578

JIMETTE McLENN                      Jimette McLea                      3421 Bonfoc, Anchorage, AK 99504

Linda Jean P. Myers                      Linda Jean P. Myers                      1980 Black Bear Dr, Wasilla, AK 99687

Sandra F. Lambert                      Sandra F. Lambert                      5970 North St., Juneau, AK 99801

Dennis B. Holway                      Dennis Holway                      3402 Westman Dr. Anchorage, AK 99508

Edmond B. Stanton                      Ed Stanton                      Box 332, Homer, Alaska 99603

Blythe C. Stanton                      Blythe C. Stanton                      Box 332, Homer, AK 99603

John Page                      John Page                      Box 509 Douglas AK 99824

Ronald R.P. Myers                      Ronald R.P. Myers                      1980 Black Bear Dr. Wasilla, AK 99687

Carol Ann Seckel                      Carol Ann Seckel                      4869 Knights Way Anchorage, AK 99508

Beverly Bowers                      Beverly Bowers                      3608 Baranof Ave Ketchikan 99901

Billy Still                      Billy Still                      2008 Dimond Dr. Anch AK. 99508

Ann Still                      Ann Still                      2008 Dimond Dr Anchorage AK 9950

Steven Lambert                      Steven Lambert                      5970 North, Juneau, AK

99801



STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 17 (Jud)  
PUBLISH DATE: \_\_\_\_\_

**FISCAL NOTE**

**REQUEST:**

Revision Date: 3/7/89  
Title: "An Act authorizing capital punishment..."  
Sponsor: Senate Judiciary  
Requestor: Senate Finance

Agency Affected: Administration  
BRI: Office of Public Advocacy  
Comments: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	239.2	248.8	258.8
TRAVEL				35.0	36.4	37.9
CONTRACTUAL				406.2	505.6	525.9
SUPPLIES				4.0	4.2	4.4
EQUIPMENT				18.3	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	782.7	795.0	826.0
CAPITAL						
REVENUE						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	782.7	795.0	826.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	782.7	795.0	826.9

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

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

See Attached

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

Phone: 274-1684  
Date: 3/7/89

Approved by Commissioner: John Andrews  
Agency: Department of Administration

Date: 3/7/89

**Distribution: (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**CONTINUATION of FISCAL NOTE ANALYSIS****For Bill/Resolution No. CSSB 17 (Jud)**

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

Section 9 of the Senate Judiciary Committee substitute for this bill adds a new chapter to AS 12, which grants prosecutors the discretion whether to seek the death penalty against a defendant. The Department of Law has estimated that it would seek the death penalty in approximately six cases annually. Therefore, Office of Public Advocacy anticipates that it would be responsible for two capital cases in FY92. This estimate is dependent upon the following two assumptions: (1) a slight numerical increase in the number of capital felony cases which fall within the OPA statutory mandate, and (2) the Department of Law will not seek the death penalty in more than six cases annually.

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

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

It is anticipated that the Office of Public Advocacy will have to contract for representation in at least one death penalty case per year. Such a case would arise when OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CCCD 17 (Jud)Personal ServicesAnchorage

Attorney V  
Salary & Benefits = \$ 79.6

Attorney IV  
Salary & Benefits = 74.8

Investigator III  
Salary & Benefits = 52.0

Legal Secretary I = 32.8

Subtotal Personal Services \$239.2

Travel

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

Contractual

Additional office for four positions  
in Anchorage = \$16,200 16.2

Expert witness fees based on two  
cases per year at \$60,000 per case 120.0

Contract representation for one case  
per year where OPA has a conflict of  
interest at \$350,000 per case 350.0

Subtotal Contractual \$486.2

Supplies

Stationary, library and office  
supplies for four new positions at  
\$1,000 per position = \$4,000 4.0

Equipment

Office furniture and equipment for  
three professional positions at \$3,635  
each and one legal secretary at \$7,369 18.3

TOTAL: \$782.7

**FISCAL NOTE**

**REQUEST:**

Revision Date: March 3, 1989  
Title: "An Act authorizing capital  
punishment..."  
Sponsor: Senate Judiciary  
Requestor: Senate Finance

Agency Affected: Department of Law  
BRU: Prosecution  
Components: Criminal Appeals and  
Special Prosecution

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES				383.6	701.2	1,004.0
TRAVEL				138.5	266.5	394.5
CONTRACTUAL				222.4	506.4	724.4
SUPPLIES				27.9	40.8	55.2
EQUIPMENT				47.5	42.0	41.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>819.9</b>	<b>1,556.9</b>	<b>2,219.1</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	819.9	1,556.9	2,219.1
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

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

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

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services  
Approved by Commissioner: Douglas B. Bailly, Attorney Gen.  
Agency: Department of Law

Phone: 465-3672  
Date: March 3, 1989  
Date: March 3, 1989

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. Section 9 of the Senate Judiciary Committee substitute for the bill adds a new chapter to AS 12, which grants prosecutors the discretion whether to seek the death penalty against a defendant. As was pointed out in the Department of Law's fiscal note of January 20, 1989, the death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors.

## Overview

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

Consequently, the Department of Law estimates that four capital felony convictions, with aggravating factors sufficient to justify a death sentence (and where a sentence of death is imposed) will occur each year. The department also estimates that it will attempt to seek the death penalty in two additional capital felony cases, where it may not be successful. Thus, the department must be prepared to prosecute capital felonies on six occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of four cases per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

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

In order to meet this heightened level of due process, it will be necessary for the state to employ far greater prosecution resources.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

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

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defense's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. In a recent California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it appears likely that the same level of state resources, needed for the John Kenneth Peel and Neil Mackay trials, will also be needed for many of the capital murder trials. For example, a fivefold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases.

Lastly, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

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. In the federal system, it is standard and accepted practice for the defense to raise each issue on appeal as a separate action, and new issues are not raised until after the earlier issue has been completely adjudicated, further lengthening the appellate review process. As a result, it should be expected that many years will pass before a death sentence can be carried out.

## Implementation

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

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

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

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

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

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

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

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

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

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

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

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

6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.

7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs of a bifurcated capital felony case has been projected to be \$ 284,300 or 48% of the \$ 597,000 cost of the first Peel trial.

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

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

### Capital Felony Trials

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

### Death Sentence Appellate Review

- Staff Travel, \$7,500 per attorney, \$5,000 per paraprofessional, per annum.
- Expert Witness Fees, legal scholars for years two and three only, \$30,000, each year. Socio-psychiatric experts, \$25,000, per annum.
- Deposition/court reporter costs, \$10,000 per annum.

Fiscal Analysis  
 Cost Summary (First Year - FY 92 - Capital Trials)

Object	Atty V	Atty IV	Atty IV	Assoc. Atty I	P/A II	Legal Sec I	Legal Sec I	TOTAL
<u>100-Salaries &amp; Benefits</u>	<u>77.9</u>	<u>73.4</u>	<u>73.4</u>	<u>47.8</u>	<u>44.9</u>	<u>33.1</u>	<u>33.1</u>	<u>383.6</u>
	77.9	73.4	73.4	47.8	44.9	33.1	33.1	383.6
<u>200-Travel</u>								
Witness travel & Subsist	20.0	20.0	20.0	20.0	20.0	-0-	-0-	100.0
Staff travel and per diem	7.5	7.5	7.5	5.0	5.0	3.0	3.0	38.5
	<u>27.5</u>	<u>27.5</u>	<u>27.5</u>	<u>25.0</u>	<u>25.0</u>	<u>3.0</u>	<u>3.0</u>	<u>138.5</u>
<u>300-Contractual</u>								
Communications, copy, document production	3.6	3.6	3.6	2.4	2.4	2.4	2.4	20.4
Expert Witness	24.0	24.0	24.0	24.0	24.0	-0-	-0-	120.0
Witness Fees	2.4	2.4	2.4	2.4	2.4	-0-	-0-	12.0
Depositions	8.0	8.0	8.0	8.0	8.0	-0-	-0-	40.0
Office Space Leases	3.9	3.9	3.9	2.7	2.2	2.2	2.2	21.0
WP Maintenance	-0-	-0-	-0-	-0-	-0-	1.5	1.5	3.0
Westlaw	1.2	1.2	1.2	1.2	1.2	-0-	-0-	6.0
	<u>43.1</u>	<u>43.1</u>	<u>43.1</u>	<u>40.7</u>	<u>40.2</u>	<u>6.1</u>	<u>6.1</u>	<u>222.4</u>
<u>400-Supplies</u>								
Office Consumables	1.8	1.8	1.8	1.8	1.8	1.2	1.2	11.4
Law Library	1.2	1.2	1.2	1.2	1.2	-0-	-0-	6.0
New Position Supplies	1.5	1.5	1.5	1.5	1.5	1.5	1.5	10.5
	<u>4.5</u>	<u>4.5</u>	<u>4.5</u>	<u>4.5</u>	<u>4.5</u>	<u>2.7</u>	<u>2.7</u>	<u>27.9</u>
<u>500-Equipment</u>								
New Position Equipment	2.5	2.5	2.5	2.5	1.5	1.5	1.5	14.5
PC/Word Processing	4.0	4.0	4.0	4.0	4.0	6.5	6.5	33.0
	<u>6.5</u>	<u>6.5</u>	<u>6.5</u>	<u>6.5</u>	<u>5.5</u>	<u>8.0</u>	<u>8.0</u>	<u>47.5</u>
TOTAL	159.5	155.0	155.0	124.5	120.1	52.9	52.9	819.9

Fiscal Analysis CSSB 17 (Jud)  
 Cost Summary (Second and Third Years Additions - FY 93 and FY 94 - Capital Trials )

Object	Second Year				Third Year			
	Atty V	Assoc. Atty I	Legal Sec I	TOTAL	Atty IV	P/A II	Legal Sec I	TOTAL
<u>100-Salaries &amp; Benefits</u>	<u>77.9</u>	<u>47.8</u>	<u>33.1</u>	<u>158.8</u>	<u>73.4</u>	<u>44.9</u>	<u>33.1</u>	<u>151.4</u>
	77.9	47.8	33.1	158.8	73.4	44.9	33.1	151.4
<u>200-Travel</u>								
Witness travel & Subsist	50.0	50.0	-0-	100.0	50.0	50.0	-0-	100.0
Staff travel and per diem	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
	<u>57.5</u>	<u>55.0</u>	<u>3.0</u>	<u>115.5</u>	<u>57.5</u>	<u>55.0</u>	<u>3.0</u>	<u>115.5</u>
<u>300-Contractual</u>								
Communications, copy, document production	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Expert Witness	60.0	60.0	-0-	120.0	60.0	60.0	-0-	120.0
Witness Fees	6.0	6.0	-0-	12.0	6.0	6.0	-0-	12.0
Depositions	20.0	20.0	-0-	40.0	20.0	20.0	-0-	40.0
Office Space Leases	3.9	2.7	2.2	8.8	3.9	2.2	2.2	8.3
WP Maintenance	-0-	-0-	1.5	1.5	-0-	-0-	1.5	1.5
Westlaw	1.2	1.2	-0-	2.4	1.2	1.2	-0-	2.4
	<u>94.7</u>	<u>93.5</u>	<u>6.1</u>	<u>194.3</u>	<u>94.7</u>	<u>93.0</u>	<u>6.1</u>	<u>193.8</u>
<u>400-Supplies</u>								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	-0-	2.4	1.2	1.2	-0-	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	<u>4.5</u>	<u>4.5</u>	<u>2.7</u>	<u>11.7</u>	<u>4.5</u>	<u>4.5</u>	<u>2.7</u>	<u>11.7</u>
<u>500-Equipment</u>								
New Position Equipment	2.5	2.5	1.5	6.5	2.5	2.5	1.5	6.5
PC/Word Processing	4.0	4.0	6.5	14.5	4.0	4.0	6.5	14.5
	<u>6.5</u>	<u>6.5</u>	<u>8.0</u>	<u>21.0</u>	<u>6.5</u>	<u>6.5</u>	<u>8.0</u>	<u>21.0</u>
<b>TOTAL</b>	<b>241.1</b>	<b>207.3</b>	<b>52.9</b>	<b>501.3</b>	<b>236.6</b>	<b>203.9</b>	<b>52.9</b>	<b>493.4</b>

Fiscal Analysis CSSB 17 (Jud)  
 Cost Summary (Second and Third Years Additions - FY 93 and FY 94 - Appellate Review Process)

Object	Second Year				Third Year			
	Atty V	Assoc. Atty I	Legal Sec I	TOTAL	Atty IV	P/A II	Legal Sec I	TOTAL
<u>100-Salaries &amp; Benefits</u>	<u>77.9</u>	<u>47.8</u>	<u>33.1</u>	<u>158.8</u>	<u>73.4</u>	<u>44.9</u>	<u>33.1</u>	<u>151.4</u>
	<u>77.9</u>	<u>47.8</u>	<u>33.1</u>	<u>158.8</u>	<u>73.4</u>	<u>44.9</u>	<u>33.1</u>	<u>151.4</u>
<u>200-Travel</u>								
Staff travel and per diem	7.5	5.0	-0-	12.5	7.5	5.0	-0-	12.5
	<u>7.5</u>	<u>5.0</u>	<u>-0-</u>	<u>12.5</u>	<u>7.5</u>	<u>5.0</u>	<u>-0-</u>	<u>12.5</u>
<u>300-Contractual</u>								
Communications, copy, document production	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Expert Witness	30.0	25.0	-0-	55.0	-0-	-0-	-0-	-0-
Depositions	5.0	5.0	-0-	10.0	-0-	-0-	-0-	-0-
Office Space Leases	3.9	2.7	2.2	8.8	3.9	2.2	2.2	8.3
WP Maintenance	-0-	-0-	1.5	1.5	-0-	-0-	1.5	1.5
Westlaw	2.4	2.4	-0-	4.8	2.4	2.4	-0-	4.8
	<u>44.9</u>	<u>38.7</u>	<u>6.1</u>	<u>89.7</u>	<u>9.9</u>	<u>8.2</u>	<u>6.1</u>	<u>24.2</u>
<u>400-Supplies</u>								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	-0-	2.4	1.2	1.2	-0-	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	<u>4.5</u>	<u>4.5</u>	<u>2.7</u>	<u>11.7</u>	<u>4.5</u>	<u>4.5</u>	<u>2.7</u>	<u>11.7</u>
<u>500-Equipment</u>								
New Position Equipment	2.5	2.5	1.5	6.5	2.5	1.5	1.5	5.5
PC/Word Processing	4.0	4.0	6.5	14.5	4.0	4.0	6.5	14.5
	<u>6.5</u>	<u>6.5</u>	<u>8.0</u>	<u>21.0</u>	<u>6.5</u>	<u>5.5</u>	<u>8.0</u>	<u>20.0</u>
<b>TOTAL</b>	<b>141.3</b>	<b>102.5</b>	<b>49.9</b>	<b>293.7</b>	<b>101.8</b>	<b>68.1</b>	<b>49.9</b>	<b>219.8</b>

Fiscal Analysis CSSB 17 (Jud)  
 Cummulative Implementation Cost by Year

<u>Object</u>	<u>Prosecution Costs</u>				<u>Appellate Review Costs</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
<u>100</u> - Personal Services	383.6	542.4	693.8	693.8	-0-	158.8	310.2	310.2
<u>200</u> - Travel	138.5	254.0	369.5	369.5	-0-	12.5	25.0	25.0
<u>300</u> - Contractual	222.4	416.7	610.5	610.5	-0-	89.7	113.9	113.9
<u>400</u> - Supplies	27.9	29.1	36.3	31.8	-0-	11.7	18.9	14.4
<u>500</u> - Equipment	<u>47.5</u>	<u>21.0</u>	<u>21.0</u>	<u>-0-</u>	<u>-0-</u>	<u>21.0</u>	<u>20.0</u>	<u>-0-</u>
TOTAL	819.9	1,263.2	1,731.1	1,705.6	-0-	293.7	488.0	463.5

## FISCAL NOTE

**REQUEST:**

Revision Date: 2/14/89  
Title: "An Act authorizing capital punishment..."  
Sponsor: Senator Fischer  
Requestor: Senate Judiciary

Agency Affected: Administration  
BRU: Office of Public Advocacy  
Components: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	239.2	248.8	258.8
TRAVEL				35.0	36.4	37.9
CONTRACTUAL				546.2	568.0	590.7
SUPPLIES				4.0	4.2	4.4
EQUIPMENT				18.3	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>842.7</b>	<b>857.4</b>	<b>891.8</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	842.7	857.4	891.8
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>842.7</b>	<b>857.4</b>	<b>891.8</b>

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

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

See Attached

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

Phone: 274-1684  
Date: 2/14/89

Approved by Commissioner: John Andrews  
Agency: Department of Administration

Date: 2/15/89

**Distribution (by preparer):**

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (JUD)

The passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy. The OPA is purely a reactive agency and must provide legal representation to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

This office's estimate that it will be responsible for three capital cases in FY92 is dependent upon the following two assumptions: (1) a slight numerical increase in the number of first degree murder cases which fall within the OPA statutory mandate, and (2) the Department of Law will request the death penalty in only one-third of all First Degree Murder cases.

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

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

It is anticipated that the Office of Public Advocacy will have to contract for representation in at least one death penalty case per year. Such a case would arise when OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (JUD)

SB17 continued:

## Personal Services

### Anchorage

Attorney V Salary & Benefits	=	\$ 79.6
Attorney IV Salary & Benefits	=	74.8
Investigator III Salary & Benefits	=	52.0
Legal Secretary I	=	<u>32.8</u>
Subtotal Personal Services		\$239.2

### Travel

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

### Contractual

Additional office for four positions in Anchorage = \$16,200	16.2
Expert witness fees based on three cases per year at \$60,000 per case	180.0
Contract representation for one case per year where OPA has a conflict of interest at \$350,000 per case	<u>350.0</u>
Subtotal Contractual	\$546.2

### Supplies

Stationary, library and office supplies for four new positions at \$1,000 per position = \$4,000	4.0
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### Equipment

Office furniture and equipment for three professional positions at \$3,635 each and one legal secretary at \$7,369	<u>18.3</u>
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TOTAL: \$842.7

**FISCAL NOTE**

**REQUEST:**

Revision Date: 3/7/89  
Title: "An Act authorizing capital punishment..."  
Sponsor: Senate Judiciary  
Requestor: Senate Finance

Agency Affected: Administration  
BRU: Office of Public Advocacy

Components: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	-0-	-0-	239.2	248.8	258.8
TRAVEL				35.0	36.4	37.9
CONTRACTUAL				486.2	505.6	525.8
SUPPLIES				4.0	4.2	4.4
EQUIPMENT				18.3	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	782.7	795.0	826.9
CAPITAL						
REVENUE						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	782.7	795.0	826.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	782.7	795.0	826.9

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

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

See Attached

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

Phone: 274-1684  
Date: 3/7/89

Approved by Commissioner: John Andrews  
Agency: Department of Administration

Date: 3/7/89

**Distribution (by preparer):**

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

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

Section 9 of the Senate Judiciary Committee substitute for this bill adds a new chapter to AS 12, which grants prosecutors the discretion whether to seek the death penalty against a defendant. The Department of Law has estimated that it would seek the death penalty in approximately six cases annually. Therefore, Office of Public Advocacy anticipates that it would be responsible for two capital cases in FY92. This estimate is dependent upon the following two assumptions: (1) a slight numerical increase in the number of capital felony cases which fall within the OPA statutory mandate, and (2) the Department of Law will not seek the death penalty in more than six cases annually.

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

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

It is anticipated that the Office of Public Advocacy will have to contract for representation in at least one death penalty case per year. Such a case would arise when OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 17 (Jud)

## Personal Services

### Anchorage

Attorney V Salary & Benefits	=	\$ 79.6
Attorney IV Salary & Benefits	=	74.8
Investigator III Salary & Benefits	=	52.0
Legal Secretary I	=	<u>32.8</u>
Subtotal Personal Services		\$239.2

## Travel

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

## Contractual

Additional office for four positions in Anchorage = \$16,200	16.2
Expert witness fees based on two cases per year at \$60,000 per case	120.0
Contract representation for one case per year where OPA has a conflict of interest at \$350,000 per case	<u>350.0</u>
Subtotal Contractual	\$486.2

## Supplies

Stationary, library and office  
supplies for four new positions at  
\$1,000 per position = \$4,000 4.0

## Equipment

Office furniture and equipment for  
three professional positions at \$3,635  
each and one legal secretary at \$7,369 18.3

TOTAL: \$782.7

2/22/89 S(Jud); SFC

STATE OF ALASKA 1989 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST:  

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Revision Date: 2/16/89  
Title: An act related capital  
punishment  
Sponsor: Fischer  
Requestor:

Bill Version: SB 17 *CS (Jud)*  
Publish Date:  
Agency Affected: Alaska Court System  
BRU: Trial Courts  
Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	. . . .	. . . .	. . . .	87.6	87.6	87.6
Travel	. . . .	. . . .	. . . .	112.5	112.5	112.5
Contractual	. . . .	. . . .	. . . .	166.0	166.0	166.0
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	15.7	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	381.8	366.1	366.1

CAPITAL . . . . .

REVENUE . . . . .

FUNDING:		(Thousands of Dollars)				
General Funds	0.0	0.0	0.0	381.8	366.1	366.1
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	381.8	366.1	366.1

POSITIONS:						
Full-time	. . . .	. . . .	. . . .	2.0	2.0	2.0
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached information

Prepared by: Jan Strandberg, General Counsel Phone: 264-8228  
Division: Alaska Court System Date: 02/16/89  
Approved by: *Stephanie Cole, for* Arthur H. Snowden, II, Administrative Director Date: 02/16/89  
Agency: Alaska Court System

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
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- Impacted Agency(ies)
- Senate Secretary

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LEGISLATIVE FINANCE

ALASKA COURT SYSTEM

SB 17 - CAPITAL PUNISHMENT

FISCAL IMPACT

Voter approval of capital punishment will result in an estimated 10 capital punishment trials each year. These trials will result in additional costs for the following reasons:

1. Personnel Costs and Related Costs. Extensive legal research is required for capital offenses. Additional law clerks will be needed to research motions and other judicial questions. Courtroom security will have to be strengthened for these cases. Contractual funds for security services in other courts will be needed.

2. Travel Costs. Since death penalty cases are often subject to intense media exposure, expenses associated with jury sequestration and with change of venue can be expected.

3. Juror Selection. Jurors must be questioned individually in capital cases and some courts have required questioning in private. More jurors must be called and the process takes longer, with more challenges for cause, all of which results in higher jury fee expenditures. Similarly, additional bailiff costs can be expected.

4. Transcription Costs. Preparation of the voluminous record which accompanies a death penalty case will result in additional transcribing costs.

5. Equipment. Courtroom security requirements will necessitate the installation metal detectors in major court locations and the use of hand-held detectors in smaller courts to screen trial spectators.

The estimated annual costs associated with these items are summarized in the attached schedule.

ALASKA COURT SYSTEM

SB 17 - Capital Punishment  
Fiscal Impact

<u>Personal Services:</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Law Clerk I, Range 13D, Anchorage, PFT - 12 Months	\$29,340	\$11,730	\$41,070
Law Clerk I, Range 13D, Fairbanks, PFT - 12 Months	33,816	12,710	46,526 -----
	Total Personal Services		87,596 -----
 <u>Travel:</u>			
Jury sequestration - meals and lodging			112,500
 <u>Contractual:</u>			
Security guard services for courts outside Anchorage			10,000
Jury fees			96,000
Bailiff costs			10,000
Transcription			50,000 -----
	Total Contractual		166,000 -----
 <u>Equipment: (one-time items)</u>			
Standard office equipment and reference materials for law clerks			3,249
Walk-through metal detectors for Anchorage, Fairbanks, Juneau, and Ketchikan and hand-held metal detectors for other superior courts			12,450 -----
	Total Equipment		15,699 -----
Total First Year Cost			\$381,795 =====

**FISCAL NOTE**

**REQUEST:**

Revision Dates: \_\_\_\_\_  
Title: "An Act authorizing capital punishment..."  
Sponsor: Senator Fischer, Kelly, Pearce  
Requestor: Senate Judiciary and Finance

Agency Affected: Dept. of Administration  
BRU: Public Defender Agency  
Components: Third Judicial District

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES				740.8	770.4	801.2
TRAVEL				225.0	234.0	243.4
CONTRACTUAL				450.0	468.0	486.7
SUPPLIES				27.0	28.1	29.2
EQUIPMENT				60.0	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	1502.8	1500.5	1560.5

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND				1502.8	1500.5	1560.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	1502.8	1500.5	1560.5

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

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

*Handwritten signature: JS*

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

Phone: 279-7541  
Date: 2/14/89

Approved by Commissioner: John Andrews  
Agency: Department of Administration

Date: 2/15/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 17 (Jud)

If this death penalty bill is enacted, representation of the poor in death cases must be adequate. The United States Supreme Court has recognized that death penalty cases require greater due process procedural safeguards than do non-capital cases. This is due to the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. Some degree of mistake is of course a potential problem in all criminal cases. In non-death cases, the system stands ready to correct those mistakes where they become known. An execution can never be corrected.

Due to these considerations, the processing of a death case is much more complex and expensive than other criminal cases. Not only are extraordinary amounts of attorney time and substantial expert fees necessary in the guilt phase of a trial, but the penalty phase, in which a jury determines whether or not to put a person to death, takes on tremendous significance. This penalty phase requires extensive preparation, the use of psychiatric experts and family and friends from out-of-state, as well as other necessary expenditures.

Finally, even after the death penalty has been imposed, the appeal procedures in death penalty cases are lengthy and time consuming. After guilt and penalty phases of a case, the following procedures would be routinely necessary:

1. Motion to modify before trial judge.
2. Appeal of conviction and sentence to Alaska Supreme Court.
3. Writ of certiorari to the United States Supreme Court.
4. Post-conviction relief proceedings in state court.
5. Appeal of post-conviction relief proceedings in the Court of Appeals.
6. Petition for hearing of post-conviction relief proceedings to the Alaska Supreme Court.
7. Petition for Writ of Habeas Corpus in the Federal District Court.
8. Appeal to the United States Court of Appeals.
9. Rehearing in the United States Court of Appeals.
10. Writ of certiorari to the United States Court of Appeals.
11. Commutation applications to executive branch.
12. Emergency stays to the United States Supreme Court.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 17 (Jud)

The figures in this fiscal note are based on an estimation of the number of cases which would have qualified under the bill as capital cases. This agency handles approximately 30 first degree murder cases each year. On the assumption that one third or 10 of these cases would qualify as capital cases under this bill, the specific figures were arrived at as follows:

### 1. Personal Services

Given the complexity and intensity of effort involved in each death penalty trial and penalty phase, many states recommend or require by statute that a minimum of two attorneys handle each death penalty case. Based on an estimated 10 cases per year, this agency would need two death penalty teams of two attorneys each to handle the trial and penalty phases of these cases. Two appellate attorneys would be necessary to handle the appeals of these cases. In addition, each team of attorneys would require an investigator and legal secretary.

Use of this death penalty team concept will be needed to adequately represent a client who faces the death penalty. Substantially more attorney time is required in a death penalty case than in a non-capital case. Extensive pre-trial motion practice would be required in each case. Given the lack of plea bargaining in Alaska, jury trials will be conducted in all capital murder cases. These jury trials will be longer and more complex than in non-capital cases. The penalty phase of each case will require tremendous expenditures of attorney time in preparing for sentencing and coordinating professional and lay witnesses to testify. Finally, appeals of death penalty cases require extraordinary amounts of attorney time. The New York Defender Association estimates that preparation and argument before the United States Supreme Court alone would be equivalent to 883 hours attorney time.

### 2. Travel and Contractual Fees.

The New York State Defender Association has estimated that a minimum figure for expert witness fees and travel must be \$30,000 for the penalty phase per case. Experts in forensics, ballistics, blood analysis, hair analysis, eyewitness identification, psychiatry, and psychology could be necessary during the trial phase in each case, and many of these would be traveling from out-of-state. During the penalty phase friends and family members of the defendant as well as psychiatrists, psychologists and social workers would be involved. Thus the contractual and travel costs for expert witnesses has been calculated at \$60,000 per case. This figure does not include any expert fees which might be necessary at the appellate stages. The amount of contractual fees estimated in this fiscal note is based on an estimated 10 cases per year.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 17 (Jud)

### 3. Equipment and Supplies.

Other costs include expanded office space as well as equipment and supply money for additional personnel.

#### BUDGET SUMMARY

##### Personal Services:

<u>Guilt and Penalty Team-Anchorage</u>			
Attorney V	79.6		
Attorney IV	74.8		
Investigator III	51.9		
Legal Secretary I	32.8		
<u>Appellate Team - Anchorage</u>			
Attorney V	79.6		
Attorney IV	74.8		
Investigator III	51.9		
Legal Secretary I	32.8		
<u>Guilty and Penalty Team-Fairbanks</u>			
Attorney V	90.2		
Attorney IV	84.7		
Investigator III	53.8		
Legal Secretary I	<u>33.9</u>	TOTAL	740.8

##### Travel:

Based on 10 Capital cases per year	225.0
Employee and non-employee (experts)	

##### Contractual:

Based on 10 Capital cases per year			
Experts	400.0		
Office space			
Anchorage, Fairbanks	40.0		
Printing	5.0		
Communications	<u>5.0</u>	TOTAL	450.0

##### Supplies:

Office, law library	27.0
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##### Equipment:

Office furniture and machines	<u>60.0</u>	
	TOTAL	1502.8

1/24/89 J (JUD)

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act authorizing capital punishment..."  
Sponsor: Senator Fischer, Kelly, Pearce  
Requestor: Senate Judiciary and Finance

Agency Affected: Dept. of Administration  
BRU: Public Defender Agency  
Components: Third Judicial District

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		740.8	770.4	801.2	833.2	866.5
TRAVEL		225.0	234.0	243.4	253.1	263.2
CONTRACTUAL		450.0	468.0	486.7	506.2	526.4
SUPPLIES		27.0	28.1	29.2	30.4	31.6
EQUIPMENT		60.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	1502.8	1500.5	1560.5	1622.9	1687.7

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	1502.8	1500.5	1560.5	1622.9	1687.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	1502.8	1500.5	1560.5	1622.9	1687.7

**POSITIONS:**

FULL-TIME	-0-	12.0	12.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

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

(See attached)

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

Phone: 279-7541  
Date: 1/18/89

Approved by Commissioner: John Andrews  
Agency: Department of Administration

Date: 1/20/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

**received**  
1-24-89

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

If this death penalty bill is enacted, representation of the poor in death cases must be adequate. The United States Supreme Court has recognized that death penalty cases require greater due process procedural safeguards than do non-capital cases. This is due to the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. Some degree of mistake is of course a potential problem in all criminal cases. In non-death cases, the system stands ready to correct those mistakes where they become known. An execution can never be corrected.

Due to these considerations, the processing of a death case is much more complex and expensive than other criminal cases. Not only are extraordinary amounts of attorney time and substantial expert fees necessary in the guilt phase of a trial, but the penalty phase, in which a jury determines whether or not to put a person to death, takes on tremendous significance. This penalty phase requires extensive preparation, the use of psychiatric experts and family and friends from out-of-state, as well as other necessary expenditures.

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2. Appeal of conviction and sentence to Alaska Supreme Court.
3. Writ of certiorari to the United States Supreme Court.
4. Post-conviction relief proceedings in state court.
5. Appeal of post-conviction relief proceedings in the Court of Appeals.
6. Petition for hearing of post-conviction relief proceedings to the Alaska Supreme Court.
7. Petition for Writ of Habeus Corpus in the Federal District Court.
8. Appeal to the United States Court of Appeals.
9. Rehearing in the United States Court of Appeals.
10. Writ of certiorari to the United States Court of Appeals.
11. Commutation applications to executive branch.
12. Emergency stays to the United States Supreme Court.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

The figures in this fiscal note are based on an estimation of the number of cases which would have qualified under the bill as capital cases. This agency handles approximately 30 first degree murder cases each year. On the assumption that one third or 10 of these cases would qualify as capital cases under this bill, the specific figures were arrived at as follows:

### 1. Personal Services

Given the complexity and intensity of effort involved in each death penalty trial and penalty phase, many states recommend or require by statute that a minimum of two attorneys handle each death penalty case. Based on an estimated 10 cases per year, this agency would need two death penalty teams of two attorneys each to handle the trial and penalty phases of these cases. Two appellate attorneys would be necessary to handle the appeals of these cases. In addition, each team of attorneys would require an investigator and legal secretary.

Use of this death penalty team concept will be needed to adequately represent a client who faces the death penalty. Substantially more attorney time is required in a death penalty case than in a non-capital case. Extensive pre-trial motion practice would be required in each case. Given the lack of plea bargaining in Alaska, jury trials will be conducted in all capital murder cases. These jury trials will be longer and more complex than in non-capital cases. The penalty phase of each case will require tremendous expenditures of attorney time in preparing for sentencing and coordinating professional and lay witnesses to testify. Finally, appeals of death penalty cases require extraordinary amounts of attorney time. The New York Defender Association estimates that preparation and argument before the United States Supreme Court alone would be equivalent to 883 hours attorney time.

### 2. Travel and Contractual Fees.

The New York State Defender Association has estimated that a minimum figure for expert witness fees and travel must be \$30,000 for the penalty phase per case. Experts in forensics, ballistics, blood analysis, hair analysis, eyewitness identification, psychiatry, and psychology could be necessary during the trial phase in each case, and many of these would be traveling from out-of-state. During the penalty phase friends and family members of the defendant as well as psychiatrists, psychologists and social workers would be involved. Thus the contractual and travel costs for expert witnesses has been calculated at \$60,000 per case. This figure does not include any expert fees which might be necessary at the appellate stages. The amount of contractual fees estimated in this fiscal note is based on an estimated 10 cases per year.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

### 3. Equipment and Supplies.

Other costs include expanded office space as well as equipment and supply money for additional personnel.

#### BUDGET SUMMARY

##### Personal Services:

Guilt and Penalty Team-Anchorage			
Attorney V	79.6		
Attorney IV	74.8		
Investigator III	51.9		
Legal Secretary I	32.8		
Appellate Team - Anchorage			
Attorney V	79.6		
Attorney IV	74.8		
Investigator III	51.9		
Legal Secretary I	32.8		
Guilty and Penalty Team-Fairbanks			
Attorney V	90.2		
Attorney IV	84.7		
Investigator III	53.8		
Legal Secretary I	<u>33.9</u>	TOTAL	740.8

##### Travel:

Based on 10 Capital cases per year	225.0		
Employee and non-employee (experts)			

##### Contractual:

Based on 10 Capital cases per year			
Experts	400.0		
Office space			
Anchorage, Fairbanks	40.0		
Printing	5.0		
Communications	<u>5.0</u>	TOTAL	450.0

##### Supplies:

Office, law library	27.0		
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##### Equipment:

Office furniture and machines	<u>60.0</u>		
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TOTAL 1502.8

1/24/89 SPud

**FISCAL NOTE**

**REQUEST:**

Revision Date: 1/18/89  
Title: "An Act authorizing capital punishment,..."  
Sponsor: Fischer  
Requestor: Judiciary

Agency Affected: Administration  
BRU: Office of Public Advocacy  
Components: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	-0-	239.2	248.8	258.8	269.2	280.0
TRAVEL		35.0	36.4	37.9	39.4	40.1
CONTRACTUAL		546.2	568.0	590.7	614.3	638.9
SUPPLIES		4.0	4.2	4.4	4.6	4.8
EQUIPMENT		18.3	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>842.7</b>	<b>857.4</b>	<b>891.8</b>	<b>927.5</b>	<b>963.8</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	842.7	857.4	891.8	927.5	963.8
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>842.7</b>	<b>857.4</b>	<b>891.8</b>	<b>927.5</b>	<b>963.8</b>

**POSITIONS:**

FULL-TIME	-0-	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

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

See Attached

*SMC*

Prepared by: Erant McGee, Public Advocate Phone: 274-1684  
Division: Office of Public Advocacy Date: 1/18/89

Approved by Commissioner: John Andrews Date: 1/20/89  
Agency: Administration

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

**received**  
1-24-89

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

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

This office's estimate that it will be responsible for three capital cases in FY90 is dependent upon the following two assumptions: (1) a slight numerical increase in the number of first degree murder cases which fall within the OPA statutory mandate, and (2) the Department of Law will request the death penalty in only one-third of all First Degree Murder cases.

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

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

It is anticipated that the Office of Public Advocacy will have to contract for representation in at least one death penalty case per year. Such a case would arise when OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

SB17 continued:

## Personal Services

### Anchorage

Attorney V  
Salary & Benefits = \$ 79.6

Attorney IV  
Salary & Benefits = 74.8

Investigator III  
Salary & Benefits = 52.0

Legal Secretary I = 32.8

Subtotal Personal Services \$239.2

## Travel

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

## Contractual

Additional office for four positions  
in Anchorage = \$16,200 16.2

Expert witness fees based on three  
cases per year at \$60,000 per case 180.0

Contract representation for one case  
per year where OPA has a conflict of  
interest at \$350,000 per case 350.0

Subtotal Contractual \$546.2

## Supplies

Stationary, library and office  
supplies for four new positions at  
\$1,000 per position = \$4,000 4.0

## Equipment

Office furniture and equipment for  
three professional positions at \$3,635  
each and one legal secretary at \$7,369 18.3

TOTAL: \$842.7

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act authorizing capital punishment..."  
Sponsor: Sen. Fischer  
Requestor: Senate Judiciary

Agency Affected: Department of Law  
BRU: Prosecution  
Components: Criminal Appeals and Special Prosecution

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES				224.8	331.2	331.2
TRAVEL				37.5	45.0	45.0
CONTRACTUAL				70.7	135.6	135.6
SUPPLIES				16.2	17.4	14.4
EQUIPMENT				26.5	14.5	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>375.7</b>	<b>543.7</b>	<b>526.2</b>

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	375.7	543.7	526.2
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	4	6	6
PART-TIME						
TEMPORARY						

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

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services  
Approved by Commissioner: Grace Berg Schaible, Atty. Gen.  
Agency: Department of Law

Phone: 465-3672  
Date: January 20, 1989  
Date: January 20, 1989

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and it was not outweighed by mitigating factors. Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist to justify the death sentence; whether mitigating factors exist to outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death. In any event, bifurcated trials will be required for capital cases whenever there is a conviction. At the present time there are 10 to 12 first degree murder convictions per year that would require bifurcated trials if the bill is enacted.

The Department of Law estimates that three or four first degree murder convictions, with aggravating factors sufficient to justify a death sentence (and where a sentence of death is imposed) will occur each year. The department also estimates it will probably attempt to obtain the death penalty in one or two additional first degree murder cases, where it may not be successful. The experience in other states is that capital cases require far more in the way of prosecution and investigative resources than ordinary murder cases. Because a human life is at stake, the defense of these cases is extremely vigorous and no expense is spared. It is entirely conceivable that the same level of state resources needed for the John Peel and Neil MacKay cases will be needed for many of the capital murder trials. Consequently substantially greater prosecution resources will be needed whenever death penalty aggravating factors are present.

At the appellate level some contractual assistance from constitutional law experts will be needed to defend against initial challenges to the law based on due process, equal protection and the cruel and unusual punishment doctrine. Such challenges should be expected during the first two or three years after the provisions of this bill go into effect. Otherwise the bill provides for a straightforward appeals process to the Alaska Supreme Court, but capital sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues that are available to defendants in capital cases in the federal court system. That system includes original application to the U.S. District Court, appeals from these proceedings to the U.S. Circuit Court of Appeals, and further appeals from both state and federal proceedings to the U.S. Supreme Court. Typically, appeals move both up and down through the federal system on remands for rehearings and additional fact finding. Consequently, it should be expected that years can pass before a capital sentence is carried out.

Based on these considerations, at least two full-time attorneys, together with paraprofessional and secretarial support

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

elements, will be required to handle the additional work made necessary by capital cases and the sentencing trials, during the first year. A third attorney position will be required beginning in the second year to handle appeals work, together with a second legal secretary. Other fiscal note costs include witness travel and subsistence (25.0) that will be required by the provision for sentencing trials. The cost for U.S. Supreme Court and U.S. Circuit Court of Appeals brief printing (\$30.0), which is a new required expense, has also been included. The positions required by this bill will be located in the Office of Special Prosecutions and Appeals at Anchorage.

Substantial additional costs would be incurred by the Department of Corrections for facilities and staff for inmates who have been sentenced to death and are awaiting execution.

Fiscal Analysis SB 17

Cost Summary (First Year - FY 92)

<u>Object</u>	<u>Atty IV</u>	<u>Atty IV</u>	<u>P/A II</u>	<u>Leg Sec I</u>	<u>Total</u>
<u>100 - Salaries &amp; Benefits</u>	73.4	73.4	44.9	33.1	224.8
	<u>73.4</u>	<u>73.4</u>	<u>44.9</u>	<u>33.1</u>	<u>224.8</u>
<u>200 - Travel</u>					
Witness travel and subsistence for sentencing trials	10.0	10.0	5.0	-0-	
Staff travel instate for capital and trails.	5.0	5.0	2.5	-0-	
	<u>15.0</u>	<u>15.0</u>	<u>7.5</u>	<u>-0-</u>	<u>37.5</u>
<u>300</u>					
Communications, copy & document	3.6	3.6	2.4	2.4	
Expert witness for sentencing trials.	20.0	20.0	-0-	-0-	
Office space leases	4.1	4.1	3.3	2.2	
WP Maintenance	-0-	-0-	-0-	1.4	
Westlaw	1.2	1.2	1.2	-0-	
	<u>28.9</u>	<u>28.9</u>	<u>6.9</u>	<u>6.0</u>	<u>70.7</u>
<u>400 - Commodities</u>					
Office consumable	1.8	1.8	1.8	1.2	
Law Library	1.2	1.2	1.2	-0-	
New Position Supplies	1.5	1.5	1.5	1.5	
	<u>4.5</u>	<u>4.5</u>	<u>4.5</u>	<u>2.7</u>	<u>16.2</u>
<u>500 - Equipment</u>					
New position equipment	2.5	2.5	1.5	1.5	
PC/Word Processing	4.0	4.0	4.0	6.5	
	<u>6.5</u>	<u>6.5</u>	<u>5.5</u>	<u>8.0</u>	<u>26.5</u>
TOTAL	128.3	128.3	69.3	49.8	375.7

Fiscal Analysis SB 17

Cost Summary (Second Year - FY 93)

<u>Object</u>	<u>First Year Cost</u>	<u>Continued</u>	<u>Second Year Appeals</u>	<u>Cost</u>	<u>Total</u>
	<u>Trial &amp; Sentencing Staff</u>		<u>Appeal Atty(IV)</u>	<u>Leg Sec I</u>	
<u>100 - Salaries and Benefits</u>	224.8		73.4	33.0	331.2
	<u>224.8</u>		<u>73.4</u>	<u>33.0</u>	<u>331.2</u>
<u>200 - Travel</u>					
Witness travel and subsistence capital and sentencing trials	37.5				37.5
Out-of-State trials to defend appeals in the U.S. Circuit Court of Appeals and the U.S. Supreme Court			7.5		7.5
	<u>37.5</u>		<u>7.5</u>	<u>        </u>	<u>45.0</u>
<u>300</u>					
Communications, Copying and document production	12.0		3.6	2.4	18.0
U.S. Supreme Court and U.S. Court of Appeals brief printing			30.0		30.0
Expert Witnesses	40.0		20.0		60.0
Office Space Leases	13.7		4.1	2.2	20.0
WP Maintenance	1.4			1.4	2.8
Westlaw	3.6		1.2		4.8
	<u>70.7</u>		<u>58.9</u>	<u>6.0</u>	<u>135.6</u>
<u>400 - Commodities</u>					
Office Consumable	6.6		1.8	1.2	9.6
Law Library	3.6		1.2		4.8
New Position Supplies	-0-		1.5	1.5	3.0
	<u>10.2</u>		<u>4.5</u>	<u>2.7</u>	<u>17.4</u>
<u>500 - Equipment</u>					
New Position Equipment	-0-		2.5	1.5	4.0
PC/WP	-0-		4.0	6.5	10.5
	<u>-0-</u>		<u>6.5</u>	<u>8.0</u>	<u>14.5</u>
<b>TOTAL</b>	<b>343.2</b>		<b>150.8</b>	<b>49.7</b>	<b>543.7</b>