

ALASKA LEGISLATURE

1760

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO 10
Bill Version: CSSB 58 (HES)
(S) Publish Date: 3-26-97

Revision Date: _____ **Dept. Affected:** Administration
Title: An Act relating to the privileges to drive of **BRU:** Motor Vehicles
minors... **Component:** Driver Services
Sponsor: Senator Taylor
Requestor: (S) HES **COMPONENT SERIAL NO.** 500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Repeals #4

Prepared By: Jay Dulany, Director **Phone:** 465-2650
Division: Motor Vehicles **Date:** _____
Approved by Commissioner: Mark Boyer *Alison M. Segger* **Date:** 3/25/97
Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: No. 4
 Bill Verson: SB 58
 (S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Public Safety
 Title: Minor Consuming BRU: Motor Vehicles
 Component: Driver Services
 Sponsor: Sen. Taylor
 Requestor: S. HESS COMPONENT SERIAL NO. 0500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill is not expected to have any fiscal impact on DMV.

Prepared By: Juanita M. Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 3/5/96
 Approved by Commissioner: Ronald L. Otte Date: 3/5/97
 Agency: Department of Public Safety

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1997 LEGISLATIVE SESSION

Revision Date: March 26, 1997 Dept. Affected: Public Safety
 Title: Minor Consuming Alcohol: Penalty Component: DPS Statewide Support
 Sponsor: Senator Taylor Commissioner's Office
 Requestor: S. HESS COMPONENT SERIAL NO. 0523

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: 3/26/97
 Approved by Commissioner: Ronald L. Otte Date: 3/26/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 12
Bill Version: CSSB 58 (HES)
(S) Publish Date: 4-3-97

Revision Date: _____ Dept. Affected: Alaska Court System
Title: Minor Consuming Alcohol Penalties BRU: Trial Courts
Sponsor: Sen. Taylor Component: _____
Requestor: Senate Judiciary COMPONENT SERIAL NO.: 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	28.6	28.6	28.6	28.6	28.6	28.6
TRAVEL						
CONTRACTUAL	10.5	10.5	10.5	10.5	10.5	10.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	39.1	39.1	39.1	39.1	39.1	39.1

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	39.1	39.1	39.1	39.1	39.1	39.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	39.1	39.1	39.1	39.1	39.1	39.1

Estimate of any current year (FY 97) cost: None

Positions

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

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8228
Agency: Alaska Court System Date: 04/02/97

Approved by: Stephanie J. Cole, Acting Administrative Director Date: 04/02/97
Agency: Alaska Court System

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ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 58 (HES)

Section 1 of CSSB 58 (HES) amends AS 04.16.050(b) to make second and subsequent violations of AS 04.16.050(a) (consumption or possession of alcohol by a minor) a class B misdemeanor. Section 5 of the bill amends AS 28.15.185(a) by removing the authority of the district court to revoke the driver's license of a minor who is convicted of consumption or possession of alcohol.

At the present time, second or subsequent violations of AS 04.16.050(a) are classified as violations, although the penalty provisions contained in AS 28.15.185(a) require the criminal justice system to treat them as misdemeanors, including right to counsel and jury trial. This fact was overlooked when the statutes were enacted and funded in 1995. Misdemeanors must be handled in court by an assistant attorney general rather than the arresting officer, and the Department of Law is not currently prosecuting these offenses.

The Department of Law has estimated that with passage of CSSB 58 (HES), it will prosecute 60 minor consumption cases each year which result in a jury trial. This note is based upon that estimate, and includes the costs associated with 60 one-day jury trials in district court, offset by the time which a magistrate would have spent on such cases if they were treated as violations.

Alaska Court System
Fiscal Analysis
CSSB 58 (HES)

Personal Services

Position

Salary

Benefits

Total

Pro Tem District Court Judge, Anchorage, PPT, 3 months

\$13,500

\$8,323

\$21,823

In-Court Clerk, 12A, Anchorage, PPT, 3 months

7,125

1,835

8,960

Total Personal Services

30,784

Personal Services Offset

Magistrate time to conduct 60 one-hour infraction trials, average salary and benefits

(2,143)

Net Personal Services

28,641

Contractual Services

Jury fees for additional 60 one-day, 7-person jury trials at \$25 a day

10,500

Total estimated annual cost

\$39,141

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 58 (HES)

Revision Date: 02/23/98 Dept. Affected: Alaska Court System
 Title: Minor Consuming Alcohol BRU: Trial Courts
 Sponsor: Sen. Taylor Component: _____
 Requestor: Senate Finance COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	28.6	28.6	28.6	28.6	28.6	28.6
TRAVEL						
CONTRACTUAL	10.5	10.5	10.5	10.5	10.5	10.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	39.1	39.1	39.1	39.1	39.1	39.1

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

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	39.1	39.1	39.1	39.1	39.1	39.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	39.1	39.1	39.1	39.1	39.1	39.1

Estimate of any current year (FY 98) cost: \$ None

Positions

Full-Time						
Part-Time	2	2	2	2	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8265
 Date: 02/23/98
 Date: 02/23/98

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ALASKA COURT SYSTEM
FISCAL ANALYSIS
CSSB 58 (HES)

Section 1 of CSSB 58 (HES) amends AS 04.16.050(b) to make second and subsequent violations of AS 04.16.050(a) (consumption or possession of alcohol by a minor) a class B misdemeanor. Section 5 of the bill amends AS 28.15.185(a) by removing the authority of the district court to revoke the driver's license of a minor who is convicted of consumption or possession of alcohol.

At the present time, second and subsequent violations of AS 04.16.050(a) are classified as violations, although the penalty provisions contained in AS 28.15.185(a) require the criminal justice system to treat them as misdemeanors, which includes the right to a jury trial. This fact was overlooked when the statutes were amended in 1995 to make the crime of minor consuming alcohol a violation handled in district court rather than a misdemeanor handled through DFYS. Because these violations have to be treated as misdemeanors and handled in court by an assistant attorney general rather than the arresting officer, the Department of Law has not been aggressively prosecuting them.

The Department of Law has estimated that the passage of CSSB 58 (HES) will result in 60 minor consuming jury trials a year. This note is based upon that estimate and includes the costs associated with 60 one day jury trials in district court. This number is offset by the amount of time which a magistrate would have spent on such cases had they been treated as violations.

Alaska Court System
Fiscal Analysis
CSSB 58 (HES)

Personal Services
Position

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem District Court Judge, Anchorage, PPT, 3 months	14,625	7,129	\$21,754
In-Court Clerk, 12A, Anchorage, PPT, 3 months	7,233	1,568	<u>8,801</u>
Total Personal Services			30,555

Personal Services Offset

Magistrate time to conduct 60 one-hour infraction trials, average salary and benefits	<u>(2,143)</u>
Net Personal Services	28,641

Contractual Services

Jury fees for additional 60 one-day, 7-person jury trials at \$25 a day	<u>10,500</u>
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Total estimated annual cost \$ 39,141

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



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Senator Robin L. Taylor

Sponsor Statement

Senate Bill 58

In 1995, the Legislature passed and the Governor signed Senate Bill 46. This bill moved underage drinking offenses out of the juvenile justice system and into adult court. The new law also changed minor consuming from Class A Misdemeanor status to that of a violation with a fine of not less than \$100.

SB 46 was intended to toughen enforcement of underage drinking laws by getting the offenders and their parents or guardians into adult court. Two problems have arisen since that passage of SB 46 which require that this issue be revisited.

Parents in several communities have complained that the new law is not having the intended effect. The \$100 fine seems to have little impact on young people who receive \$1000+ in the form of Permanent Fund Dividend payments each year.

And, District Court Judge Patricia Collins has ruled that minors charged under the MCA statute are entitled to a jury trial and a public defender, if they qualify, because their drivers' licenses are subject to revocation upon conviction. The Court of Appeals upheld that ruling on December 6, 1996.

Senate Bill 58 seeks to restore legislative intent to the process. It would make minor consuming a violation, subject to a fine of \$250, on the first offense. The offense would revert to Class B Misdemeanor status for the second and subsequent offenses.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Senate Bill 58- Sponsor Statement
Page Two

Senate Bill 58 would also divorce minor consuming from penalties against drivers' licenses, at least as far as the courts are concerned. Minors who consume alcohol would still lose their licenses through administrative action under the "Use It and Lose It" law, but it would no longer be a court action.

The \$250 fine imposed by SB 58 would also strengthen the message that underage drinking is against the law, while falling below the threshold of fines which establish a "criminal" prosecution. More importantly, the increased fine would allow the establishment of a screening and referral program.

The Senate HESS version would reduce the second and subsequent offenses to class B misdemeanor status if they occur within two years of the first offense. That two year window will give ample opportunity to target problem drinkers. It should also serve to reduce the fiscal impact projected by the Public Defender Agency.

The second provision adopted in Senate HESS would incorporate the "junior" Alcohol Safety Action Program suggested in Senate Bill 71. It would allow the legislature to appropriate the \$250 fines imposed by SB 58 to pay for this screening and referral program.

Adult offenders already pay for the ASAP program and should not be subject to increased drivers license reinstatement fees. Letting the kids pay for their own "junior" ASAP program through the \$250 fine will add some accountability to this effort to address minor consuming.

SB

60

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB60

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Advisory vote on capital punishment BRU Elective Operations
 Component Elections
 Sponsor Senator Taylor
 Requester House Finance Committee Component Serial No. #21

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Gail Fenumiai *Gail Fenumiai*
 Division Division of Elections
 Approved by Lt. Governor Fran Ulmer *Fran Ulmer*
 Agency Office of the Lieutenant Governor

Phone 465-3935
 Date 1/23/98
 Date 1/23/98

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FISCAL NOTE

BILL NO. HCS SB 60 (JUD)

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date: _____
Title: " An Act providing for an advisory vote on the issue of capital punishment."
Sponsor: Senator Taylor
Requestor: (H) FIN

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/28/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS: (continued)

HCS SB 60 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Public Defender Agency.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. (See, for example, SB 52, introduced in the 19th Legislature.)

The capital caseload of the Public Defender Agency will be a direct function of the number of murder cases prosecuted in the state combined with prosecutorial decisions to seek the death penalty. As such the Public Defender Agency's fiscal analysis is premised on projections made by the Department of Law in its fiscal analysis of HB 131. The Department of Law indicated it prosecuted 17 murder cases in 1994 where the death penalty could have been sought in that the requisite statutory aggravators were present. Of those 17, ten would likely result in death penalty trials. The Department of Law concluded that they would gain nine convictions from which the death penalty would be imposed in six cases.

Of the ten cases which are projected to go to trial as capital cases, The Public Defender anticipates being assigned to seven, with the other three either involving private lawyers or attorneys secured through the Office of Public Advocacy (where the PD is unable to undertake representation because of legal conflict of interest).

Because the number of murders can vary significantly from year to year predicting actual numbers of cases is difficult. It is not difficult, however, to predict a profound fiscal impact for the PD once the death penalty becomes law. The concept of "super due process", established by the U.S. Supreme Court as the required standard of practice for defending death penalty cases, necessitates that highly capable lawyers and support staff (in sufficient numbers) be in place to handle any and all cases of this nature.

Fiscal Impact

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

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

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

Workload in capital cases creates extraordinary difficulties in every jurisdiction in which the death penalty can be imposed. Time requirements in such cases vastly exceed those of non-

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

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

(at p. 73; footnotes omitted.)

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

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

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

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

While precise numbers may be difficult to predict, the conclusion is inescapable: to meet the extraordinary workload difficulties of capital cases extraordinary resources must be allocated.

Breakdown of Fiscal Impact

1. Personal Services

Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, many states require by statute that a minimum of two defense attorneys take up representation of the accused in death penalty matters. Both the state District Attorney and the Office of Public Advocacy contemplate such a policy for their respective agencies. The Public Defender will follow this prudent course, whether established by statute or internal policy.

Assuming that the Public Defender Agency is appointed to seven capital cases per year, death penalty units will be established in its two largest offices; Anchorage and Fairbanks. A trial team in each of these offices will be established

FISCAL NOTE

STATE OF ALASKA

BILL NO. HCS SB 60 (JUD)

1998 LEGISLATIVE SESSION

the first year. Even if only 4 cases proceed to trial in that year, preparation must begin immediately. The second year an appellate team will be placed in Anchorage. (Please note that unlike the Department of Law, the Public Defender Agency has no equivalent to the Office of Special Prosecutions and Appeals). The appellate team will not be needed until the second year following enactment of the death penalty because it is not expected that an appeal would be "ripe" until that time. Obviously adequate support staff, to include legal interns (designated as "Associate Attorneys" under state personnel classification) paralegals, investigators and secretaries, will be necessary. A second appellate team will be established in Fairbanks in the third year following enactment of capital punishment.

2. Travel and Contractual

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

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

3. Supplies and Equipment

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

4. Training

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

Conclusion

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

Fiscal Impact

First Year Cost Summary

Development of two Capital Defense Teams, one in Anchorage and one in Fairbanks.

PFT Positions	(2) Atty V	(2) Atty IV	(2) Invest	(2) A Atty I	(2) Paralegal	(2) Sec I	Total
100 - Salaries & Benefits	188.4	176.8	121.6	114.3	108.8	75.1	785.0
	<hr/> 188.4	<hr/> 176.8	<hr/> 121.6	<hr/> 114.3	<hr/> 108.8	<hr/> 75.1	<hr/> 785.0
200 - Travel							
Staff Travel & Per Diem	15.0	15.0	15.0	10.0	10.0	6.0	71.0
	<hr/> 15.0	<hr/> 15.0	<hr/> 10.0	<hr/> 15.0	<hr/> 10.0	<hr/> 6.0	<hr/> 71.0
300 - Contractual							
Communications	7.2	7.2	7.2	4.8	4.8	2.4	33.6
Copy & Discovery	11.2	11.2	11.2	5.6	5.6	5.6	50.4
Office Space Leases	11.2	11.2	6.2	7.8	6.2	6.2	48.8
Westlaw	3.2	3.2	0.0	3.2	3.2	0.0	12.8
PC Network Maint	3.0	3.0	3.0	3.0	3.0	3.0	18.0
	<hr/> 35.8	<hr/> 35.8	<hr/> 27.6	<hr/> 24.4	<hr/> 22.8	<hr/> 17.2	<hr/> 163.6
400 - Supplies							
Office Supplies	3.6	3.6	3.6	3.6	3.6	2.4	20.4
Law Library	2.4	2.4	2.4	2.0	2.0	0.0	11.2
New Position Supplies	3.0	3.0	3.0	3.0	3.0	3.0	18.0
	<hr/> 9.0	<hr/> 9.0	<hr/> 9.0	<hr/> 8.6	<hr/> 8.6	<hr/> 5.4	<hr/> 49.6
500 - Equipment							
New Position Equipment	5.0	5.0	5.0	5.0	5.0	5.0	30.0
Personal Computer	8.0	8.0	8.0	8.0	8.0	8.0	48.0
	<hr/> 13.0	<hr/> 13.0	<hr/> 13.0	<hr/> 13.0	<hr/> 13.0	<hr/> 13.0	<hr/> 78.0
TOTAL	261.2	249.6	186.2	170.3	163.2	116.7	1147.2

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HCS SB 60 (JUD)

Second Year Cost Summary
Additional Costs

Development of Capital Appellate Team in Anchorage

FTE Positions	(1) Atty V	(1) Atty IV	(1) Paralegal	(1) Secretary	Total
100 - Salaries & Benefits	88.3	82.8	51.7	36.9	259.7
	<hr/> 88.3	<hr/> 82.8	<hr/> 51.7	<hr/> 36.9	<hr/> 259.7
200 - Travel					
Staff Travel & Per Diem		3.5	2.5	0.0	9.5
	<hr/> 3.5	<hr/> 3.5	<hr/> 2.5	<hr/> 0.0	<hr/> 9.5
300 - Contractual					
Communications	3.6	3.6	2.4	1.2	10.8
Copy & Discovery	18.0	18.0	9.0	2.8	47.8
Office Space Leases	5.6	5.6	3.1	3.1	17.4
Westlaw	2.4	2.4	2.4	0.0	7.2
PC Network Maint	1.5	1.5	1.5	1.5	6.0
	<hr/> 31.1	<hr/> 31.1	<hr/> 18.4	<hr/> 8.6	<hr/> 89.2
400 - Supplies					
Office Supplies	1.3	1.8	1.8	1.2	6.6
Law Library	3.6	3.6	1.0	0.0	8.2
New Position Supplies	1.5	1.5	1.5	1.5	6.0
	<hr/> 6.9	<hr/> 6.9	<hr/> 4.3	<hr/> 2.7	<hr/> 20.8
500 - Equipment					
New Position Equipment	2.5	2.5	2.5	2.5	10.0
Personal Computer	4.0	4.0	4.0	4.0	16.0
	<hr/> 6.5	<hr/> 6.5	<hr/> 6.5	<hr/> 6.5	<hr/> 26.0
TOTAL	136.3	130.8	83.4	54.7	405.2

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HCS SB 60 (JUD)

Third Year Cost Summary
Additional Costs

Development of second Capital Appellate Team in Fairbanks and the addition of trial lawyers and staff in Anchorage and Fairbanks due to increased caseload.

FTE Positions	(3)	(1)	(2)	(1)	(1)	(3)	Total
	Atty V	Atty IV	Invest	A Atty I	Paralegal	Sec I	
100 - Salaries & Benefits	288.5	94.0	121.6	53.5	57.1	113.3	728.0
	288.5	94.0	121.6	53.5	57.1	113.3	728.0
200 - Travel							
Staff Travel & Per Diem	18.5	3.5	15.0	5.0	2.5	6.0	50.5
	18.5	3.5	15.0	5.0	2.5	6.0	50.5
300 - Contractual							
Communications	10.8	3.6	7.2	2.4	2.4	3.6	30.0
Copy & Discovery	29.2	18.0	11.2	2.8	9.0	5.6	75.8
Office Space Leases	16.8	5.6	6.2	3.9	3.1	9.3	44.9
Westlaw	5.6	2.4	0.0	1.6	2.4	0.0	12.0
PC Network Maint.	4.5	1.5	3.0	1.5	1.5	4.5	16.5
	66.9	31.1	27.6	12.2	18.4	23.0	179.2
400 - Supplies							
Office Supplies	5.4	1.8	3.6	1.8	1.8	3.6	18.0
Law Library	6.0	3.6	2.4	1.0	1.0	0.0	14.0
New Position Supplies	4.5	1.5	3.0	1.5	1.5	4.5	16.5
	15.9	6.9	9.0	4.3	4.3	8.1	48.5
500 - Equipment							
New Position Equipment	7.5	2.5	5.0	2.5	2.5	7.5	27.5
Personal Computer	12.0	4.0	4.0	8.0	4.0	12.0	44.0
	19.5	6.5	9	10.5	6.5	19.5	71.5
TOTAL	409.3	142.0	186.2	81.5	88.8	169.9	1077.7

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

Additional Case Costs

First Year: 4 Trials

Expert Witness Fees	=	
\$60,000 per case x 4 cases	=	240.0
Witness travel and per diem	=	
\$50,000 per case x 4 cases	=	200.0
Witness fees	=	
\$2,500 per case x 4 cases	=	10.0
Deposition/Court Reporter charges	=	
\$20,000 per case x 4 cases	=	80.0
Training and Consultation	=	50.0

Second Year: 6 Trials plus 4 Appeals

Expert Witness Fees	=	
\$60,000 per case x 6 cases	=	360.0
Witness travel and per diem	=	
\$50,000 per case x 6 cases	=	300.0
Witness fees	=	
\$2,500 per case x 6 cases	=	15.0
Deposition/Court Reporter charges	=	
\$20,000 per case x 6 cases	=	120.0
\$30,000 per case x 4 case	=	120.0
Training and Consultation	=	50.0

Third Year: 7 Trials plus 6 new appeals

Expert Witness Fees	=	
\$60,000 per case x 7 cases	=	420.0
Witness travel and per diem	=	
\$50,000 per case x 7 cases	=	350.0
Witness fees	=	
\$2,500 per case x 7 cases	=	17.5
Deposition/Court Reporter charges	=	
\$20,000 per case x 7 cases	=	140.0
\$30,000 per case x 6 case	=	180.0
Training and Consultation	=	50.0

FISCAL NOTE

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

BILL NO. HCS SB 60 (JUD)

Cumulative Cost Summary

	Year 1	Year 2	Year 3	Year 4
100 - Salaries & Benefits	785.0	1044.7	1772.7	1772.7
	785.0	1044.7	1772.7	1772.7
200- Travel				
Staff Travel	71.0	80.5	131.0	131.0
Witness Travel	200.0	300.0	350.0	350.0
	271.0	380.5	481.0	481.0
300 - Contractual				
Staff Contractual	163.6	252.8	432.0	432.0
Outside Services	380.0	665.0	807.5	807.5
	543.6	917.8	1239.5	1239.5
400 - Supplies	49.6	52.4	94.9	78.4
	49.6	52.4	94.9	78.4
500 - Equipment	78.0	26.0	71.5	17.5
	78.0	26.0	71.5	17.5
Grand Totals	1727.2	2421.4	3659.6	3589.1
PFT Positions	12.0	16.0	27.0	27.0

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 6Q (JUD)

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act providing for an advisory vote on the BRU: Criminal Division
issue of capital punishment." Com. Unit: Office of Special Prosecutions & Appeals
 Sponsor: Senator Taylor
 Requester: House Finance Committee COMPONENT SERIAL NO. 2203

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES		561.9	936.4	1,424.2	1,424.2	1,424.2
TRAVEL		245.2	467.9	594.4	594.4	594.4
CONTRACTUAL		423.3	985.4	1,350.7	1,240.7	1,240.7
SUPPLIES		9.2	15.3	23.2	23.2	23.2
EQUIPMENT		52.0	39.0	45.5	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,291.5	2,444.0	3,438.0	3,282.5	3,282.5

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

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,291.5	2,444.0	3,438.0	3,282.5	3,282.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	1,291.5	2,444.0	3,438.0	3,282.5	3,282.5

Estimate of any current year (FY98) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	8.0	14.0	21.0	21.0	21.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HCS SB 60 (JUD) would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Department of Law.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. (See, for example, SB 52, introduced in the 19th Alaska Legislature.)

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 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

In preparing a fiscal note for SB 52, murder cases from 1994 were reviewed. The department's criminal division had 17 first degree murder cases in 1994 in which aggravating factors were present that would justify the death penalty, had a similar provision been the law. The number of murders committed in Alaska varies somewhat from year-to-year, but the average number of murder cases in the years 1994-97 is the same as in 1994, so those figures were used.

Overview

Capital felony trials would be bifurcated, that is, held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty, whether mitigating factors exist that outweigh the aggravating factors, and whether the defendant should be sentenced to a term of imprisonment or to death. Based on 1994's data, where 17 murders having death penalty aggravators occurred, the department would probably seek the death penalty in ten cases, all of which would require trials. In the remaining seven cases, prosecutors would elect to try the cases as noncapital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. The department expects that nine capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed six times each year.

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

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

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

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding,

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 6Q (JUD)

ANALYSIS CONTINUATION:

the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In addition, a five-fold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for capital murder trials.

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out. Current information indicates that nationally over 11 years elapses from the time a death penalty sentence is imposed to the time the sentence is carried out, and this period of delay has increased in recent years, despite efforts to streamline federal death penalty appeals.

Implementation

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

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

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

During the second year, eight or more additional capital felonies are expected to go to trial, and 17 new potential capital felony offenses will occur. At this point, it will be necessary to add one attorney, one paraprofessional, and one legal secretary to handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to begin the appellate review process. Initially, one attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

During the third year, the number of bifurcated capital murder trials (10) should equal the number of new capital offenses charged, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. The trial staff would be increased by one attorney, one paraprofessional, and one legal secretary. Post-conviction capital felony appeals will have reached eight by year three, and they will continue to increase at the rate of six new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year by adding two attorneys, one paraprofessional, and one legal secretary.

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

- (1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting first degree murder offenses, at a minimum.
- (2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- (3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- (4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- (5) Witness travel and per diem will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of state travel.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

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

(7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, the total Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs (both personal and non-personal services) of a bifurcated capital felony case has been projected to be nearly \$240,000 or considerably less than one-half of the \$597,000 cost for the *first Peel* trial.

(8) The cost for appeals is shown only through the fourth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of 10 or more capital felony defendants annually, within 10 years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

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

Capital Felony Trials

- Witness travel and per diem, \$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.
- Standard witness fees paid to others, \$2,500 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney, \$2,500 per paraprofessional, per annum.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.

(10) The full-time equivalent attorney and paraprofessional cost estimates are based on the department's FY98/99 standard cost schedule (\$133,517 per attorney; \$88,486 per paraprofessional) and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific travel, listed in (6) above, and one-time equipment costs are not included in the rate, and are added separately.

FISCA NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Cost Summary (First Year, Capital Trials)

ASSUMPTION: 4 trials, trial preparation, preparation on 17 potential capital felonies

OBJECT	<u>3</u> <u>Attorney</u>	<u>3</u> <u>Paraprofessional</u>	<u>2</u> <u>Secretary</u>	TOTAL
100 - Salaries & Benefits	339.6	222.2		561.9
	<u>339.6</u>	<u>222.2</u>	0.0	<u>561.9</u>
200 - Travel				
Administrative travel	1.0	0.7		1.7
Direct case travel	22.5	15.0	6.0	43.5
	<u>23.5</u>	<u>15.7</u>	6.0	<u>45.2</u>
300-Contractual	54.4	38.8		93.3
	<u>54.4</u>	<u>38.8</u>	0.0	<u>93.3</u>
400 - Supplies	5.4	3.7		9.2
	<u>5.4</u>	<u>3.7</u>	0.0	<u>9.2</u>
500 - One time New Equipment	19.5	19.5	13.0	52.0
	<u>19.5</u>	<u>19.5</u>	<u>13.0</u>	<u>52.0</u>
TOTAL	442.6	300.0	19.0	761.5

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Cost Summary (Second and Third Year Additions, Capital Trials)

ASSUMPTION:

Year 2 - 8 trials, preparation on 17 new potential capital felonies
Year 3 - 10 trials, preparation on 10 new charges

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	<u>1</u> <u>Atty</u>	<u>1</u> <u>Para</u>	<u>1</u> <u>Secy</u>	TOTAL	<u>1</u> <u>Atty</u>	<u>1</u> <u>Para</u>	<u>1</u> <u>Secy</u>	TOTAL
100 - Salaries & Benefits	113.2	74.1	0.0	187.3	113.2	74.1	0.0	187.3
	113.2	74.1	0.0	187.3	113.2	74.1	0.0	187.3
200 - Travel								
Administrative travel	0.3	0.2	0.0	0.6	0.3	0.2	0.0	0.6
Direct case travel	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
	7.8	5.2	3.0	16.1	7.8	5.2	3.0	16.1
300-Contractual	18.1	12.9	0.0	31.1	18.1	12.9	0.0	31.1
	18.1	12.9	0.0	31.1	18.1	12.9	0.0	31.1
400 - Supplies	1.8	1.2	0.0	3.1	1.8	1.2	0.0	3.1
	1.8	1.2	0.0	3.1	1.8	1.2	0.0	3.1
500 - New Equipment	6.5	6.5	6.5	19.5	6.5	6.5	6.5	19.5
	6.5	6.5	6.5	19.5	6.5	6.5	6.5	19.5
TOTAL	147.5	100.0	9.5	257.0	147.5	100.0	9.5	257.0

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Cost Summary (Second and Third Year Additions, Appellate Review Process)

ASSUMPTION:

Year 2 - 4 trials begin appellate review process
Year 3 - 8 trials on appeal, with 6 new cases each following year

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	<u>1</u> <u>Atty</u>	<u>1</u> <u>Para</u>	<u>1</u> <u>Secy</u>	TOTAL	<u>2</u> <u>Atty</u>	<u>1</u> <u>Para</u>	<u>1</u> <u>Secy</u>	TOTAL
100 - Salaries & Benefits	113.2	74.1	0.0	187.3	226.4	74.1	0.0	300.5
	113.2	74.1	0.0	187.3	226.4	74.1	0.0	300.5
200 - Travel								
Administrative travel	0.3	0.2	0.0	0.6	0.7	0.2	0.0	0.9
Direct case travel	3.5	2.5		6.0	7.0	2.5		9.5
	3.8	2.7	0.0	6.6	7.7	2.7	0.0	10.4
300-Contractual	18.1	12.9	0.0	31.1	36.3	12.9	0.0	49.2
	18.1	12.9	0.0	31.1	36.3	12.9	0.0	49.2
400 - Supplies	1.8	1.2	0.0	3.1	3.6	1.2	0.0	4.9
	1.8	1.2	0.0	3.1	3.6	1.2	0.0	4.9
500 - New Equipment	6.5	6.5	6.5	19.5	13.0	6.5	6.5	26.0
	6.5	6.5	6.5	19.5	13.0	6.5	6.5	26.0
TOTAL	143.5	97.5	6.5	247.5	287.0	97.5	6.5	391.0

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Out-of-Pocket Costs - Capital Felony Trials

Year 1: (4 cases underway)

Witness travel and per diem \$50,000 per case X 4 cases	=	200.0
Expert witness fees \$60,000 per case X 4 cases	=	240.0
Witness fees (witnesses of fact) \$2,500 per case X 4 cases	=	10.0
Deposition/court reporter charges \$20,000 per case X 4 cases	=	80.0

Year 2: (8 cases underway)

Witness travel and per diem \$50,000 per case X 8 cases	=	400.0
Expert witness fees \$60,000 per case X 8 cases	=	480.0
Witness fees (witnesses of fact) \$2,500 per case X 8 cases	=	20.0
Deposition/court reporter charges \$20,000 per case X 8 cases	=	160.0

Year 3: (10 cases underway)

Witness travel and per diem \$50,000 per case X 10 cases	=	500.0
Expert witness fees \$60,000 per case X 10 cases	=	600.0
Witness fees (witnesses of fact) \$2,500 per case X 10 cases	=	25.0
Deposition/court reporter charges \$20,000 per case X 10 cases	=	200.0

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Out-of-Pocket Costs - Capital Felony Appeals

Year 2: (4 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
Deposition/court reporter charges \$30,000 per case X 4 cases	=	120.0

Year 3: (8 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
Deposition/court reporter charges \$30,000 per case X 8 cases	=	240.0

Year 4: (14 cases underway)

Deposition/court reporter charges \$30,000 per case X 6 cases	=	180.0
--	---	-------

ANALYSIS CONTINUATION:

Fiscal Analysis HCS SB 60 (JUD)
Cumulative Implementation Cost by Year

OBJECT	<u>Criminal Felony Trial</u>				<u>Appellate Review</u>			
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>
100 - Salaries & Benefits	561.9	749.1	936.4	936.4	0.0	187.3	487.8	487.8
	561.9	749.1	936.4	936.4	0.0	187.3	487.8	487.8
200 - Travel								
Staff Travel & Per Diem	45.2	61.3	77.4	77.4	0.0	6.6	17.0	17.0
Witness Travel	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
	245.2	461.3	577.4	577.4	0.0	6.6	17.0	17.0
300 - Contractual								
Staff Contractual	93.3	124.3	155.4	155.4	0.0	31.1	80.3	80.3
Outside Services	330.0	660.0	825.0	825.0	0.0	170.0	290.0	180.0
	423.3	784.3	980.4	980.4	0.0	201.1	370.3	260.3
400 - Supplies	9.2	12.2	15.3	15.3	0.0	3.1	7.9	7.9
	9.2	12.2	15.3	15.3	0.0	3.1	7.9	7.9
500 - Equipment	52.0	19.5	19.5	0.0	0.0	19.5	26.0	0.0
	52.0	19.5	19.5	0.0	0.0	19.5	26.0	0.0
TOTAL	1,291.5	2,026.5	2,529.0	2,509.5	0.0	417.5	909.0	773.0
PFT	8	11	14	14	0	3	7	7

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

Revision Date (Note if correction) 01/27/98 Dept. Affected Corrections
 Title "An Act providing for an advisory vote on the BRU Administration and Operations
issue of capital punishment....." Component Spring Creek Correctional Center
 Sponsor Senator Taylor
 Requester Senate Finance Component Serial No. # 0772

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		365.0	1,080.0	3,652.6	3,652.6	3,652.6
TOTAL OPERATING	0.0	365.0	1,080.0	3,652.6	3,652.6	3,652.6

CAPITAL EXPENDITURES		18,000.0				
-----------------------------	--	-----------------	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	18,365.0	1,080.0	3,652.6	3,652.6	3,652.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	18,365.0	1,080.0	3,652.6	3,652.6	3,652.6

Estimate of any current year (FY96) cost: 0.0

POSITIONS

Full-time		0	39	48	48	48
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation provides for an advisory vote on the issue of capital punishment. This bill also requires agencies to provide three (3) specific fiscal costs.

1. Annual Fiscal Costs for Capital Punishment
2. Total Costs for one (1) Capital Punishment Case
3. Estimated Total Cost for Mandatory 99-year term of imprisonment without parole.

Please see attached

Prepared by Dwayne B. Peeples Phone 465-3339
 Division Administrative Services Date _____
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date _____
 Agency Department of Corrections

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Assumptions

This legislation is based on ten capital punishment cases annually. The average time spent under sentence prior to execution for 1996 was ten (10) years. This would result in 100 inmates being housed on death row prior to the first execution.

According to the Bureau of Justice Statistics, the average age at the time of arrest for a capital offense is 28 years old. The average lifespan of an inmate incarcerated for life is approximately 68 years of age which would result in a forty (40) year incarceration.

DOC Annual Fiscal Cost for Capital Punishment:

Operating

10 inmates X \$100.07 per day X 365 days = \$365,255

Capital

100 beds X \$180,000 per bed = \$18,000,000 for a 100 bed maximum security death row.

\$300,000 for the execution portion of the facility.

TOTAL = \$18,300,000

DOC Cost for one (1) Capital Punishment Case (Ten Year Duration):

Operating

1 inmate X \$100.07 per day X 365 days X 10 years = \$365,255

DOC Cost to Incarcerate one (1) Inmate for Life:

Operating

1 inmate X \$100.07 per day X 365 days X 40 years = \$1,461,022

FY00

10 inmates X \$100.07 per day X 365 days = \$365,255

\$18,300,000 for new death row and execution facility

FY01

20 inmates X \$100.07 per day X 365 days = \$730,000

\$350,000 for training staff for the new death row facility.

TOTAL = \$1,080,000

FY02 - 04

New 100 bed facility opens. Operating costs are estimated at \$3,652,600

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

Revision Date: _____ Department t Affected: Administration
 Title: "An Act providing for an advisory vote on the issue of capital punishment." BRU: Legal and Advocacy Services
 Sponsor: Senator Taylor Component: Office of Public Advocacy
 Requesior: (H) FIN COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES		329.0	569.5	654.6	830.6	915.7
TRAVEL		178.0	187.5	190.0	201.0	203.5
CONTRACTUAL		844.7	1038.1	1169.6	1333.9	1476.0
SUPPLIES		20.7	31.8	30.3	40.5	40.5
EQUIPMENT		32.5	26.0	6.5	19.5	6.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1404.9	1852.9	2051.0	2425.5	2642.2

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1404.9	1852.9	2051.0	2425.5	2642.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	1404.9	1852.9	2051.0	2425.5	2642.2

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	0.0	5.0	9.0	10.0	13.0	14.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

The Department of Law has estimated it would seek the death penalty in approximately ten trials annually. Therefore, OPA anticipates it would be responsible for three capital cases in FY 00 and three more in each of the following years. Because almost no one in Alaska could afford the cost of defending capital cases, it is assumed the Public Defender Agency and OPA would represent all capital defendants.

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

Phone: 269-3500
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Administration

Date: 11/26/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

ANALYSIS: (continued)

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

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

It is anticipated that OPA would have to contract for representation of at least one death penalty case per year. Such a case would arise where OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000 in 1988. The cost in Alaska would probably be significantly higher.

Death penalty cases will accumulate in the agency each year. It is highly likely that each case that comes into the office will remain its responsibility for at least 8-10 years.

In FY 01, the first year in which actual death penalty trials will probably occur, OPA costs rise because of the addition of an appellate attorney, and support personnel including an associate attorney (non-lawyer) position, a paralegal, and a legal secretary. In FY 02, an additional trial attorney position would be needed to support the initial three-trial positions created in FY 00 and FY 01.

In FY 03, the death penalty defense staff would need to be enlarged by at least one attorney, to complete the formation of two larger teams, together with a paralegal and legal secretary. In FY 04, an additional appellate attorney would be necessary to handle the increasing appellate cases handled by OPA staff.

OPA assumes that it will have only one or less conflict contract case per year. For this reason, the accumulating appellate costs are conservatively estimated at an additional \$100.0 per year.

Finally, even though OPA assumes the addition of only three cases per year, the costs associated with the accumulation of cases can be expected to more than double at least every three years. There is little doubt that, within ten years of the adoption of the death penalty in Alaska, OPA costs for the defense of these relatively few cases would surpass its FY 98 budget of \$7,651.8 for over 10,000 cases.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS -- FY 00

Personal Services - Anchorage

Attorney V - Salary and Benefits	\$ 90.6
Attorney IV - Salary and Benefits	85.1
Associate Attorney II - Salary and Benefits	62.4
Paralegal Assist II - Salary and Benefits	53.1
Legal Secretary I - Salary and Benefits	<u>37.8</u>

Subtotal Personal Services 329.0

Travel

Staff Travel and Per Diem	28.0
Witness Travel and Per Diem	<u>150.0</u>

Subtotal Travel 178.0

Contractual

Communications	15.2
Copy & Discovery	28.0
Office Space	16.5
PC Network Maintenance	7.5
Westlaw	4.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case X 1 case per year)	432.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

Subtotal Contractual 844.7

Supplies

Office Supplies	8.4
Law Library	4.8
New Position Supplies	<u>7.5</u>

Subtotal Supplies 20.7

Equipment

New Position Equipment	12.5
Computer Equipment	<u>20.0</u>

Subtotal Equipment 32.5

TOTAL FY 00 \$1404.9

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS -- FY 01

Personal Services - Anchorage

Salary and Benefits for 5 current positions	\$ 329.0
Attorney IV - Salary and Benefits	85.1
Paralegal Assistant II - Salary and Benefits	53.1
Associate Attorney II - Salary and Benefits	62.4
Legal Secretary II - Salary and Benefits	<u>39.9</u>

Subtotal Personal Services 569.5

Travel

Staff Travel and Per Diem	37.5
Witness Travel and Per Diem	<u>150.0</u>

Subtotal Travel 187.5

Contractual

Communications	28.0
Copy & Discovery	73.0
Office Space	38.9
PC Network Maintenance	14.7
Westlaw	10.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case plus \$100.0 for appeals)	532.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

Subtotal Contractual Services 1038.1

Supplies

Office Supplies	15.0
Law Library	10.8
New Position Supplies	<u>6.0</u>

Subtotal Supplies 31.8

Equipment

New Position Equipment	10.0
Computer Equipment	<u>16.0</u>

Subtotal Equipment 26.0

TOTAL FY 01 \$1852.9

FISCAL NOTE

BILL NO. HCS SB 60 (JUD)

STATE OF ALASKA
1998 LEGISLATIVE SESSION

FISCAL ANALYSIS -- FY 02

Personal Services - Anchorage

Salary and Benefits for 9 current positions \$ 569.5
Attorney IV - Salary and Benefits 85.1

Subtotal Personal Services 654.6

Travel

Staff Travel and Per Diem 40.0
Witness Travel and Per Diem 150.0

Subtotal Travel 190.0

Contractual

Communications 32.0
Copy & Discovery 91.0
Office Space 44.5
PC Network Maintenance 17.1
Westlaw 12.3
Expert Witness Fees (\$74.2 per case X 3 cases per year) 222.6
Witness Fees (\$2.5 per case X 3 cases per year) 7.5
Contract Representation for Conflict (\$432.6 plus \$200.00 for appeals) 632.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year) 60.0
Training and Consultation 50.0

Subtotal Contractual Services 1169.6

Supplies

Office Supplies 16.8
Law Library 12.0
New Position Supplies 1.5

Subtotal Supplies 30.3

Equipment

New Position Equipment 2.5
Computer Equipment 4.0

Subtotal Equipment 6.5

TOTAL FY 02 \$2051.0

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS -- FY 03

Personal Services - Anchorage

Salary and Benefits for 10 current positions \$ 654.6

Attorney IV - Salary and Benefits	85.1
Paralegal Assistant II - Salary and Benefits	53.1
Legal Secretary I - Salary and Benefits	<u>37.8</u>

Subtotal Personal Services 830.6

Travel

Staff Travel and Per Diem	51.0
Witness Travel and Per Diem	<u>150.0</u>

Subtotal Travel 201.0

Contractual

Communications	40.8
Copy & Discovery	118.0
Office Space	61.3
PC Network Maintenance	24.3
Westlaw	16.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case plus \$300.0 for appeals)	732.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

Subtotal Contractual Services 1333.9

Supplies

Office Supplies	21.6
Law Library	14.4
New Position Supplies	<u>4.5</u>

Subtotal Supplies 40.5

Equipment

New Position Equipment	7.5
Computer Equipment	<u>12.0</u>

Subtotal Equipment 19.5

TOTAL FY 03 \$2425.5

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HCS SB 60 (JUD)

FISCAL ANALYSIS FY -- 04

Personal Services - Anchorage

Salary and Benefits for 13 current positions \$ 830.6

Attorney IV - Salary and Benefits 85.1

Subtotal Personal Services 915.7

Travel

Staff Travel and Per Diem 53.5

Witness Travel and Per Diem 150.0

Subtotal Travel 203.5

Contractual

Communications 44.8

Copy & Discovery 136.0

Office Space 78.4

PC Network Maintenance 25.8

Westlaw 18.3

Expert Witness Fees *\$74.2 per case X 3 cases per year) 222.6

Witness Fees *\$2.5 per case X 3 cases per year) 7.5

Contract Representation for Conflict (\$432.6 per case plus \$400.00 for appeals) 832.6

Depositions and Court Reporter (\$20.0 per case X 3 cases per year) 60.0

Training and Consultation 50.0

Subtotal Contractual 1476.0

Supplies

Office Supplies 23.4

Law Library 15.6

New Position Supplies 1.5

Subtotal Supplies 40.5

Equipment

New Position Equipment 2.5

Computer Equipment 4.0

Subtotal Equipment 6.5

TOTAL FY04 \$2642.2

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ADMIN ACCOUNTING

003

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 60

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act providing for an advisory vote on the BRU: Trial Courts
issue of capital punishment Component: _____
 Sponsor: Sen. Taylor
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will place an advisory vote on the issue of the death penalty before the voters at the next general election. See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Acting Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/09/97

Date: 04/09/97

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**Alaska Court System
Fiscal Analysis**

On the assumption that the advisory vote is approved by the voters and that the Legislature passes legislation which authorizes use of the death penalty, the court system has estimated the cost of processing 10 death penalty cases annually.

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, PPT, 12 months	\$58,500	\$36,802	\$94,102
Pro Tem Judge, Anchorage Trial Courts, PPT, 12 months	58,500	35,602	94,102
Pro Tem Judge, Fairbanks Trial Courts, PPT, 6 months	29,250	17,801	47,051
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	33,480	14,181	47,661
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	33,480	14,181	47,661
Law Clerk I, Fairbanks Trial Courts, range 13D, PFT, 12 months	38,592	15,498	54,090
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	38,592	15,498	54,090
Bailiff, Statewide, range 6A, NPP, 24 months	40,176	3,985	44,161
			<u>482,918</u>

Offset cost of existing caseload -

Under present law, first degree murder cases experience a 50% trial rate and last approximately one month. Thus, the court expects five trials which last a total of 5 months. The proposed legislation will result in approximately 39 months of trial activity (see the time calculations under Jury Fees in the Contractual section below). Therefore, the cost offset is computed at 5/39 of the expected personnel costs.

	<u>(61,900)</u>
Net personal services	<u>421,018</u>

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

Travel

Jury sequestration costs - transportation, meals and lodging	126,000
10 Innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day	

Offset cost of existing caseload -

See offset note in personal services.

	<u>(16,200)</u>
Net travel	<u>142,200</u>

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

Contractual

Jury fees - 10 innocence/guilt trial @ 66 days each (3 months), 18 jurors @ \$25 a day	386,100
and 9 sentencing trials @ 22 day each (1 month), 18 jurors @ \$25 a day	
Contractual security guard to staff metal detectors	10,000
Transcription fees - 19 transcripts, 5,000 pages each at \$2.00 a page	190,000
Freight for high security equipment kit	1,000
Total contractual services	<u>587,100</u>

Offset cost of existing caseload -

See offset note in personal services.

	<u>(75,300)</u>
Net contractual services	<u>511,800</u>

See additional note on contractual costs on the next page.

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ADMIN ACCOUNTING

001

Alaska Court System
Fiscal Analysis (continued)

The Department of Law expects to prosecute 10 capital offences each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.

Supplies

Office and courtroom supplies for new positions and trials. 7,000

Equipment (one-time cost)

Standard office equipment and reference materials for law clerks 6,720

Portable high security equipment kit, consisting of a walk-through metal detector, temporary building card key system and video monitoring system. Will be shipped to trial site.

25,000

 31,720

Total annual estimated costs

\$1,113,738

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature

MAY 15 - JAN 15 258-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182



MEMORANDUM

January 29, 1998

To: House Finance Committee Members
From: Representative Terry Martin - *PHM*
Subject: Death penalty information

In light of Sister Helen Prejean's comments to the committee yesterday and today's scheduled discussion of the death penalty, you may find the attached information pertinent and useful.

The attached consists of two packets--the first is a summarization of the major arguments showing why the death penalty is not good public policy for Alaska; the second details the anticipated costs to the state of implementing the death penalty, if it was ever instituted.

if you have questions regarding this information, please contact me. Thank you.



FISCAL IMPACT OF CAPITAL PUNISHMENT

FIRST FOUR YEARS

CORRECTIONS	
Spring Creek Correctional Facility	\$16,197,600
ADMINISTRATION	
Public Defender Agency	\$11,505,400
Office of Public Advocacy	\$7,734,300
LAW	
Criminal Division	\$10,289,400
COURTS	
Trial Courts	\$4,359,792
<hr/>	
Total Estimated Costs First Four Years	\$50,086,492 *

* Not including extra costs to
Dept. Public Safety

FACTS At Your FINGERTIPS

For FAST, ACCURATE, QUOTABLE Information About the Consequences of Passing An Alaskan Death Penalty, SEE the following Summary Charts:

- (1) Executions COST MUCH MORE Than Prison.
- (2) Alaska CanNOT Afford the Death Penalty.
- (3) MISTAKES Are Made & INNOCENT People Are Executed.
- (4) An Innocent Life Was Lost in Alaska.
- (5) Death Penalty Saves NO Lives.
- (6) Voters Want Safety, NOT the Death Penalty.
- (7A) RACIAL BIAS Plagued Capital
&(7B) Punishment in Alaska.

(1)

POPULAR OPINION TOTALLY WRONG:
Executions Cost MUCH MORE Than Prison!

Q: Which do you believe costs more --
the death penalty or life in prison without parole?

74% life in prison costs more

21% death penalty costs more

5% unsure

THE TRUTH: It costs MILLIONS and MILLIONS MORE
to execute JUST ONE murderer than to keep him in
prison for life.

NORTH CAROLINA: \$2.16 Million MORE

CALIFORNIA: \$15 Million /execution
6 x MORE than prison

TEXAS: \$2.3 Million /execution
3 x MORE than prison

FLORIDA: \$3.2 Million /execution

*** MOST costs are at the TRIAL level,
NOT the result of appeals. ***

(2)

**ALASKA CANNOT AFFORD THE DEATH
PENALTY**

**Attorney General Botelho estimates the cost of
obtaining a single execution in Alaska at at least
\$5MILLION -- that's HALF the ANNUAL
PROSECUTION BUDGET!**

**1997 Fiscal Notes from Corrections, Defenders,
Prosecution, and Trial Courts conservatively predict
that just over 10 capital cases a year, would cost
taxpayers over \$50million for the first four years
alone.**

**Alaskans can expect to spend well in excess of
\$100,000,000.00 on the death penalty before even
one person is executed!**

P. Cook & D. Slawson, The Costs of Processing Murder Cases in North Carolina (Duke University Study, May, 1993); R. Dieter, Millions Misspent: What Politicians Don't Say About the High Costs of the Death Penalty, D.P.I. Center (Rev. Ed. Fall, 1994); Letter from Atty. Gen. Botelho to AADP, August 27, 1995; Interview of OPA Head, Brant McGee; 1997 Fiscal Notes.

(3)

MISTAKES ARE MADE:
INNOCENT LIVES ARE LOST

Americans NOW on death row: 3,365

**Since 1973,
Death CASES OVERTURNED by courts: 1,642**

**Since 1973,
INNOCENT PEOPLE RELEASED from
death row, some due to new DNA technology: 70**

Death Row, U.S.A., NAACP Bulletin (Winter 1998)

Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions, Staff Report, Subcomm. on Civil and Constitutional Rights, Judiciary Comm., 103d Congress, First Session (1993)

(4)

MISTAKES ARE MADE:

INNOCENT LIVES ARE LOST... IN ALASKA

Eugene LaMoore, a 42 year old African-American fisherman from Juneau, was the last Alaskan executed. Although convicted of minimal participation in a robbery-murder, there is substantial evidence that Mr. LaMoore was, in fact, innocent.

LaMoore's death sentence rested on a "confession" obtained when authorities brought Austin Nelson -- already convicted of doing the stabbing -- into his cell, to beg for help in saving his life, just days before Nelson's scheduled execution.

A prominent attorney, who LaMoore naively thought had come to represent him, then advised LaMoore to put his "confession" in a statement. LaMoore fell for this stratagem, with fatal consequences!

Eugene LaMoore was hanged in Juneau on April 14, 1950.

A. Lerman, Capital Punishment in Territorial Alaska, presented at Alaska State Historical Society Annual Meeting (October 1995)

(5)

**POPULAR OPINION TOTALLY WRONG:
Convicted Murderers Stay in Prison!**

Q: If a person is convicted in Alaska of 1st degree murder and **sentenced to life**, how long do you think that person will be in prison before being **paroled or released** back into society?

**Public opinion of years
before parole/release:**

78%=1-20 years

THE TRUTH: Law requires NO RELEASE for 20 years.

78% of Alaskans believe in a crime risk that does NOT and can NOT exist!

**THE TRUTH: ALASKA IS ALREADY TOUGH ON
CRIME**

The average sentenced for murder-1 = 80-90 years

HALF of those sentence for **Murder-1** receive **99 yrs.** Composite sentences in the **aggravated cases**, for which the death penalty is proposed, always exceed 99 yrs and/or include parole restrictions, resulting in **terms of natural life without any possibility of parole.**

*In the history of our state, NO ONE sentenced for Murder-1 has EVER committed another murder after being released.

*In the history of our state, NO ONE sentenced for Murder-1 has EVER killed a prison guard or another inmate.

THE TRUTH: The death penalty makes NO contribution to public safety in Alaska.

(6)

WHAT DO VOTERS REALLY WANT?

There is NO Public Mandate for
Executions.

MOST PEOPLE FAVOR LIFE W/Out PAROLE
+ RESTITUTION (44%)
OVER D.P. (41%)

THE MISLEADING "APPROVAL MANDATE" CLAIMS
ARE BASED ON DENYING PEOPLE THE RIGHT TO
MAKE THEIR OWN CHOICES AMONG REASONABLE
ALTERNATIVES.

Favor D.P. If No Alternative Offered: 77%

Favor D.P. Over 25 yrs. w/out Parole: 56%

Favor D.P. Over 25 yrs. w/out Parole
+ Restitution to Victim's Family: 44%

FAVOR LIFE W/Out PAROLE
+ RESTITUTION 44%
OVER the D.P. (41%)

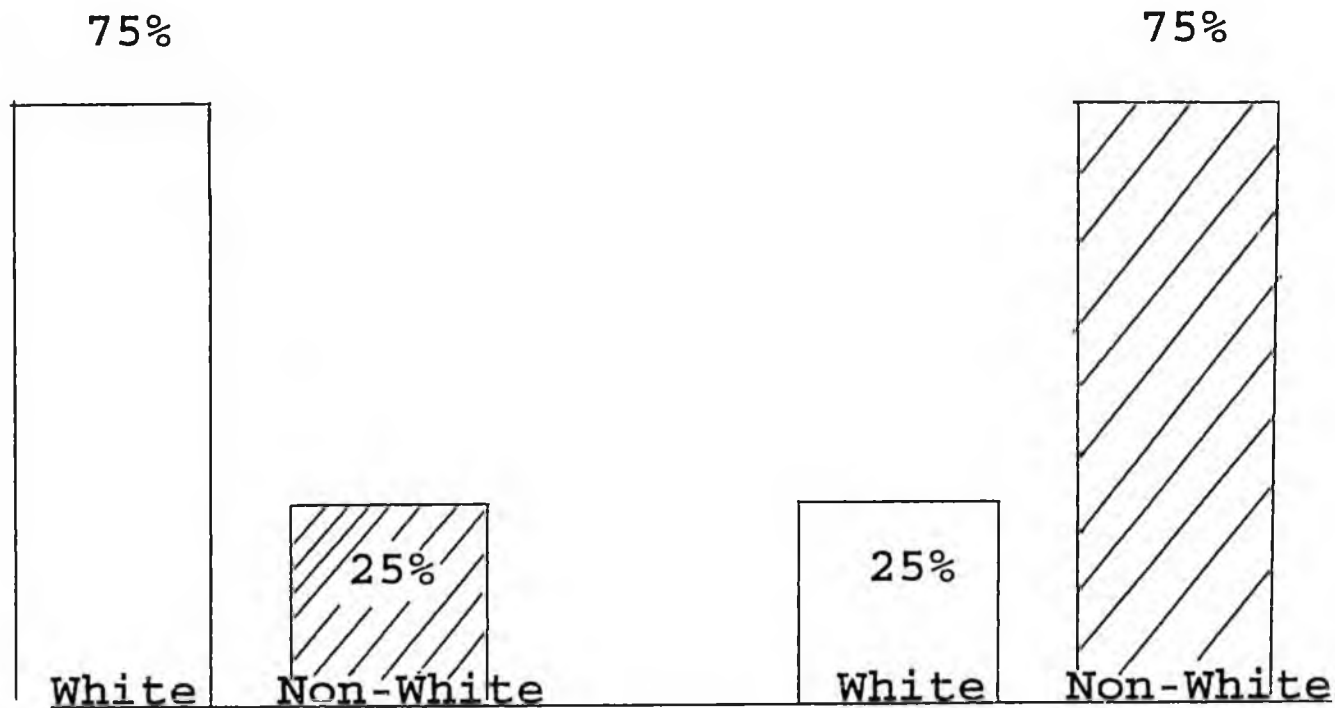
MOST PEOPLE FAVOR THE SENTENCE
ALASKA COURTS ARE ALREADY IMPOSING
IN AGGRAVATED FIRST-DEGREE MURDER
CASES!

(7A)
RACE & EXECUTIONS
IN TERRITORIAL ALASKA

1900-1957

WHO COMMITTED MURDERS?

WHO WAS EXECUTED?

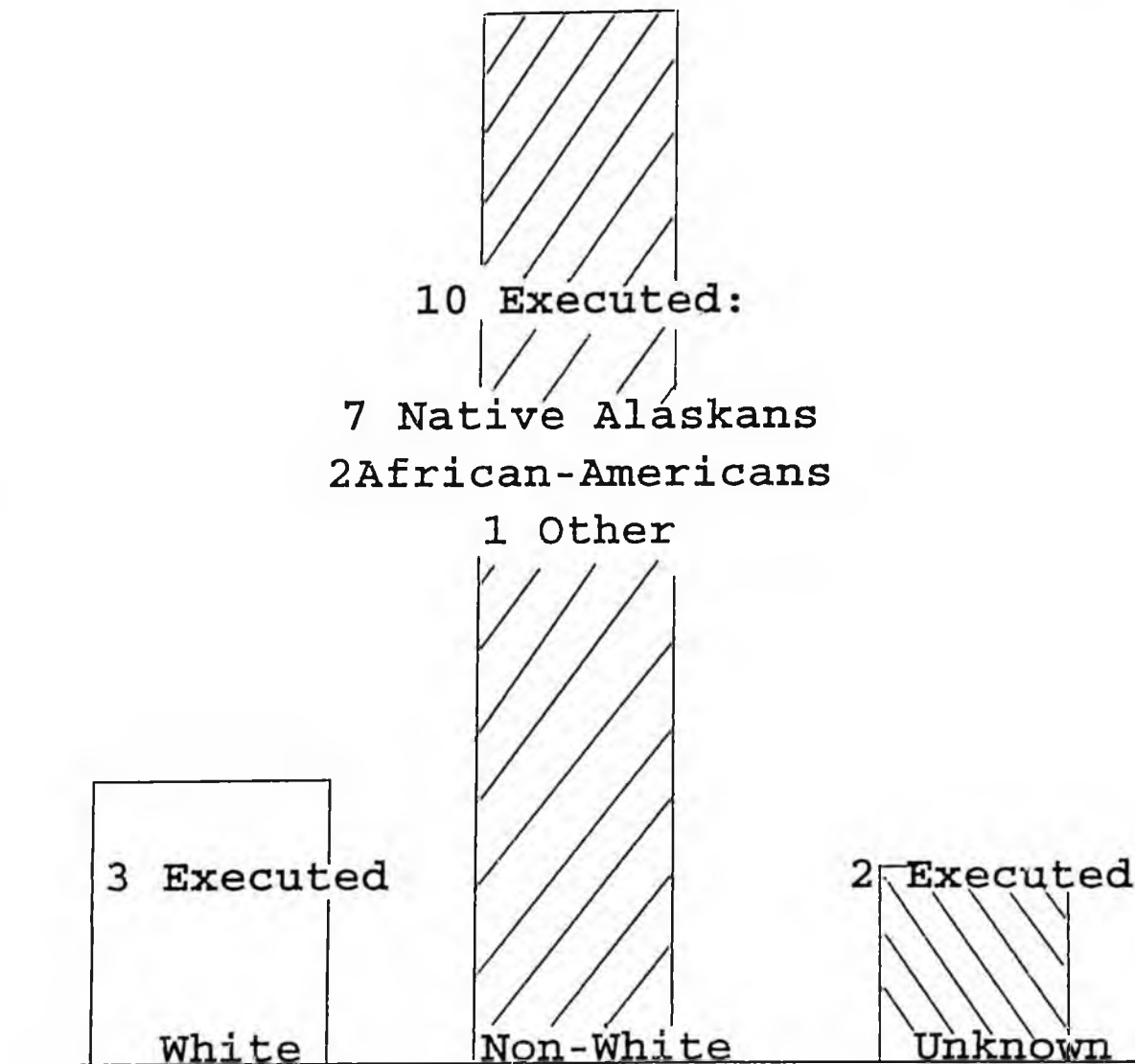


A. Lerman, Capital Punishment in Territorial Alaska, presented at Alaska State Historical Society Annual Meeting (October 1995)

Kynell, A Different Frontier (U. Press of America, Lanham, MD 1991)

(7B)
RACE & EXECUTIONS
IN TERRITORIAL ALASKA

1869-1957



**STATEMENT OF THE CATHOLIC DIOCESE OF JUNEAU IN OPPOSITION TO THE
INSTITUTION OF THE DEATH PENALTY IN THE STATE OF ALASKA**

*Presented to the Finance Committee of the Alaska House of Representatives by Rev. Peter F. Gorges and
Rev. Patrick J. Travers on behalf of Most Reverend Michael W. Warfel, Bishop of Juneau, 28 January 1998*

The Catholic Bishops of Alaska have, over the past two years, expressed strong opposition to the revival of the death penalty in our State for a number of reasons. The first and most important of these is the need, now more than ever, to reaffirm the value of every human life in a society and a world in which this is so often denied. We condemn and abhor the destruction of life that takes place at the hands of violent criminals, as well as the emotional and spiritual violence that is done to the loved ones of their victims. We believe, however, not only that the death penalty is ineffective and unnecessary to reduce violent crime in our State and Nation, but also that the acceptance of further killing by our government as a response to such crime will actually foster the attitudes and emotions that give rise to it in the first place. The opposition of our Church to abortion and euthanasia is founded on our belief that they deny the sanctity and value of every human life, contributing to what we sometimes refer to as a "culture of death" in which killing becomes more and more acceptable as a solution for our problems. We oppose the death penalty for the same reason, recognizing fully the horrible crimes committed and the danger presented by the criminals for whom it is intended.

Our legitimate needs for the deterrence and punishment of the most vicious murderers, and for prevention of any danger that they might be released to murder again, can be met by measures other than the death penalty. We specifically endorse the imprisonment of such persons for the rest of their natural lives without any possibility of parole or other early release, under conditions as secure and rigorous as might be necessary to meet these needs. This is a measure that you yourselves have the authority to enact. It is a measure that would avoid certain other problems with the death penalty that our Bishops have previously observed. One is the inevitability and the finality of executing persons who did not commit the crimes of which they were convicted. Another is the consistently demonstrated unevenness of the death penalty's application to persons convicted of similarly brutal crimes, based upon their economic resources, their race, and their sex. Others, including Sister Helen Prejean, who is with us today, have or will provide you with detailed information on these problems, as well as on the exorbitant cost that implementation of the death penalty involves in contrast with true life imprisonment. Thank you for your consideration of our views on this important moral issue.

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



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Senator Robin L. Taylor
Senate Majority Leader

Sponsor Statement

Death Penalty Vote - The Ultimate Poll

by Senator Robin L. Taylor

Senate Bill 60 is intended to seek the advice of the voters of Alaska on the controversial issue of capital punishment.

Passage of SB 60 will not impose the death penalty in Alaska. It simply places on the ballot the question: "Shall the Alaska State Legislature enact a law providing for capital punishment for murder in the first degree and establishing procedures for the imposition of capital punishment that are consistent with the United States Constitution as interpreted by the United States Supreme Court?".

For years opinion poll after opinion poll have reflected the desire of the people of Alaska to have the death penalty available as an option in this state. SB 60 seeks to employ the ultimate poll, that of the ballot box, in a non-binding vote.

There are those who argue that the people of Alaska are somehow unqualified to render advice on this issue. They argue that the ballot question itself is too "simplistic". They argue that the ballot question should offer a choice between the death penalty and life without parole. What they fail to acknowledge is that the life in prison without parole option already exists in Alaska.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Given the option of a death penalty or life in prison without parole, 555 Alaskans polled statewide in March, 1996, favored the death penalty by a 62% margin, with 35% choosing life without parole. It is especially significant that only 5% of the respondents said they were undecided.

Support for the death penalty crossed all demographics, including location, gender, age, party affiliation, employment status and length of time in the community.

Alaska has one of the youngest, best educated and well read populations in the nation. Judging from the campaign already being mounted against SB 60, the organized groups opposed to capital punishment will most certainly conduct a vigorous campaign when this issue reaches the ballot. Alaskans will cast votes based in information, not emotion.

Issues such as the cost and effectiveness of capital punishment will be part of any campaign on the ballot question and will also need to be explored again at great length if the voters advise the 21st Alaska State Legislature to pursue this issue.

For now, we are talking about placing an advisory vote on the ballot, at a cost of about \$3,000.

<http://essential.org/dpic1>



There are currently 38 states with the death penalty: (in chart above, states in green do not have the death penalty; states in red have the death penalty, but have no one on death row; states in white have the death penalty and have people on death row)

- | | | |
|-------------|----------------|----------------|
| Alabama | Kentucky | Ohio |
| Arizona | Louisiana | Oklahoma |
| Arkansas | Maryland | Oregon |
| California | Mississippi | Pennsylvania |
| Colorado | Missouri | South Carolina |
| Connecticut | Montana | South Dakota |
| Delaware | Nebraska | Tennessee |
| Florida | Nevada | Texas |
| Georgia | New Hampshire* | Utah |
| Idaho | New Jersey | Virginia |
| Illinois | New Mexico | Washington |
| Indiana | New York* | Wyoming* |
| Kansas* | North Carolina | |

Plus: U.S. Government and U.S. Military

*Indicates jurisdictions with no one on death row.
 -New York's law became effective Sept. 1, 1995.

There are currently 12 states without the death penalty:

- Alaska
- Hawaii
- Iowa

Maine
Massachusetts
Michigan
Minnesota
North Dakota
Rhode Island
Vermont
West Virginia
Wisconsin

Plus: the District of Columbia

WHICH PUNISHMENT DO YOU SUPPORT THE MOST FOR CRIMINALS CONVICTED OF PARTICULARLY TERRIBLE CRIMES AGAINST PEOPLE, INCLUDING FIRST DEGREE MURDER...

DEMOGRAPHICS	UNSURE	DEATH PENALTY	LIFE W-O PAROLE
TOTAL.....	5%	62%	33%
LOCATION			
RURAL.....	8%	59%	32%
CENTRAL.....	2%	56%	42%
SOUTH CENTRAL....	4%	63%	32%
ANCHORAGE.....	4%	66%	30%
SCOUTH EAST.....	6%	59%	35%
GENDER			
MALE.....	4%	69%	27%
FEMALE.....	5%	55%	40%
RESPONDENT AGE			
18-29 YRS OF AGE.	4%	57%	39%
30-44 YRS.....	2%	68%	30%
45-59 YRS.....	7%	57%	36%
60+ YEARS OF AGE.	6%	65%	29%
DENOCRAT.....	6%	47%	47%
REPUBLICAN.....	6%	77%	17%
NON-PARTISAN.....	4%	62%	34%
OTHER.....	0%	55%	45%
NOT REGISTERED...	0%	61%	39%
EMPLOYMENT			
FEDERAL.....	0%	82%	18%
STATE.....	5%	53%	42%
LOCAL.....	7%	60%	32%
PRIVATE.....	4%	63%	33%
NOT IN WORKFORCE.	7%	59%	35%
TIME IN COMMUNITY			
TO 4 YEARS.....	6%	61%	33%
5-9 YEARS.....	0%	70%	30%
10-14 YEARS.....	1%	62%	37%
MORE THAN 15 YEARS.....	6%	61%	33%

*ADN 4/16/97

STOP CODDLING CRIMINALS

I recently read a letter by a Rev. Kelley indicating that the death penalty did not serve as a deterrent to crime and that it was more expensive than incarceration. This is only true because our justice system does not function with the primary goal of deterring crime, rather it operates like a business oriented toward profit for a corrupt legal system. Many victims of crime feel like they are victimized twice, once by the perpetrator and once by the system. Yet we pay more for our justice system than any other country on earth.

Some countries, like Singapore, have made an effort to just say "no" to crime. Last year, they had five murders committed by the total population. I would say justice which is fair, swift and consistent does serve as a deterrent to crime. In the United States there is chaos in the form of rape, murder and gang warfare. Singapore had these same problems, but they instituted laws which held people responsible and were enforced to the letter.

The average murderer in the United States does nine years prior to release. Many of these killers murder again after their release. Others manage to kill while still incarcerated. We had a case several years ago in Anchorage where a criminal doing a life sentence managed to murder and injure innocent people with a package bomb.

Our justice system is a joke to most criminals. Rather than hold criminals responsible, we find excuses for their demeanor. They don't know right from wrong, they are hapless victims of oppressive social conditions or they suffered from temporary insanity. Let's demand a system that works.

-- Rocky Latta
Anchorage

STOP CRIMINALS PERMANENTLY

The Rev. Dale Kelley would like Alaska to remain a pacifist state in which murderers are eventually set free to murder again. Instead of the death penalty, he would like us to focus on "crime prevention tools that truly work." But he belies his own argument with this statement. The death penalty is not a "crime prevention tool," it is crime prevention, period. Those who receive the death penalty are forever prevented from committing another murder, or any other crime.

Mr. Kelley and his flock need only to read a few national headlines to see the fruits of the prevailing pacifist liberal theology which allows for society's murderers and wickedly vicious offenders to be "rehabilitated" and turned loose. Most, if not all, of the murders and other heinous atrocities committed against our citizens are the work of repeat offenders. Hence, the need for the death penalty.

"Reverend" seems a dubious title for one who quotes George Bernard Shaw (atheist, socialist) but ignores the words of his own Bible which requires murderers to be held accountable with the forfeiture of their own lives. (Reverends and sheep may consult their own Bibles for confirmation.) Mr. Kelley quotes Shaw as saying, "It is the deed that teaches." Precisely. The lesson here is this: murder will earn you the death penalty. Sure, this will be a deterrent to some, and not to others. But for those who are not deterred, there is the penalty. That's the point.

Let us finally dispel this notion that capital punishment is a "teaching tool." It is not. It surely is a deterrent for some. But ultimately, it is crime prevention, in its final, conclusive purpose. And we need it.

-- Michael Toundas

Wasilla

JUSTICE NOT ALWAYS FOOLPROOF

I agree with the conclusion of the Rev. Kelley's letter of March 21, but not with the argument. Prisoners indeed should not be executed, because of the chance of their actually being innocent -- but for no other reason. I confine my response to one aspect of his position on capital punishment: that in carrying it out the executioners sink to the level of the executed.

The belief itself sinks its own adherents; only by dropping all context, all issues of circumstance, goal, motivation -- only by rejecting one's conceptual grasp of reality and adopting a subhuman, perceptual mode of awareness, can one look at an action and come to the conclusion that its opposite is its equivalent. To an animal, from its limited vantage, two actions differing fundamentally in nature may very well appear identical -- but not to a man. A man knows the irrationality of assessing an action's morality by mere reference to the action in and of itself, regardless of context. In this case, both actions do result in death. But one is the initiation of force, the violation of the individual rights of another human being -- the other is justice, a response earned by the offender's own actions. A violator of rights has lost all claim to his own.

It is notable that Dale Kelley is a reverend; religion is the single largest source and cesspool of such thinking, and the results of its influence -- the substitution of dogmatic absolutes for principles -- can be seen all around us.

-- Michael Baum
Anchorage

DEATH PENALTY LONG OVERDUE

In response to Caleb Stewart's letter opposing the death penalty on the grounds that the possibility exists that an innocent person may be executed: Almost daily we read of innocent people being killed by someone who had been convicted of previous murders and was on parole or let out of prison after serving a short sentence. Would Mr. Stewart say Jeffrey Dahmer, Ted Bundy, John Wayne Gacy, etc., were innocent?

It shouldn't be only murder that warrants the death penalty. Just recently, Singleton, the guy who chopped the arms off a 17-year-old girl after raping her, killed a 33-year-old woman in Tampa, Fla. Wasn't the previous crime heinous enough that he should have been executed? Ask the poor girl who lived in fear since Singleton was released from prison.

It's hard to figure the mentality of a person who opposes the death penalty on the grounds that an innocent person may be executed and is unconcerned about the certainty that people are almost daily killed by killers turned loose on society. What about Floyd Roehl in Fairbanks, charged with killing a little 2-year-old? Because Alaska doesn't have a death penalty, are we going to read about him again in a few years after he's released from prison and commits another heinous act on some innocent child?

One argument used by people who oppose the death penalty is that it doesn't deter crime. Ridiculous. How does a person executed for one murder commit another?

Another argument is that it costs more to execute a person than to keep him in prison. Why does it take 10-15 years and countless appeals before the sentence is carried out? Lawyers love this, it puts millions of dollars in their pockets. The sentence should be carried out in 30 days or less, then compare the costs. The death penalty is long overdue in Alaska.

- Don Nowag
Wasilla

DEATH PENALTY MAKES US SAFER

I'm glad to see Reps. Beverly Masek and Jerry Sanders and Sen. Robin Taylor have decided to introduce bills to reinstate the death penalty in Alaska. I do not buy the fact that trying a death penalty case is too expensive - that is not the point. I believe it's time for the residents of this state to face the fact that the streets are not safe and it's not only children who are being murdered every day. How many more children will have to be buried? If I ever see another police procession driving to the Anchorage International Airport it will be too soon. How long will it be before we read about another Alaska state trooper killed by a recently released prisoner? The solution is simple; the alternative puts all Alaskans in danger of being the next dead citizen.

- Mike McClary
Anchorage

DEATH PENALTY AND SENTENCING INFORMATION

In the United States

3/ 97

1. Imposition of the death penalty is extraordinarily rare. Since 1967, there has been one execution for every 1600 murders, or 0.06%. There have been approximately 560,000 murders and 350 executions from 1967-1996 (FBI's Uniform Crime Report (UCR) & Bureau of Justice Statistics (BJS)).
2. Approximately 5900 persons have been sentenced to death and 358 executed (from 1973-96). An average of 0.2% of those were executed every year during that time. 56 murderers were executed in 1995, a record number for the modern death penalty. This represented 1.8% of those on death row. The average time on death row for those 56 executed - 11 years, 2 months ("Capital Punishment 1995", BJS, 1996), an all time record of longevity, breaking the 1994 record of 10 years, 2 months.
3. Death penalty opponents ("opponents") state that "Those who support the death penalty see it as a solution to violent crime." Opponents, hereby, present one of many fabrications. In reality, executions are seen as the appropriate punishment for certain criminals committing specific crimes. So says the U.S. Supreme Court and so say most death penalty supporters ("advocates").

Many opponents say that execution is the same as murder because both end a human life. Opponents have reached the bizarre conclusion that if two acts have the same ending or result, i.e. execution and murder, then those two acts are morally equivalent. Is the legal taking of property to satisfy a debt the same as auto theft? Are kidnaping and legal incarceration the same because both involve imprisonment against one's will? Truly, "any culture that fails to distinguish between the criminal (act) and the punitive act is a culture that cannot survive." (D.6.) Is killing in self defense the same as capital murder because both end in taking human life? Are rape and making love the same because both may result in sexual intercourse? Opponents' logic often mirrors opponents' "factual" arguments - there is, often, an absence of reality.

Great effort has been made in pretrial, trial, appeals, writ and clemency procedures to minimize the chance of an innocent being convicted, sentenced to death or executed. Indeed, since 1973, the due process protections in capital cases have been so extraordinary that 37% of all death row cases, or 2046, have been overturned for due process reasons or commuted. ("Capital Punishment 1995", BJS, 1996). Many of those cases were overturned based on post conviction new laws, established by legislative or judicial decisions in other cases. Possibly as many as 15-30 of post Furman cases (0.25-0.51%) were overturned or commuted based on credible claims of innocence. This means that from 99.49%-99.75% of all capital convictions resulted in the guilty being convicted. Predictably, opponents falsely claim that 65 death row inmates have been released since 1973, after having been proven

innocent. There is no evidence to support that claim. Also, contrary to the false claims of opponents, clemency is used generously to grant mercy to death row murderers and to spare inmates whose guilt has come into question. In fact, 135 death row inmates have been spared by clemency or commutation from 1973-1975 (ibid). This represents 43% of the total of those executed during that time - a remarkable record of consideration and mercy.

The greatest fear, by advocates and opponents, is that an innocent person will be executed. The most significant study conducted to evaluate the evidence of that threat is the Bedau-Radelet Study ("Miscarriages of Justice in Potentially Capital Cases", 40, 1 Stanford Law Review, 11/87). The study concluded that 23 innocent persons had been executed since 1900. However, the study's methodology was so flawed that at least 12 of those cases had no evidence of innocence but substantial evidence of guilt. Bedau & Radelet, both opponents, "consistently presented incomplete and misleading accounts of the evidence." (Markman, Stephen J. & Cassell, Paul G., "Protecting the Innocent: A Response to the Bedau-Radelet Study" 41, 1 Stanford Law Review, 11/88). The remaining 11 cases represent 0.14% of the 7,800 executions which have taken place since 1900. And, there is, in fact, no proof that those 11 executed were innocent. In addition, the "innocents executed" group was extracted from a Bedau & Radelet imagined pool of 350 persons who were, supposedly, wrongly convicted of capital or "potentially" capital crimes. Not only were they at least 50% in error with their 23 "innocents executed" claim, but 211 of those 350 cases, or 60%, were not sentenced to death. Bedau & Radelet already knew that plea bargains, the juries, the prosecutors, judicial review or the legal statutes had already put these crimes in the "no capital punishment" category. Indeed, their claims of innocence, regarding the remaining 139 of those 350 cases, should be suspect, given this study's poor level of accuracy. Calling their work misleading hardly does this "academic" study justice. Had any high school student presented such an inaccurate and misleading report, a grade of F would be a likely result.

Indeed, Michigan Court of Appeals Judge Stephen Markman finds that "... the Bedau-Radelet study is remarkable not (as retired Supreme Court Judge Harry Blackman seems to believe) for demonstrating that mistakes involving the death penalty are common, but rather for demonstrating how uncommon they are... This study - the most thorough and painstaking analysis ever on the subject - fails to prove that a single such mistake has occurred in the United States during the twentieth century." Presumably, Bedau and Radelet would have selected the most compelling 23 cases of the innocent executed to prove their proposition. "Yet, in each of these cases, where there is a record to review, there are eyewitnesses, confessions, physical evidence and circumstantial evidence in support of the defendant's guilt. Bedau has written elsewhere that it is 'false sentimentality to argue that the death penalty ought to be abolished because of the abstract possibility that an innocent person might be executed when the record fails to disclose that such cases exist.' ... (T)he Bedau and Radelet study... speaks eloquently about the extraordinary rarity of error in capital punishment." ("Innocents on Death Row?", National Review, September 12, 1994).

Another significant oversight by that study was not differentiating between the risk of executing innocent persons before and after *Furman v Georgia* (1972). There is, in fact, no proof that an innocent has been executed since 1900, and the probability of such a tragedy occurring has been lowered significantly more since *Furman*. In the context that hundreds of thousands of innocents have been murdered or seriously injured, since 1900, by criminals improperly released by the U.S. criminal justice system, the relevant question is: Is the risk of executing the innocent, however slight, worth the justifications for the death penalty - those being retribution, rehabilitation, incapacitation, required punishment, deterrence, escalating punishments, religious mandates, cost savings, the moral imperative, just punishment and the saving of innocent lives?

Predictably, opponents still continue to claim, even today, that a study has proven that 23 innocent people have been executed, even though Bedau and Radelet, the authors of that study, conceded - in 1988 - that neither they nor any previous researchers have proved that any of those executed was innocent: "We agree with our critics that we have not proved these executed defendants to be innocent; we never claimed that we had." (41, 1 *Stanford Law Review*, 11/1988).

B. THE INCAPACITATION AND THE DETERRENT EFFECTS

1. The argument that murderers are the least likely of all criminals to repeat their crimes is not only irrelevant, but also increasingly false. 6% of young adults paroled in 1978 after having been convicted of murder were arrested for murder again within 6 years of release. ("Recidivism of Young Parolees", 4, 1987, BJS). Murderers have so violated the human rights of their victims and of society that it should be a moral imperative that they never again have that opportunity.
2. Obviously, those executed can't murder again. "Of the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder and had killed 821 persons following their previous murder convictions. Executing each of these inmates would have saved 821 lives." (41, 1 *Stanford Law Review*, 11/88, pg. 153) Using a 75% murder clearance rate, it is most probable that the actual number of lives saved would have been 1026, or fifty times the number legally executed that year. This would suggest that some 5000 persons have been murdered, since 1971, by those who had previously committed additional murders (JFA). See B.5.
3. FBI crime reports reveal that in 1993, 7,700 persons were murdered by criminals released on parole, probation or pretrial release. (*The American Enterprise*, May/June 1995.) Death penalty opponents spend millions of dollars and countless man hours fighting the legal execution of, at most, 56 murderers per year, when they do nothing to fight for the end of those inhumane release policies which, every year, result in 7,000-10,000 additional murders and 3 million additional violent crime victims. (*The State of Violent Crime in America*, 1/96, i, ii & *Criminal Victimization 1993*, BJS 1995 & JFA). Incredibly, this does not include those violent crimes committed by repeat offenders who are released and not on "supervision". Where is the compassion in honoring the previous victim's suffering

and in protecting the human rights of future victims? Opponents' actions show virtually no compassion for the victims of violent crime or concern for future victims, yet, they exhibit overwhelming support for those who violate our human rights and murder our loved ones.

4. 9-15% of those on death row committed, at least one additional murder, prior to that murder (or those murders) which has currently put them on death row; 67% had a prior felony conviction; 42% had an active criminal justice status when they committed their capital offense; 14% of those sentenced to death from 1988-94, had received two or more death sentences ("Capital Punishment 1994", BJS 1995 & JFA). Should we err on the side of caution and protect the innocent and honor the memories of those murdered or should we give murderers the opportunity to harm again? Should we put prison personnel and other prisoners at any additional risk from known murderers? Prisoners on death row are 250% more likely to murder, in prison, than are prisoners in the general population. Lester, D., "Suicide and Homicide on Death Row", American Journal of Psychiatry, 143, 559, 1986.
5. Murderers released in 1992 had served an average of 5.9 years in prison (The State Of Violent Crime in America, 1/96). Taking into account those murderers that were never caught, those that were not sentenced to prison and "good time" and other "credits" counted as "time served", the average time served for all murders is closer to 3 years (JFA). See B.2. Why have we chosen to be so generous to murderers and so contemptuous of the human rights and suffering of the victims? For a criminal justice system to have credibility and deterrent value, two factors are required: (1) a high rate of arrest and (2) punishment which reflects the severity of the crime, the criminal's record and the demand for justice. The U.S. system has neither. Of the 10.3 million violent crimes in 1993, only 100,000 of those victimizations, or 1%, resulted in an actual jail sentence. Only 6.2% of all violent crimes result in arrest. (Prof. John J. DiIulio, Jr., Princeton Univ. 1995, The State of Violent Crime in America, 1/96 and Criminal Victimization 1993, BJS, 1995.) The human rights of victims and future victims are consistently ignored.
6. With no death penalty and only life without parole (LWOP), there is no deterrent for LWOP inmates killing others while in prison or after escape. Indeed, there is actually a positive incentive to murder if a criminal has committed a LWOP offense and had not yet been captured. Currently, there are a number of inmates who have killed numerous people in prison or after escape. Their punishment could not be increased because there is no death penalty in those states. Therefore, they will never be punished for those crimes. Never. Not surprisingly, death penalty opponents believe that LWOP is more severe than the death penalty. Hamilton, V., & Rakin, L.: "Interpreting the 8th Amendment", Bedau, H., & Pierce, C., ed., Capital Punishment in the United States, New York, AMS, 1976. This absurd belief, which has now become the newest mantra of opponents, is contradicted by all other surveyed groups, including prisoners (B.12 & 15).
7. Death Penalty opponents claim that there is a "brutalization effect" with executions, meaning, that executions show a low regard for human life and do, thereby, cause an increase in the murder rate. If the brutalization effect is real, it would be the only

known legal sanction to cause an increase in wrongful behavior. Why would criminals become more likely to engage in illegal activities because the punishments for those activities become more severe? How absurd. Have dramatic increases in the rates of incarceration resulted in dramatic increases in kidnappings? Just the opposite. Further deploring the brutalization effect is the fact that many respected studies show that executions do produce an individual and a general deterrent effect. (B.13 & 15)

8. Assume all murderers would instantly die upon murdering. Murderers would then kill only if they wished to die themselves. Murder/suicide is an extremely small component of all murders. Therefore, if a swift and sure death penalty was universally applied to our worst criminals, it is logically conclusive that the death penalty would be a significant deterrent and that many innocent lives would be saved. In fact, swift and sure executions do result in deterrence: (A) The greater the publicity surrounding executions, the greater the deterrent effect. Phillips, D. "The Deterrent Effect of Capital Punishment". *American Journal of Sociology*, 86:139-158, 1980; Phillips, D. & Hensley, J., "When Violence is Rewarded or Punished". *J. Commun.*, 34(3): 101-116, 1984; and the various studies by Prof. Steven Stack, Wayne St. U. (1988-1995) and (B) The higher the rate of execution, the greater the deterrent effect. Lester, D. "Executions As A Deterrent To Homicide", 44:562, 1979a and "Deterring Effect of Executions on Murder as a Function of Number and Proportion of Executions", 45:598, 1979b, both from *Psychol. Rep.* and Wasserman, L.: "Non-deterrent Effect of Executions on Homicide Rates", *Psychol. Rep.*, 58:137-138, 1981. The State of Delaware has the highest execution rate per capita and the lowest homicide rates. See B. 13, 15 and 17.
9. There are two rational conclusions one can make regarding deterrence. One, if the death penalty is not a deterrent, then we are executing our worst human rights violators. Two, if the death penalty is a deterrent, then we are executing those criminals **and** saving innocent lives. Regarding deterrence, it is necessary to err on the side of saving innocent life.
10. There are two mistakes we can make with those convicted of violent crimes. First, we can misjudge their character and keep them incarcerated too long, when they could have become constructive free persons, repaying even more their debt to society and to their victim(s). Secondly, we can misjudge their character and release them too soon, so that they further destroy the lives of our children, our brothers and sisters, our spouses and our parents, creating additional economic, physical, emotional and spiritual loss. For far too long, the U.S. has chosen to err on the side of those who have violated our human rights and has, thereby, expanded the river of blood and tears for victims and their survivors (See B.3). No more. Not in our name. We demand that the memories and suffering of crime victims be honored by justice - that is by a just punishment which reflects the severity of the crime. And, we must always err on the side of caution and compassion for those not yet harmed.
11. Opponents proclaim that the death penalty is a cruel and medieval policy, reflecting horrors that conflict with human dignity - a barbaric act so dreadful in its implications that we can hardly bear to contemplate its terrible character. On the

other hand, they also assert that potential murderers, when confronted with the horrors of execution, will not be deterred by its infliction upon them. That proposition is, of course, absurd on the face of it. Revised from M. Stanton Evans, *Clear and Present Danger*. Indeed, prisoners rate the death penalty as the most feared punishment, much more so than life without parole. Sehba, L. & Nathan, G., "Further Explorations in the Scale of Penalties," *British Journal of Criminology*, 24:221-249, 1984. See B.15.30 years of studies suggest that the death penalty is a general, or systemic, deterrent. (See works by Profs. D. Cloninger, S. Cameron, I. Ehrlich, W. Bailey, D. Lester, S. Layson, K. I. Wolpin, L. Phillips, S. C. Ray, S. Stack, etc.) Examples: a) A 1967-68 study revealed 27 states showed a deterrent effect (Bailey, W., 1974); b) The 1960's showed a rapid rise in all crimes, including murder, while both prison terms and executions declined (Passell, P. & Tarr, T., 1977; Bowers, W. & Pierce, G., 1975); c) Murder increased 100% during the U.S.'s moratorium on executions (Carrington, F., *Neither Cruel Nor Unusual*); d) 14 nations that abolished the death penalty showed that murder rates increased 7% from the 5 year pre-abolition period to the 5 year post abolition period (Archer, et al, 1977); e) A 37 state study showed that 24 states showed a deterrent effect, 8 states showed a brutalization effect and 5 states showed no effect (Bailey, W., 1979-80); and f) econometric studies indicate that each execution may deter 8 or more murders (Cameron, S., 1994). Although these studies have been produced by respected social scientists, there are also studies which show no general deterrent effect. Indeed, with the complexity of these studies and the number of variables required to accurately measure the absolute general effect of executions on murder rates, it is arguable if there ever will be a consensus on a cause and effect connection. Furthermore, with so few executions and so many murders, the general deterrent effect will likely remain statistically elusive. However, since the general deterrent effect is inconclusive, we must choose to use executions because they may save innocent life. Whereas, if we choose not to use executions we may be sacrificing innocent lives.

12. Regarding the deterrent affect of the death penalty, poet Hyam Barshay made the following observation, "The death penalty is a warning, just like a lighthouse throwing beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down." Prof. Ernest van den Haag, "On Deterrence and The Death Penalty", *Journal of Criminal Law, Criminology and Police Science*, vol. 60, no.2 (1969).
13. The individual deterrent effect is proven by hundreds, if not many thousands, of individual, fully documented cases where criminals have admitted that the death penalty was the specific threat which deterred them and/or others from committing murder. Indeed, one study showed that criminals, by a 5:1 ratio, believed that capital punishment was a significant enough deterrent to prevent them and/or others from murdering their victims (People vs Love, 56 Cal 2d 720 (1961), McComb, J. dissenting. see also: (A) "Controversy Over Capital Punishment", *Congressional Digest*, Jan., 73, p. 13; (B) L.A.P.D. study within Aikens vs Ca., No. 68-5027, Oct.

Term, 1971, U.S. Supreme Court; (C) Carol Vance, "The Death Penalty' After Furman", The Prosecutor, vol. 9, no. 4 (1973), p. 703; (D) Carrington, F., Neither Cruel Nor Unusual, Pgs. 92-100(1978); (E) Don Hooloschultz, "Gunman Slain, Hostages O.K.", Washington Star News, 8/23/73, p.A-1; (F) Jim Landers, "4 Guilty in Holdup Sentence", Washington Post, 12/8/73,p.B-1; (G) Larry Derryberry, "It Is The Fear That Death May Be The Punishment That Deters", Police Digest, Spring/Summer 1973, p.27, col.2. ; (H) "Langley says Texas death penalty affected his actions during escape", by Stephen Martin, The Daily Democrat (Ft. Madison, Iowa), 1/8/97, pg 1. Indeed, prisoners rate the death penalty as a much more severe penalty than they do life without parole (B.12). While it is difficult to prove a negative, i.e." How many murders does the death penalty cause not to occur?", there is absolute evidence that the individual deterrent effect of executions saves innocent lives. Extensive worldwide research on individual deterrence would, undoubtedly, reveal significant systemic deterrence. See B.9

14. Opponents state that if the death penalty was a deterrent then states that have the death penalty would have a reduced homicide rate. Delaware, which executes more murderers per capita than any other state in the U.S.A., also has the lowest homicide rates. Furthermore, general or systemic deterrence is not necessarily measured by low or reduced homicide rates, but by rates that are lower than they otherwise would be if the death penalty was not present. Additionally, some countries, such as Saudi Arabia, have swift and sure executions and very low violent crime rates. It is not surprising that the U.S., which executes only 0.06% of its murderers, does not overtly show a general deterrent effect. While most in the U.S. would not advocate criminal justice systems like that of Saudi Arabia, it is also very clear that our criminal justice system fosters the additional slaughter of its own innocent citizens.
15. The highest murder rate in Houston (Harris County), Texas occurred in 1981, with 701 murders. Texas reinstated the death penalty in 1982. Since that time, Houston (Harris County) has executed more murderers than any other city or state AND has seen the greatest reduction in murder, 701 in 1981 down to 261 in 1996 - a 63% reduction, representing a 270% differential! (FBI, UCR, 1982 & Houston Chronicle, 2/1/97, pg. 31A).

CONCLUSION

The test for deterrence is not whether executions produce lower murder rates, but that executions produce fewer murders than if the death penalty did not exist. For example, the fact that Delaware executes more people per capita (1/74,000) than any other state and has the lowest murder rate in the country (.5/100,000), a rate lower than virtually all European nations, is not proof, per se, of deterrence. Nor is the fact that Washington, D.C. has the highest murder rates (50/100,000) and highest violent crime rates (1,000/100,000) evidence, per se, that the lack of the death penalty increases all violence, including murder. Be careful how you explain and understand deterrence.

At worst, the general deterrent effect is inconclusive (B. 9, 13 & 16). There are 30 years

of respected academic studies which reveal a general deterrent effect. However, such general deterrence is inconclusive because there are also studies that find no general deterrent effect. Because this matter is inconclusive, we must choose the option that may save innocent lives. For, if there is a general deterrent effect and we don't execute murderers, we are sacrificing innocent lives. If there is not a general deterrent effect, and we continue to execute, then we are executing our worst human rights violators. If our judgment is in error regarding general deterrence, then such error must be made on the side of saving innocent lives and not on the side of sacrificing innocent lives. This is a moral imperative. Therefore, regarding general deterrence, we must execute. Additionally, there is no contradicting that the incapacitation effect saves lives - that is, that by executing murderers you prevent them from murdering again and, thereby, save innocent life. The evidence of this is conclusive and incontrovertible (B.1-4 & 7). Additionally, the individual deterrent effect absolutely saves innocent life (B. 9, 12 & 15). The individual effect represents those potential murderers, and/or their accomplices in crime, who state that they, and/or others, did not murder under specific circumstances because of their fear of execution. There are hundreds, if not thousands, of such documented cases, representing many innocent lives saved by the fear of execution. Circumstances dictate that the majority of these cases will never be documented and that the number of innocent lives saved by individual deterrence will be, and has been, much greater than we will ever be able to calculate.

C. RACE, SENTENCING AND THE DEATH PENALTY

One of opponents's most popular false claims is that it is the race of the victim which determines who is on death row. 82% of the murder victims in death penalty cases are white, 13% are black, or a 6:1 ratio (NAACP Legal Defense Fund (LDF), 1996). Opponents, such as Kica Matos, NAACP LDF, Steven Hawkins, Executive Director, National Coalition to Abolish the Death Penalty (NCADP) and Sr. Helen Prejean, longtime Chairperson of the NCADP and author (*Dead Man Walking*), present this fact as evidence that the "system" values white lives more than black lives. If true, then we must wonder why whites represent 56% of those executed, and blacks 38% (NAACP LDF, Summer 1996) when blacks have committed 47% of all murders, and whites 38% (Special run of 1930-1984 BJS data, 1/13/97, for non Hispanic whites and non Hispanic blacks. JFA calculations for known race/ethnicity.). From 1991-94, 34% of murderers have been white, 54% black (*ibid*).

Should we conclude that the "system" focuses its benevolence toward black murderers, but its racism against black victims? How absurd. Such false conclusions, by opponents, are expected and serve only to further undermine their quickly eroding credibility. Successful capital prosecutions have nothing to do with the race of the victim and everything to do with the nature of the crimes. The most thorough evaluation of this subject was presented in *McClesky vs Georgia* (Zant/Kemp), wherein Federal District Judge Owen Forester accurately found that "the best models which (McClesky expert) Baldus was able to devise... produce no statistically significant evidence that race (of the victim or of the

defendant) plays a part in either (the prosecution's or the jury's capital decisions).ä (580 Federal Supplement 338, p 368, 2/1/84).

Could it be that whites are, overwhelmingly, the victims in death row cases because whites are, overwhelmingly, the victims in capital crimes? The 8 most common capital crimes, by statute and by occurrence, are (1) murder of a police officer; (2) multiple victim murders; and murder combined with (3) rape; (4) sexual assault; (5) robbery; (6) burglary; (7) auto theft/car jacking; and (8) kidnaping. (BJS, 1996). What is the ratio of white to black victims under the relevant, but non-homicide circumstances, which, when combined with homicide, become capital crimes? (A) The most relevant economic violent crime is robbery with injury, which shows a 4:1 ratio of white victims to black victims (C.4.); (B) By a 5:1 ratio, whites are more likely to be victims of rape/sexual assault than are blacks (BJS, 1977-1984); (C) For all property crimes (theft, burglary, auto theft), there is a 7:1 ratio of white to black victims ("Sourcebook, 1994", BJS 1995, tables 3.21,3.25); (D) White victims make up 5 times the number of violent crime victims as black victims, or 5:1 (C.2); and, for homicides, which by themselves, qualify for the death penalty: (E) In death penalty states, police victim murders are capital crimes. From 1985-1994, 87% of murdered officers were white, 12% black, or 7:1 (Law Enforcement Officers Killed and Assaulted, FBI:UCR, 1994); (F) Whites make up a dominant percentage of multiple/serial murderers, whose victims are overwhelmingly white, thereby disproportionately and correctly raising the number of white victims in execution cases. In such death row cases, 87% of the victims are white, 13% black, or 7:1 (NAACP LDF data, 1996); (G) Many death row cases involve stranger murders. Whites make up 74% of all strangers, blacks 12%, or 6:1 (US Census); and (H) Research and appellate courts have confirmed that white victim murders are the most aggravated, thus, by statute, enhancing the likelihood of a death sentence in those cases (C.13, 15, & 17). These factors, and those below, within this paragraph 1, appear to be entirely consistent with the 6:1 ratio of white to black victims in capital cases.

But, wait, don't blacks and whites represent about an equal number of murder victims? Yes. However, capital crimes are very unique, combining murder with specific circumstance, such as subsets 1-8 and A-H., IF homicide rates are statistically consistent within subsets A-D, as McClesky vs Georgia and additional studies indicate (C. 10, 13, 14, 15, & 16; hereinafter McClesky et al), then it is subsets 1-8 and A-H, with additional required factors such as the murderer's criminal history and capital procedures (see F), which are confirmed to dictate the distribution of victims in these cases. Make no mistake, murder victims and capital murder victims are two very distinct groups. Capital statutes, crime statistics, aggravating factors and criminal history appear to accurately dictate the racial variation of murder victims in capital cases. See bold section of C.4.

Should we balance the scales of justice by changing the statutes so that we can execute equally the killers of blacks and whites? Only if you wish to dramatically increase the number of black murderers executed. 93% of all black murder victims are killed by blacks. On a case by case basis, black on black murders show significant enough mitigating factors,

that, by current statutes, this reduces the numbers of blacks who might otherwise be executed (BJS, 1976-94, McCleskey vs. Georgia (Zant/Kemp), Dr. Joseph Katz (Georgia State U.), etc.).

2) A comparison of only black or white perpetrators and victims reveals that whites are 5 times more likely to be the victims of a violent crime than are blacks, or 7.5 million vs 1.5 million ("Criminal Victimization, 1993", BJS, 1995.).

3) In 1994, death row inmates median level of education was the 12th grade. Of the 87 executed in 1994 and 1995, 50(57%) were white and 33(38%) were black. ("Cap. Pun. 1994-1995", BJS, 1995-1996).

4) From 1976-1995, 5 white murderers have been put to death for the murder of black persons and 101 black murderers have been put to death for the murder of white persons (NAACP LDF, 1996). Of course, opponents contend that this is evidence of racism in the "system". Equally predictable, that contention appears to be entirely false. That 101:5 ratio, or 20:1, is consistent with statistics that show aggravated crimes (those crimes committed prior to a murder which may make a crime eligible for the death penalty) are committed by blacks against whites in far greater numbers than by whites against blacks. For all violent crimes, there are ten times as many black offenders (2,016,939) involved in white victim violent crimes as there are white offenders (210,869) involved in black victim violent crimes, or a 10:1 ratio. (The State of Violent Crime in America, pg. 12, 1/96, data derived from Criminal Victimization in the U.S., 1993, BJS forthcoming, tables 42 and 48. JFA has assumed multiple offenders to be two offenders for calculation purposes.) In addition, blacks are nearly three times as likely to murder whites (849), as whites are to murder blacks (304), or 3:1 (Sourcebook 1994, BJS 1995, table 3.123). If murder rates are statistically consistent within the violent crime category, as McCleskey et al indicate, then blacks are, statistically, by a 30:1 (10:1 X 3:1) ratio, more likely to murder whites, than whites are to murder blacks, in those circumstances where an additional aggravating factor is present (see C.1.). These are those crimes most eligible for the death penalty. That statistically projected ratio of 30:1 is hardly inconsistent with the 20:1 ratio for black offender(s)/white victim vs white offender(s)/black victim executions. The most relevant aggravated crime is robbery with injury. Black offenders are 21 times more likely to be involved in such crimes as white offenders. This 21:1 ratio represents 1.4 million black offender(s)/white victim vs. 68,000 white offender(s)/black victim for robbery with injury crimes (JFA, using BJS, 1977-84 data). If overall murder statistics are consistent, within this crime category, as McCleskey et al suggests, then there is a 30-60:1 ratio of black on white vs white on black murders within this robbery/murder category. (From 1977-1984). A thorough evaluation of the data, in death penalty states, from 1973-84, of the 8 most prevalent capital crimes and statutes, the aggravated nature of those murders, and the criminal background of those murderers (as per Katz's evaluation in McCleskey vs Georgia and as per C.1.) is needed to present the most relevant and the most accurate analysis. Crimes committed in 1973-1984 are the most relevant to those executed from 1977-1995. Non-Hispanic whites and non-Hispanic blacks are the requested categories of offender/victim. See C.1, 13, 15 and 17.

5) 75% of blacks and 35% of whites believe that blacks are treated more harshly than whites by the criminal justice system. This is a deserved reputation, particularly in the South. Blacks have suffered some 400 years of slavery and blatantly racist criminal justice practices. From the practices of punishing blacks, who rape whites, with death and whites, who rape blacks, with a slap on the wrist, to the three trials needed to convict Byron de la Beckwith for the murder of civil rights leader Medgar Evers, generations of black Americans cannot and must not forget.

6) In 1994, in northeastern states, 36% of those on death row were white, 59% black. In southern states, 57% were white, 41% black (Capital Punishment 1994 ,BJS, 1995).

7) After examining 42,500 criminal files in the nations 75 largest counties, Patrick Langan (BJS) concluded that there was no evidence "...that, in the places where blacks in the U. S. have most of their contacts with the judicial system, that (the) system treats them more harshly than whites." (John DiIulio, Jr., "White Lies About Black Crime", The Public Interest, 1995. See also "Research on Sentencing", National Research Council, 1983.)

8) 93% of blacks are murdered by blacks; 83% of whites are murdered by whites
"Sbk. 94", BJS, 1995.

9) No evidence of system wide discrimination in the imposition of the death penalty exists beyond the 1950's. From 1929-66, white murderers were more likely to be executed than black murderers (10.4 vs 9.7/1000). This trend continues today.(C.I.) (Gary Kleck, "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty", American Sociological Review, 12/81.)

10) A study of the death penalty, as imposed by Harris County (Houston, Texas, USA) juries, since 1982, found that the death penalty was imposed on white and black murderers in proportion to the capital offenses committed by those race classifications(The Houston Post, 10/16/94).

11) Although blacks make up 12% of the US population, they comprise 44% of the prison population. (BJS, Prisoners in 1994). Researchers find a close relationship between the racial distribution in arrest and prison statistics and the race of offenders as described by crime victims. In other words, according to the reports from victims, racial groups are represented in prison according to their involvement in criminal activity. Although sentencing studies show that the offenders prior criminal record and the aggravated nature of the crime are the key factors in making imprisonment decisions, the racial aspects of crime and punishment should be continuously scrutinized. For example, Langan finds that in 1979 and 1982, blacks were over represented in prison by 16% and 15%, respectively. (Patrick Langan, Racism on Trial; New Evidence to Explain the Racial Composition of Prisons in the U.S. (1985). Also see Texas Crim. Jus. Policy Council, A Source Book of Arrest and Sentencing By Race, 1994; Al Blumstein, On The Racial Disproportionality of

U.S. Prison Populations, (1982); M. Hindelang, Crime Victimization (1976) and Race and Involvement (1978); U.S. General Accounting Office, Racial Differences in Arrests, 1/20/94.)

12) Whites are executed an average of 15 months quicker than blacks. ("Capital Punishment, 1995", BJS, 1996)

13) Legal variables, such as prior criminal history and the aggravated nature of the murder, are the proven basis for imposition of the death penalty. The black/white variation in sentencing has generally been reduced to zero when such legal variables are introduced as controls. ("Execution by Quota", The Public Interest, Sum. 1994; Also see Dr. Katz, "Statement to the Senate Subcommittee on the Judiciary Concerning the Relationship Between Race and the Death Penalty" 10/2/89).

14) In *McCleskey vs Georgia*, McCleskey's attorneys argued that the death penalty was racist in its application. The basis for that view was a study conducted by Profs. Baldus, Woodward and Pulaski. In August, 1983 Fed. District Court Judge J. Owen Forester found that the study's conclusions of racial bias were without merit. In 1985, the 11th Circuit Court of Appeals, by a 9-3 vote, stated "Viewed broadly, it would seem that the statistical evidence presented here, assuming its validity, confirms rather than condemns the (death penalty) system." In April 1987, the U.S. Supreme Court upheld that decision in a 5-4 vote, stating that the referenced study did not establish that capital punishment discriminates against black defendants or killers of white victims. The courts concluded that statistical evidence could not be used to determine prejudice. Each individual case must be judged on its own case facts. A thorough critique of the Baldus study was conclusive--the death penalty was not racist in application and that, for whatever reasons, white victim cases presented the most aggravating murders thus, by statute, increasing the likelihood of a death sentence (*McCleskey vs Georgia (Zant/Kemp)* & Dr. Joseph Katz, *Georgia State U.*).

15) The single, most vile strategy of death penalty opponents is their use of propaganda to nurture hatreds and mistrust between race and class. Bryan Stevenson, a well known opposition attorney with Equal Justice Initiative (Montgomery, Alabama) gives us an example of that strategy. He finds that the death penalty reflects the middle class's desire to strike out at the poor and racial minorities ("A Matter of Life and Death", *Christianity Today*, 8/14/95). Sister Helen Prejean joins this hideous chorus, proclaiming that "middle-class and upper middle-class white people...are so much for the death penalty (to) 'Keep those dangerous people (the poor and minorities) in their place.'" ("Opposing the Death Penalty", *AMERICA*, 11/9/96, pg. 12.) Clearly, these vile statements reveal only their prejudice. Prejean continues "It didn't take long to see that for poor people, especially poor black people, there was a greased track to prison and death row." (*The Progressive*, 1/96, p. 32(4) vol. 60, no. 1). These statements are grossly insulting to both the poor and to minorities. They are also completely false. Indeed, Sister Prejean is really saying that the

poor, especially poor black people, can't help themselves from committing capital murder! What a grotesque conclusion. Based on their active involvement in the death penalty debate, both Stevenson and Prejean should (must?) be aware that (1) the majority of those executed are white (C.1.); (2) Whites are executed in a disproportionately high number and blacks in a disproportionately low number, in relation to their perpetrating murder (C.1.); (3) since 1929, white murderers have been more likely to have been executed than black murderers (C.9.); (4) the majority of those on death row are white (NAACP LDF, 1996); (5) A study of the economic status of death row inmates showed that only 38% of those on Georgia's death row were poor (C.17).; (6) there is no evidence that capital murderers of different economic classes are over or under represented on death row (C.17); (7) whites are executed 15 months quicker than blacks. (C.12.); and (8) There appears to be no "race of the victim" effect. Capital murderers are executed primarily because of the aggravated nature of the crime(s). Period. (C.1. & C.4.) Both Stevenson and Prejean do hereby reflect either their unbelievable ignorance or their willful and foul deception. The reality is that over 99% of all persons, including poor minorities, do not commit capital crimes. And, there is, of course, no excuse for anyone that does.

16) Murderers are put to death, not based on the race or economic status of the victim or the murderer, but based upon the death penalty statutes, the aggravated nature of the crime, the criminal background of the murderer and the other specific factors mandated by the Furman and Gregg vs. Georgia cases, and by subsequent Supreme Court decisions. Since 1973, there is absolutely no credible evidence to support any other conclusion.

17) THE WEALTHY AND DEATH ROW - Contrary to opponents claims, there is no systemic evidence that wealthy capital murderers are less likely than their poorer ilk to receive the death penalty. Drawing only on personal knowledge, we found that since 1973, in Texas, alone, at least seven middle class to wealthy murderers have been put on death row. Four, Markum Duff Smith, George Lott, Robert Black, Jr., and Ronald O'Bryan have been executed. Three additional await execution. Don't forget John Wayne Gacy and Ted Bundy. Extensive, objective research would, undoubtedly, reveal many more. Furthermore, Dr. Joseph Katz found that, while 74% of all Georgia murder defendants were poor, only 38% of those on death row were poor (McCleskey vs. Georgia). Speculation: 10% of the U.S. population (23 million) can afford to pay the \$400,000* cost for their capital trial and appeals. Because financial need can be excluded, the category of wealthy capital murderer can be assumed to murder at a rate 10 times less than their poorer ilk. Fact: 0.20% of the U.S. population commits murder. 1.3% of those are sentenced to death. Only 5.9% of those have been executed. Therefore, the projected number of wealthy executed from 1976-1996 is 4, or $23 \text{ million} \times .1 \times .0020 \times .013 \times .059$. Using 1973-1996 data. Must see C. 1, 4, 13, 14 and 16.

*estimate based on opponents' cost claims (see E)

18) SEXISM AND THE DEATH PENALTY - Some claim that the death penalty is sexist. The ratio of men to women on death row (and executed) is 68:1, or 3400:50 (NAACP LDF, Spring 1996). Men committed 476,937 rapes, robberies and burglaries, women

47,357 or a 10:1 ratio. From 1976-94, men committed 7 times as many murders as women, or 7:1. (Sourcebook 194, BJS 195, tb.4.9 and 3.22). Therefore, it may be statistically predictable that men are, by a 70:1 ratio (10:1 X 7:1), more likely to be on death row than are women. Women appear to be on death row in numbers that would be expected. However, one would expect that 5 women would have been executed since 1976, when only 1 has been executed. Must see C. 1, 4, 13, 14 and 16.

D. CHRISTIANITY AND THE DEATH PENALTY

NOTE: Although not relevant to the legal application of the death penalty in the United States, religious issues are a significant thread within the moral debate. Biblical text is most relevant within a theocracy or a secular government which has laws that are consistent with biblical text. The United States does not, of course, fall within either category. This section is included only to counter the false claim that there is no New Testament support for capital punishment.

1) Virtually all religious scholars agree that the correctly translated commandment "Thou shalt not murder" is a prohibition against individual cases of murder. There is no biblical prohibition against the government imposition of the death penalty in deserving cases. Indeed, the government imposition of capital punishment is required for deliberate murder. (Dr. Charles Ryrie, *Biblical Answers to Contemporary Issues & The Ryrie Study Bible*, Exodus 20:13).

2) As the Hebrew Bible was consistent in prescribing death as a proper punishment for certain crimes, so too is the New Testament consistent with these earlier pronouncements. As Jesus described in the Sermon on the Mount, obedience to the law will be rewarded with life, disobedience with destruction. A God who rewards with life and punishes with death is One whose laws provide for death as a judicial punishment. Prof. Baruch Levine, "Capital Punishment," p31, *What the Bible Really Says*, ed. Smith & Hoffman, 1993.

3) "If no crime deserves the death penalty, then it is hard to see why it was fitting that Christ be put to death for our sins and crucified among thieves. St. Thomas Aquinas quotes a gloss of St. Jerome on Matthew 27: "As Christ became accursed of the cross for us, for our salvation He was crucified as a guilty one among the guilty." That Christ be put to death as a guilty person, presupposes that death is a fitting punishment for those who are guilty." Prof. Michael Pakaluk, *The Death Penalty: An Opposing Viewpoints Series Book*, 1991.

4) "The same divine law which forbids the killing of a human being allows certain exceptions. Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment "Thou shalt not kill," for the representative of the State's authority to put criminals to death, according to the Law or the rule of rational justice." St. Augustine, *The City of God*, Book 1, Chapter 21.

5) "Nowhere does the Bible repudiate capital punishment for premeditated murder; not only is the death penalty for deliberate killing of a fellow human being permitted, but it is approved and encouraged, and for any government that attaches at least as much value to the life of an innocent victim as to a deliberate murderer, it is ethically imperative." Prof. Carl F. H. Henry, *Twilight Of A Great Civilization*, 1988.

6) "It is because humans are created in the image of God that capital punishment for premeditated murder was a perpetual obligation. The full range of biblical data weighs in its favor. This is the one crime in the Bible for which no restitution was possible (Numbers 35:31,33). The Noahic covenant recorded in Genesis 9 antedates Israel and the Mosaic code; it transcends Old Testament Law, per se, and mirrors ethical legislation that is binding for all cultures and eras. The sanctity of human life is rooted in the universal creation ethic and thus retains its force in society. The Christian community is called upon to articulate standards of biblical justice, even when this may be unpopular. Capital justice is part of that non-negotiable standard. Society should execute capital offenders to balance the scales of moral judgement." From "Capital Punishment: A Personal Statement", by Charles W. Colson., a former opponent, who is the Founder of Prison Fellowship, the largest Christian ministry serving incarcerated prisoners. Ph. 703-478-0100.

7) St. Thomas Aquinas finds all biblical interpretations against executions frivolous, citing Exodus 22:18, "wrongdoers thou shalt not suffer to live." Unequivocally, he states, "The civil rulers execute, justly and sinlessly, pestiferous men in order to protect the peace of the state." (*Summa Contra Gentiles*, III, 146.)

8) "God, Himself, instituted the death penalty (Genesis 9:6) and Christ regarded capital punishment as a just penalty for murder (Matthew 26:52). God gave to government the legitimate authority to use capital punishment to restrain murder and to punish murderers. Not to inflict the death penalty is a flagrant disregard for God's divine Law which recognizes the dignity of human life as a product of God's creation. Life is sacred, and that is why God instituted the death penalty. Consequently, whoever takes innocent human life forfeits his own right to live." Protestant scholar Rev. Reuben Hahn (Mt. Prospect, Ill.), *Human Events*, 3/2/85.

9) "The fact that the evil, as long as they live, can be corrected from their errors does not prohibit the fact that they may be justly executed, for the danger which threatens from their way of life is greater and more certain than the good which may be expected from their improvement. They also have at that critical point of death the opportunity to be converted to God through repentance. And if they are so stubborn that even at the point of death their heart does not draw back from evil, it is possible to make a highly probable judgement that they would never come away from evil to the right use of their powers." St. Thomas Aquinas, *Summa Contra Gentiles*, Book III, 146.

10) The movie *Dead Man Walking* reveals a perfect example of how just punishment and

redemption can work together. Had rapist/murderer Matthew Poncelet not been properly sentenced to death by the civil authority, he would not have met Sister Prejean, he would not have received spiritual instruction, he would not have taken responsibility for his crimes and he would not have reconciled with God. Had Poncelet never been caught or had he only been given a prison sentence, his character makes it VERY clear that those elements would not have come together. Indeed, for the entire film and up until those last moments, prior to his execution, Poncelet was not fully truthful with Sister Prejean. His lying and manipulative nature was fully exposed at that crucial time. It was not at all surprising, then, that it was just prior to his execution that all of the spiritual elements may have come together for his salvation. It was now, or never. Truly, just as St. Aquinas predicted (D.9.), it was his pending execution which finally led to his repentance. For Christians, the most crucial concerns of *Dead Man Walking* must be and are redemption and eternal salvation. And, for that reason, it may well be, for Christians, the most important pro-death penalty movie ever made.

We cannot know if the fictitious Poncelet, or the two real murderers from the book, really did repent and receive salvation. But, we do know that St. Thomas Aquinas advises us that such murderers should not be given the benefit of the doubt. We should err on the side of caution and not give murderers the opportunity to harm again. Indeed, as Dr. W.H. Baker confirms in the excellent *On Capital Punishment* (Moody Press, 1985), biblical text finds that it is a violation of God's mandate not to execute premeditated murderers - and nowhere does the text contradict this finding.

11) In his 1995 encyclical, *The Gospel of Life* (*Evangelium Vitae*), Pope John Paul II finds that the only time executions can be justified is when it is required "to defend society" and that such instances are "very rare, if not practically nonexistent". The Pope is in error. Such instances are neither non-existent nor rare. In this context, "to defend society" means that the execution of the murderer must save future lives. In other words, both the incapacitation (execution) of that specific murderer and the deterrent effect on potential future murderers must be shown "to defend society". It is already well known that murderers murder again, often time and time again - in prison, after escape, after release and, of course, after being caught, but not incarcerated. Unequivocally, incapacitation saves lives (see B. 1-4, 7, & 11). Individual deterrence (as opposed to general, or systemic, deterrence) is confirmed and cannot be contradicted (see B. 8-10 & 12-17). Therefore, executing murderers does "defend society". Furthermore, although the general, or systemic, deterrent effect is challenged, we must choose to execute because of the requirement to save innocent life. (B. 10). This encyclical is curious in additional areas, as well. Overwhelmingly, God mandates capital punishment for premeditated murder, not as a deterrent, but as the required expiation for the sin of murder. Two thousand years of tradition and instruction by the Catholic Church supports that interpretation. Additionally, Catholic biblical interpretation, tradition and natural law all seem to concur on this point, generally, and specifically through the writings of Saint Thomas Aquinas. Although Romans 13:4 and some respected Catholic writings reveal the deterrence consideration, such