

ALASKA LEGISLATURE

1762

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

## FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

### ANALYSIS: (continued)

#### Introduction

HB 131 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

## FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO SB 60

the potential for execution.

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

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

(at p. 73; footnotes omitted).

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;

## FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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 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. 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

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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 very well might understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

(Analysis continues on next page)

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

Fiscal Impact--FY 98

First Year Cost Summary

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

OBJECT	(2) Atty V	(2) Atty IV	(2) Assoc Atty I	(2) Invest	(2) Paralegal	(2) Sec I	Total
100 - Salaries & Benefits	193.4	181.6	117.3	122.8	108.1	76.9	800.1
	193.4	181.6	117.3	122.8	108.1	76.9	800.1
200 - Travel							
Staff Travel & Per Diem	15.0	15.0	10.0	15.0	10.0	6.0	71.0
	15.0	15.0	10.0	15.0	10.0	6.0	71.0
300 - Contractual							
Communications	7.2	7.2	2.4	7.2	2.4	2.4	28.8
Copy & Discovery	11.2	11.2	11.2	11.2	11.2	11.2	67.2
Office Space Leases	10.0	10.0	5.0	5.0	5.0	3.0	38.0
PC Network Maint.	3.0	3.0	3.0	3.0	3.0	3.0	18.0
Westlaw	2.4	2.4	2.4	0.0	2.4	0.0	9.6
	33.8	33.8	24.0	26.4	24.0	19.6	161.6
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	1.2	2.4	0.0	10.8
New Position Supplies	3.0	3.0	3.0	3.0	3.0	3.0	18.0
	9.0	9.0	9.0	7.8	9.0	5.4	49.2

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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
	13.0	13.0	13.0	13.0	13.0	13.0	78.0

TOTAL	264.2	252.4	173.3	185.0	164.1	120.9	1159.9
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Second Year Cost Summary  
Additional Costs

Development of Capital Appellate Team in Anchorage

OBJECT	(1) Atty V	(1) Atty IV	(1) Paralegal	(1) Secretary	Total
100 - Salaries & Benefits	90.6	85.1	53.1	37.8	266.6
	90.6	85.1	53.1	37.8	266.6
200 - Travel					
Staff Travel & Per Diem	3.5	3.5	2.5	0.0	9.5
	3.5	3.5	2.5	0.0	9.5
300 - Contractual					
Communications	4.0	4.0	2.4	2.4	12.8
Copy & Discovery	18.0	18.0	9.0	0.0	45.0
Office Space Leases	5.6	5.6	5.6	5.6	22.4
PC Network Maint.	2.4	2.4	2.4	0.0	7.2
Westlaw	1.5	1.5	1.5	1.5	6.0
	31.5	31.5	20.9	9.5	93.4

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

400 - Supplies

Office Supplies	1.8	1.8	1.8	1.2	6.6
Law Library	3.6	1.2	1.2	0.0	6.0
New Position Supplies	1.5	1.5	1.5	1.5	6.0
	<b>6.9</b>	<b>4.5</b>	<b>4.5</b>	<b>2.7</b>	<b>18.6</b>

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
	<b>6.5</b>	<b>6.5</b>	<b>6.5</b>	<b>6.5</b>	<b>26.0</b>

TOTAL	139.0	131.1	87.5	56.5	414.1
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Third Year Cost Summary  
Additional Costs

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

OBJECT	(3) Atty V	(1) Atty IV	(1)Assoc Atty I	(2) Invest	(1) Paralegal	(3) Sec I	Total
100 - Salaries & Benefits	296.2	96.5	54.9	122.8	55.0	116.0	741.4
	<b>296.2</b>	<b>96.5</b>	<b>54.9</b>	<b>122.8</b>	<b>55.0</b>	<b>116.0</b>	<b>741.4</b>
200 - Travel							
Staff Travel & Per Diem	18.5	2.5	5.0	15.0	2.5	6.0	49.5
	<b>18.5</b>	<b>2.5</b>	<b>5.0</b>	<b>15.0</b>	<b>2.5</b>	<b>6.0</b>	<b>49.5</b>

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

300 - Contractual

Communications	11.2	4.0	3.6	7.2	2.4	4.8	33.2
Copy & Discovery	28.0	18.0	5.0	5.0	9.0	3.0	68.0
Office Space Leases	16.8	5.6	5.6	11.2	5.6	16.8	61.6
PC Network Maint.	4.8	2.1	1.2	0.0	2.4	0.0	10.8
Westlaw	4.5	1.5	1.5	1.5	1.5	4.5	15.0
	<b>65.3</b>	<b>31.5</b>	<b>16.9</b>	<b>24.9</b>	<b>20.9</b>	<b>29.1</b>	<b>188.6</b>

400 - Supplies

Office Supplies	5.4	1.8	1.8	3.6	1.8	3.6	18.0
Law Library	3.6	1.2	1.2	1.2	1.2	0.0	8.4
New Position Supplies	4.5	1.5	1.5	3.0	1.5	4.5	16.5
	<b>13.5</b>	<b>4.5</b>	<b>4.5</b>	<b>7.8</b>	<b>4.5</b>	<b>8.1</b>	<b>42.9</b>

500 - Equipment

New Position Equipment	7.5	2.5	2.5	5.0	2.5	7.5	27.5
Personal Computer	12.0	4.0	4.0	8.0	4.0	12.0	44.0
	<b>19.5</b>	<b>6.5</b>	<b>6.5</b>	<b>13.0</b>	<b>6.5</b>	<b>19.5</b>	<b>71.5</b>

TOTAL	413.0	141.5	87.8	183.5	89.4	178.7	1093.9
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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

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

Witness fees	=	10.0
\$2,500 per case x 4 cases		
Deposition/Court Reporter charges	=	80.0
\$20,000 per case x 4 cases		
Training and Consultation	=	50.0

Second Year: 6 Trials plus 4 Appeals

Expert Witness Fees	=	360.0
\$60,000 per case x 6 cases		
Witness travel and per diem	=	300.0
\$50,000 per case x 6 cases		
Witness fees	=	15.0
\$2,500 per case x 6 cases		
Deposition/Court Reporter charges	=	120.0
\$20,000 per case x 6 cases		
\$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	=	420.0
\$60,000 per case x 7 cases		
Witness travel and per diem	=	350.0
\$50,000 per case x 7 cases		
Witness fees	=	17.5
\$2,500 per case x 7 cases		
Deposition/Court Reporter charges	=	140.0
\$20,000 per case x 7 cases		
\$30,000 per case x 6 case	=	180.0
Training and Consultation	=	50.0

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. S . 60

Cumulative Cost Summary

OBJECT	Year 1	Year 2	Year 3	Year 4
100 - Salaries & Benefits	800.1	1066.7	1808.1	1808.1
	<u>800.1</u>	<u>1066.7</u>	<u>1808.1</u>	<u>1808.1</u>
200- Travel				
Staff Travel	71.0	80.5	130.0	130.0
Witness Travel	200.0	300.0	350.0	350.0
	<u>271.0</u>	<u>380.5</u>	<u>480.0</u>	<u>480.0</u>
300 - Contractual				
Staff Contractual	161.6	255.0	443.6	443.6
Outside Services	380.0	665.0	807.5	807.5
	<u>541.6</u>	<u>920.0</u>	<u>1251.1</u>	<u>1251.1</u>
400 - Supplies	49.2	57.2	94.1	53.6
	<u>49.2</u>	<u>57.2</u>	<u>94.1</u>	<u>53.6</u>
500 - Equipment	78.0	26.0	71.5	17.5
	<u>78.0</u>	<u>26.0</u>	<u>71.5</u>	<u>17.5</u>
Total	1739.9	2450.4	3704.8	3610.3
PFT	12.0	16.0	27.0	27.0

**FISCAL NOTE**

No. 4

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

Bill Version: SB 60

(S) Publish Date: 3-24-97

Revision Date: \_\_\_\_\_  
 Title: "An Act providing for an advisory vote on the issue of capital punishment."  
 Sponsor: Senator Taylor  
 Requestor: Senate Judiciary

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy

**COMPONENT SERIAL NO. 43**

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

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	.	.	.	.	.	.

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	.	.	.	.	.	.

estimate of any current year (FY 97) cost: \$ 0

**POSITIONS:**

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.) Should legislation subsequently be enacted, the following fiscal analysis applies. 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. (See attached)

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

Phone: 269-3500  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Bover  
 Agency: Administration

*Mark Bover*  
 Date: 3/19/97

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FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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 (nonlawyer) 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.

OPA assumes that it will have only one or less conflict 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 97 budget of \$7,439.6 for over 10,000 cases.

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 02

Personal Services - Anchorage

Salary and Benefits for 9 current positions	\$ 569.5
Attorney IV - Salary and Benefits	<u>85.1</u>

**Subtotal Personal Services** 654.6

Travel

Staff Travel and Per Diem	40.0
Witness Travel and Per Diem	<u>150.0</u>

**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	<u>50.0</u>

**Subtotal Contractual Services** 1169.6

Supplies

Office Supplies	16.8
Law Library	12.0
New Position Supplies	<u>1.5</u>

**Subtotal Supplies** 30.3

Equipment

New Position Equipment	2.5
Computer Equipment	<u>4.0</u>

**Subtotal Equipment** 6.5

**TOTAL FY 02** \$2051.0

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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

No. 1  
 Bill Version: SB100  
 (S) Publish Date: 3/11/97

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act providing for an advisory vote on the BRU: Criminal Division  
issue of capital punishment." Component: Criminal Division  
 Sponsor: Senator Taylor  
 Requester: Senate Judiciary COMPONENT SERIAL NO. 2085

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			85.0	834.1	1,265.1	1,265.1
TRAVEL			243.5	465.0	590.0	590.0
CONTRACTUAL			416.8	1,023.4	1,446.9	1,336.9
SUPPLIES			32.4	43.8	62.7	52.2
EQUIPMENT			52.0	39.0	45.5	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>1,229.7</b>	<b>2,405.3</b>	<b>3,410.2</b>	<b>3,244.2</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF			1,229.7	2,405.3	3,410.2	3,244.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>1,229.7</b>	<b>2,405.3</b>	<b>3,410.2</b>	<b>3,244.2</b>

Estimate of any current year (FY97) cost: \* 0.0

**POSITIONS**

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	8.0	14.0	21.0	21.0
PART-TIME						
TEMPORARY						

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

HB 131 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.)

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370  
 Division: Administrative Services Division Date: 3/10/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/10/97  
 Agency: Department of Law

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## FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

### ANALYSIS CONTINUATION:

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

#### 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  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

### 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 an average of 9.6 years elapses from the time a death penalty sentence is imposed to the time the sentence is carried out.

### Implementation

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

During the first year, it will be necessary to add 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  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

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  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

### 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 subsistence, \$50,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees, \$60,000 per case.
- 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.

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
Cost Summary (First Year, Capital Trials)

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

OBJECT	(1) <u>Atty V</u>	(2) <u>Atty IV</u>	(2) Assoc <u>Atty I</u>	(1) <u>P/A II</u>	(2) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	166.8	101.1	52.5	75.8	485.0
	<u>88.8</u>	<u>166.8</u>	<u>101.1</u>	<u>52.5</u>	<u>75.8</u>	<u>485.0</u>
200 - Travel						
Staff Travel & Per Diem	7.5	15.0	10.0	5.0	6.0	43.5
	<u>7.5</u>	<u>15.0</u>	<u>10.0</u>	<u>5.0</u>	<u>6.0</u>	<u>43.5</u>
300 - Contractual						
Communications, Copy	3.6	7.2	4.8	2.4	4.8	22.8
Office Space Leases	5.6	11.2	11.2	5.6	11.2	44.8
PC Network Maintenance	1.5	3.0	3.0	1.5	3.0	12.0
Westlaw	1.2	2.4	2.4	1.2	0.0	7.2
	<u>11.9</u>	<u>23.8</u>	<u>21.4</u>	<u>10.7</u>	<u>19.0</u>	<u>86.8</u>
400 - Supplies						
Office Consumables	1.8	3.6	3.6	1.8	2.4	13.2
Law Library	1.2	2.4	2.4	1.2	0.0	7.2
New Position Supplies	1.5	3.0	3.0	1.5	3.0	12.0
	<u>4.5</u>	<u>9.0</u>	<u>9.0</u>	<u>4.5</u>	<u>5.4</u>	<u>32.4</u>
500 - Equipment						
New Position Equipment	2.5	5.0	5.0	2.5	5.0	20.0
Personal Computer	4.0	8.0	8.0	4.0	8.0	32.0
	<u>6.5</u>	<u>13.0</u>	<u>13.0</u>	<u>6.5</u>	<u>13.0</u>	<u>52.0</u>
<b>TOTAL</b>	<b>119.2</b>	<b>227.6</b>	<b>154.5</b>	<b>79.2</b>	<b>119.2</b>	<b>699.7</b>

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
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>			
	(1) <u>Atty IV</u>	(1) Assoc <u>Atty I</u>	(1) <u>Sec I</u>	TOTAL	(1) <u>Atty IV</u>	(1) <u>P/A II</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
200 - Travel								
Staff Travel & Per Diem	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
300 - Contractual								
Communications, Copy	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Office Space Leases	5.6	5.6	5.6	16.8	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
Westlaw	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
	11.9	11.9	9.5	33.3	11.9	11.9	9.5	33.3
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	2.5	2.5	2.5	7.5
Personal Computer	4.0	4.0	4.0	12.0	4.0	4.0	4.0	12.0
	6.5	6.5	6.5	19.5	6.5	6.5	6.5	19.5
<b>TOTAL</b>	<b>113.8</b>	<b>78.5</b>	<b>59.6</b>	<b>251.9</b>	<b>113.8</b>	<b>80.4</b>	<b>59.6</b>	<b>253.8</b>

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
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>			
	(1) <u>Atty V</u>	(1) Assoc <u>Atty I</u>	(1) <u>Sec I</u>	TOTAL	(2) <u>Atty IV</u>	(1) <u>P/A II</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
200 - Travel								
Staff Travel & Per Diem	3.5	2.5	0.0	6.0	7.0	2.5		9.5
	3.5	2.5	0.0	6.0	7.0	2.5	0.0	9.5
300 - Contractual								
Communications, Copy, Document Production	22.4	22.4	2.4	47.2	44.8	22.4	2.4	69.6
Office Space Leases	5.6	5.6	5.6	16.8	11.2	5.6	5.6	22.4
PC Network Maintenance	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
Westlaw	2.4	2.4	0.0	4.8	4.8	2.4	0.0	7.2
	31.9	31.9	9.5	73.3	63.8	31.9	9.5	105.2
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	3.6	1.8	1.2	6.6
Law Library	1.2	1.2	0.0	2.4	2.4	1.2	0.0	3.6
New Position Supplies	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
	4.5	4.5	2.7	11.7	9.0	4.5	2.7	16.2
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	5.0	2.5	2.5	10.0
Personal Computer	4.0	4.0	4.0	12.0	8.0	4.0	4.0	16.0
	6.5	6.5	6.5	19.5	13.0	6.5	6.5	26.0
<b>TOTAL</b>	<b>135.2</b>	<b>96.0</b>	<b>56.6</b>	<b>287.8</b>	<b>259.6</b>	<b>97.9</b>	<b>56.6</b>	<b>414.0</b>

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
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  
1997 LEGISLATIVE SESSION

BILL NO. SB 6

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
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
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ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
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	485.0	656.9	830.6	830.6	0.0	177.3	434.4	434.4
	485.0	656.9	830.6	830.6	0.0	177.3	434.4	434.4
200 - Travel								
Staff Travel & Per Diem	43.5	59.0	74.5	74.5	0.0	6.0	15.5	15.5
Witness Travel	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
	243.5	459.0	574.5	574.5	0.0	6.0	15.5	15.5
300 - Contractual								
Staff Contractual	86.8	120.1	153.4	153.4	0.0	73.3	178.5	178.5
Outside Services	330.0	660.0	825.0	825.0	0.0	170.0	290.0	180.0
	416.8	780.1	978.4	978.4	0.0	243.3	468.5	358.5
400 - Supplies	32.4	32.1	39.3	34.8	0.0	11.7	23.4	17.4
	32.4	32.1	39.3	34.8	0.0	11.7	23.4	17.4
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
<b>TOTAL</b>	<b>1,229.7</b>	<b>1,947.6</b>	<b>2,442.3</b>	<b>2,418.3</b>	<b>0.0</b>	<b>457.8</b>	<b>967.8</b>	<b>825.8</b>
<b>PFT</b>	<b>8</b>	<b>11</b>	<b>14</b>	<b>14</b>	<b>0</b>	<b>3</b>	<b>7</b>	<b>7</b>

# FISCAL NOTE

No. 2  
 Bill Version: SB60  
 (S) Publish Date: 3/11/97

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: "An Act providing for an advisory vote on the BRU: Statewide Programs  
issue of capital punishment" Component: Spring Creek Correctional Center  
 Sponsor: Senator Taylor  
 Requester: Senate Judiciary COMPONENT SERIAL NO. #0772

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

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			68.4	68.4		
TRAVEL						
CONTRACTUAL			1,665.0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				350.0	2,305.4	2,305.4
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>1,733.4</b>	<b>418.4</b>	<b>2,305.4</b>	<b>2,305.4</b>

CAPITAL EXPENDITURES				9,435.0		
----------------------	--	--	--	---------	--	--

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF			1,733.4	9,853.4	2,305.4	2,305.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>1,733.4</b>	<b>9,853.4</b>	<b>2,305.4</b>	<b>2,305.4</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME			1	31	30	30
PART-TIME						
TEMPORARY						

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

Please see attached explanation.

Prepared by: Bruce Richards Phone: 465-3307  
 Division: Commissioner's Office Margaret M. Pugh Date: 3/9/97  
 Approved by Commissioner: Margaret M. Pugh Date: 3/9/97  
 Agency: Department of Corrections

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Assumptions

1. This fiscal note is based on the assumption the proposed advisory vote is approved by the residents of Alaska during the next general election. It further contemplates that the Alaska Legislature would enact a capital punishment law following such an advisory vote.
2. The Dept. of Law estimates that six individuals per year would be prosecuted and sentenced to death for first degree murder. Other states who have instituted the death penalty statute indicate that an individual convicted of a capital felony remains on death row for approximately ten years before execution. Using this estimate the Department of Corrections (DOC) would be required to construct a death row facility capable of housing 60 inmates. The death row facility would require construction that is of the highest security standards. The cost of this type of facility is estimated at \$180,000.00 per bed. The DOC does not expect to house prisoners until the year FY02. Engineering and design (E&D) would begin in FY00. The costs for E&D would be transferred to DOT & PF via an RSA. These costs are estimated to be 15% of the total cost of construction.
4. The DOC would be required to construct an execution facility for administration of the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility is estimated to be in excess of \$300,000.00 assuming it would be built in conjunction with the death row facility.
5. The DOC would not house death row inmates until FY02. A Facilities Manager I position is required to manage the DOC responsibilities in the planning and design phase. This position would begin in FY00 and remain in place until completion of the project in FY02. The cost of this position is \$68.4 per year.
6. Actual operation of the death row facility would begin in FY02, with staff hiring and training to begin in FY01. This cost is estimated to be \$350,000.00. Staffing of the new facility would require twenty-five correctional officers, and five administrative support staff. The average daily cost of housing an inmate is \$105.27 and is shown in the miscellaneous line.

**Construction Costs**

60 bed death row X \$180,000 per bed + \$300,000 execution facility = \$11,100,000.00

.15 X \$11,100,000 = \$1,665,000 for E&D in FY00

\$11,100,000 total cost - \$1,665,000 E&D = \$9,435,000 for facility completion in FY01

**Operating Costs**

60 beds X \$105.27 per day X 365 days = \$2,305,413 in FY02 and continuing into the future.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 3  
Bill Version: SB 60  
(S) Publish Date: 3/11/97

Revision Date \_\_\_\_\_ Dept. Affected Office of the Governor  
Title Advisory Vote on Capital Punishment BRU Elective Operations  
Component General and Primary Elections  
Sponsor Senator Taylor  
Requester Senate Judiciary Component Serial No. #22

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

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: none

**POSITIONS**

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Full-time		0				
Part-time		0				
Temporary		0				

**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 Dana LaTour Phone 465-5347  
Division Division of Elections Date 3/7/97  
Approved by Co Lt. Governor Fran Ulmer Date 3/7/97  
Agency Office of the Lieutenant Governor

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Moved by Tolerson w/ ind. rec.  
Adams, Sharp object  
MOTION CARRIED by 6/1 VOTE  
0-LS0409A

**SENATE BILL NO. 60**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY SENATORS TAYLOR, Pearce**

**Introduced: 1/24/97**

**Referred: Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act providing for an advisory vote on the issue of capital punishment."

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

3 \* **Section 1.** The lieutenant governor shall place before the qualified voters of the state at  
4 the next general election the question advisory to the legislature of whether the legislature  
5 should enact a law providing for capital punishment for murder in the first degree. The  
6 question shall appear on the ballot in substantially the following form:

7 **QUESTION**

8 Shall the Alaska State Legislature enact a law providing for capital  
9 punishment for murder in the first degree and establishing procedures for the  
10 imposition of capital punishment that are consistent with the United States  
11 Constitution as interpreted by the United States Supreme Court?

i2 Yes [ ] No [ ]

SENATE FINANCE  
COMMITTEE  
Amendment Number: 1  
Bill Number: SB 60  
Sponsor: Adams Date: 4-9-97  
AMENDMENT  
Logged in By: Adams

Moved by Adams  
Torgerson, Sharp OBS  
110 REF JJA FAILED  
Torgerson, SI

TO: SB 60

BY SENATOR ADAMS

Page 1, line 8:

Delete "shall"

Insert "If the Alaska State Legislature enacts a law providing for capital punishment for murder, the following annual costs to the following state agencies are estimated to result:

(INSERT FISCAL COSTS)

Considering this, shall"

Page 1, following line 12:

Insert a new bill section to read:

"\* Sec. 2. Each department that expects to be affected by the enactment of a law providing for capital punishment for murder in the first degree shall submit an estimate of that fiscal impact to the lieutenant governor not less than 180 days before the time the question in sec. 1 of this Act will appear on the ballot. The lieutenant governor shall insert those estimates into the question at the place shown in sec. 1 of this Act."

Moved by Adams  
Objections Heeded  
Vote V. Failed  
By Adams

SEN. BILL 60

AMENDMENT BY SENATOR ADAMS TO SENATE BILL 13

SENATE FINANCE  
COMMITTEE

Amendment Number: 2  
Bill Number: SB60  
Sponsor: Adams Date: 4-1-97  
Logged In By: [Signature]

PAGE 1, LINES 1 THROUGH 12, DELETE ALL MATERIAL

INSERT:

"An Act directing an advisory vote on whether the Alaska State Legislature should provide by law for life imprisonment without possibility of parole for the crime of murder in the first degree or provide by law for the death penalty for the crime of murder in the first degree or retain the existing penalty for the crime of murder in the first degree."

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

\*Section 1. ADVISORY VOTE AUTHORIZED. The lieutenant governor shall place before the qualified voters of the state at the next statewide general election the question advisory to the legislature of whether the legislature should provide by law for life imprisonment without the possibility of parole for the crime of murder in the first degree, whether the legislature should provide by law for the death penalty for the crime of murder in the first degree, or whether the legislature should retain the existing penalty for the crime of murder in the first degree. The question shall appear on the ballot in substantially the following form:

QUESTION

Which one of the following alternatives should the legislature provide by law for the crime of murder in the first degree?

- ] Life imprisonment without possibility of parole
- ] Death penalty
- ] Retain the 20-99 year sentence in current law

I oppose Senate Bill 60, which calls for an advisory vote on the death penalty because I can think of no public issue for which an advisory vote is less appropriate, unless your concern is purely about the politics of the matter. I oppose the bill also because I believe it to be a strategic move, designed to move Alaska closer to reinstatement of the death penalty. I have had more than forty years experience in the criminal justice field, and quite a lot of personal contact with extremely brutal murderers. My advice to you is 'don't do it; don't move our state any closer to reinstating the death penalty.' Base my objection on eight primary factors.

**(1.) The death penalty may make our community less safe from brutal crime:** In 1969 Glenn Pierce and William Bowers, both of them criminologists at Northeastern University, published a report on their comprehensive study of the death penalty in New York State from 1907 to 1964. 692 executions were carried out during this 57 year period. During these 57 years, each of the months in which one or more executions were carried out, was followed by an average increase of two additional homicides. As a result of these numbers and other disturbing particulars arising from their study, Dr. Pierce and Dr. Bowers had no choice other than postulate that publicized executions, rather than having a deterrent effect, are inclined to incite persons who are predisposed to violent crime. My own experience, especially with pathologically violent individuals, causes me to suspect that this phenomenon might be true.

**(2.) Capriciousness:** It is highly unlikely that the one person executed out of each 200 convicted of murder is the one who committed the most heinous, brutal murder. (Actually, one execution for every 1,600 murders committed.) Decisions to proceed with death penalty prosecution depend on other considerations. Those who argue that the death penalty is needed in order to exact "retribution" should be reminded that retribution does not necessarily fall on those who deserve it most. They should also be reminded of what the Bible has to say about *vengeance*.

And while we are speaking of the Bible those who would like to justify the death penalty on the basis on Holy Scripture, need to ask themselves why it is that the Alaska Christian Conference, the National Council of Churches, every major Protestant denomination save one, the Roman Catholic Bishops, the Quakers, the Mennonites, the American Jewish Committee, all condemn the death penalty.

**(3.) Destructive effect of the death penalty on the families of victims:** In states where the death penalty is imposed, the offender will remain on death row anywhere from five to twenty years (an average of 11 yrs. 2 mos. in 1996.) Like it or not, the requirements of *Gregg v. Georgia* make such delays inevitable. The families of victims, therefore, must undergo a cruel, embittering, oftentimes destructive experience, lasting many years. This is one of the reasons why *Murder Victim's Families for Reconciliation* is such a powerful and useful organization. In Alaska persons convicted of aggravated first-degree murder are typically given sentences that are the equivalent of life without parole. The appeal process that follows such a sentence is not protracted. Therefore, in Alaska, as in other non-death penalty states, the families of the victims can begin putting closure to their grief not long after the conviction.

**(4.) Mistaken conviction (execution of the innocent):** Who would deny this statement? Not every person executed in the U.S. during the life time of most of us was guilty of the crime for which he was convicted. Furthermore, even ardent proponents of the death penalty do not deny the probability- or certainly the possibility- that innocent persons are among the 3500 on death row across the country. Between 1973 and 1996 5900 persons were sentenced to death; 358 were executed during that period. About 3500 remain on death row, which means that about 2000 death penalty sentences have been commuted or set aside. If you wish, I can provide you with specific information on 58 inmates freed

from death row since 1976 because of strong evidence of innocence. The fact of the matter is that we simply do not know how many innocent people may have been executed, or are on death row today.

**(5.) Bias against poor people and people of color:** An offender is four times more likely to be executed for murder of a white person than for murder of an African-American. Of the 45 executions carried out in 1996 only 4 involved murder of an African-American victim. The U.S. population consists of 12% African-American, but African-American people are 41% of death row. Sophisticated proponents of the death penalty do a pretty good job of obfuscating these numbers, but persistent racial bias was one of the four principal reasons the American Bar Association's house of delegates, in February of this year, passed a resolution calling for a moratorium on the use of capital punishment. Bad legal representation was another problem cited by the ABA. An alarming proportion of the persons who are executed are poor people who cannot afford and do not have good legal representation during the initial trial phase. A team of good lawyers can make it very difficult to convict on a first degree murder charge, therefore rich people are rarely executed.

**(6.) Deterrence:** Especially since the Furman decision in 1973 there was an almost frantic effort to prove, empirically, that the prospect of the death penalty has a greater deterrent effect on potential murderers than the threat of long-term imprisonment. The overwhelming consensus among criminologists and other social scholars is that no such finding has been offered. Knowledgeable proponents of capital punishment no longer attempt to argue on the basis of a proven deterrent value. What they say is that the death penalty should be used, in the event it *does* have an, as yet unproven, deterrent effect. The problem with that idea is that perhaps the single most comprehensive study of the question of deterrence (referred to above) strongly suggests that the prospect of execution is more likely to *incite* than deter persons who are predisposed to violent crime.

**(7.) The death penalty hampers effective prosecution and law enforcement:** The excessive burden placed on law enforcement and on prosecutors' offices by death penalty prosecutions, prevent the best use of their resources. On the basis of what you will be told by experienced prosecutors in death penalty states, you will have to reach the conclusion that a certain number of guilty criminals are not apprehended or go free as a result of the death penalty?

**(8.) Costs:** The cost of the death penalty is from two to seven times more expensive than life imprisonment without parole. Efforts to deny this fact, on the part of the more ardent members of the pro-death penalty community, are not supported by cost analysts in those jurisdictions that have made significant use of the death penalty.

Reinstatement of the death penalty option would be a troublesome, expensive alteration to criminal justice policy in Alaska, unwanted by those who would be called on to use it. It would unnecessarily saddle us with problems we do not now have. It would serve no purpose, meet no needs, solve no problem, right no wrong, and would certainly not make our state any safer or the citizens of our state less inclined to violence.

BARBARA HOOD & DIRK SISSON  
2413 Lord Baranof Drive  
Anchorage, AK 99517  
(907)248-7374; (907)248-8387

April 8, 1997

Senator Bert Sharp  
Alaska State Senate  
FAX 465-2070

Dear Senator:

Please vote against any effort to reinstate the death penalty in Alaska, including Senator Robin Taylor's current efforts to place an advisory ballot measure on next year's ballot. Senator Taylor has consistently minimized the true cost of a death penalty and has worked against current efforts in the House to inform the public of the costs. This is reprehensible in this day of budget-tightening. We are business people, and from a fiscal standpoint alone the death penalty is an expensive punishment that Alaska cannot afford. Is it really worth spending an additional \$50 million (at a minimum, according to the fiscal notes) on a practice that won't make us any safer, and will make all of us complicit in killing—the very conduct we condemn?

Thank you.

Sincerely,



Barbara J. Hood



Dirk A. Sisson *my 8/1*



# Alaska State Legislature

Please enter into the record my testimony to the Senate Finance  
 committee name  
 committee on SB 60, dated 4/9/97  
 bill/subject

- I oppose SB 60.  
 I do not want the Lt. Governor to put this question on the next election ballots because I deeply believe the Death Penalty is wrong. I definitely urge you to stay away from any further action dealing with Capital Punishment and I do not want to see any money spent to write the question and then print it on the ballots.  
 - When we see other countries torturing and executing people we cry "How Barbaric!" "How Uncivilized!" What gives us the right to judge or criticize these other countries or cultures when we remain so very barbaric ourselves in supporting capital punishment. The Death Penalty is wrong - it is killing - it does not deter violence. And my question for you is why do we kill people who kill people to show people that killing people is wrong? my plea for you is to not pass this bill.

Signed: Nancy Michaelson  
 Testifier

Thank you.

Representing (Optional)  
HC5 Box 6916F Palmer, AK 99645  
 Address  
745-66673  
 Phone No.

April 8, 1997

Dear Editor,

At this time, a bill is on the floor in the State of Alaska House of Representatives to cut Medicaid, and completely eliminate medicaid benefits for Substance Abuse Treatment. This is a smoke screen, said to be saving us money, but in the long run, the costs greatly outweigh any savings we will ever realize.

Several years ago, the State of Alaska invested in auxiliary benefits so that treatment for alcohol and drug abuse could be obtained for those with low incomes. This allows folks to get treatment before they require inpatient treatment or hospitalization. This investment will be forfeited when the pending cuts are made, and the costs associated with treating these problems will far outweigh the savings the proposed cuts would provide.

For example, according to the California Department of Alcohol and Drug Programs (1994), for every dollar spent on substance abuse treatment, we save seven dollars elsewhere in the social system. Considering the medical consequences of alcoholism and drug abuse, this just plain makes sense. If we invest \$1000.00 in treatment for an individual, we save \$7000.00 in hospital costs, education costs, public assistance payments, etc., elsewhere in the system. Take our education system for example:

The State of Alaska has one of the highest fetal alcohol syndrome (FAS) and Fetal Alcohol Effect (FAE) rates in the world, two times the national average. Left untreated, drug and alcohol problems lead to lead to FAS/FAE and other postnatal drug effects. These are preventable through drug and alcohol treatment. We call the untreated results "million dollar babies", treated at a hospital level throughout life, requiring special learning programs, attention, and care in the educational system. The postnatal effects are covered by the current social system, as are the medical complications that result from addiction. I am advocating for reducing the need to pay for these services by providing treatment.

What about the effect on public assistance, you say? Our local Department of Public Assistance estimates that as many as 40% of those collecting welfare benefits have "drugs or alcohol" as a barrier to getting back to work. If we eliminate the treatment option for these folks, we are setting them up for failure when welfare reforms take effect July 1<sup>st</sup> of this year. We have become a nation of enabler's, paying people to remain addicted and not requiring and facilitating recovery. I would like to see the welfare reforms work, but I fear that without treatment the 40% mentioned above will sabotage the reform efforts, costing us more tax dollars.

Finally, the amount of money we are talking about here is about 1.5 million dollars. (To draw a comparison, the amount collected from permanent fund checks to pay medicaid for the month that Alaskans on public assistance get their permanent fund checks is 22.5 million.) The substance abuse treatment amount is a very small price to pay for safer streets, better schools, and a more functional community!

Treatment works, and it makes sense. Please contact your local representative and let them know that you would like to see the prevention measures remain in place through Medicaid treatment provisions.

Michelle (Carney) Overstreet  
376-7627

Copy To:  
Lyda Green  
Rick Halford  
Vic Kohring  
Beverly Masek  
Scott Ogan  
PATSY TURNER'S STAFF/DPA

2801 Bogard Rd  
Wasilla AK 99654

*INFORMATION RELATED TO: SB 60*

**Distributed by Senate Judiciary**

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

March 19, 1997

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

★ CRIMINAL DIVISION CENTRAL  
OFFICE  
P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3428  
FAX: (907) 465-4041

□ OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
310 K STREET, SUITE 308  
ANCHORAGE, ALASKA 99501-2064  
PHONE: (907) 269-6250  
FAX: (907) 269-6270

The Honorable Robin Taylor  
Alaska State Senator  
Capitol Building, Rm. 30  
Juneau, Alaska 99801-1182

Re: Senate Bill 60 -- Advisory Vote on Capital Punishment

Dear Senator Taylor:

This is in response to questions you posed during my testimony in the Senate Judiciary Committee on Senate Bill 60, providing for an advisory vote to return capital punishment to Alaska after an absence of some 40 years. In particular, you questioned my statement that the death penalty has a disproportionate impact on minorities, and you referred me to an article that you had just received, published in *Texas Lawyer* magazine. The article was dated March 10, 1997, the date of my testimony.

The article in *Texas Lawyer* pointed out that blacks have constituted 38% of those executed in the last 20 years, or more than three times their percentage in the United States population. This is an obvious over-representation of minorities on death row, although you pointed out during the hearing that you believed this disproportionate impact may be explainable by other statistics.

You asked whether I had any data showing what percentage of murders are committed by blacks, because by knowing that percentage one might better attempt to understand why so many blacks are on death row. You again cited the article in *Texas Lawyer*, indicating that blacks commit a disproportionately high percentage of murders.

I have seen other research indicating that blacks do indeed commit a much higher percentage of murders than the percentage they represent in the general population. Assuming these figures are accurate, it suggests that a black who commits murder is no more likely to receive a death sentence than a white who commits murder. But that, in my opinion, is not the end of the analysis and does not permit us to say there is not a disproportionate impact on minorities.

I do not believe that any of us understand precisely *why* blacks commit such a high percentage of murders. But perhaps we can narrow it down to two primary choices. Either:

(1) blacks are racially, genetically or somehow inherently prone to commit murder -- a proposition so preposterous that it is painful to even articulate;  
or

(2) murders often result from a complex interaction of factors affecting many minority populations in the United States, such as poverty, lack of education, lack of employment opportunities, ease of access to drugs, breakdown of family and community structures, lack of self-esteem and hopelessness.

I believe the same social factors affecting blacks in the rest of the United States also contribute to the over-representation of Native Alaskans in the Alaska prison system and could easily lead to their over-representation on death row in our state.

I do not mean to suggest that persons who commit crimes should not be punished. I believe they should be punished, regardless of social factors that may have disposed a particular individual to commit his or her crime, and I support the tough sentencing structure in Alaska. I am suggesting, however, that no matter what statistics are analyzed, certain minorities are condemned to death at a far greater rate than their percentage in the population. Because I believe that factors within our society contribute to that disparity, until that disparity disappears we cannot claim the moral right to inflict the ultimate punishment that society can impose.

A second, more subtle, form of discrimination is the difference in the way death penalty defendants are treated depending on the race of the *victim*. The

*Texas Lawyer* article acknowledged that, although whites and blacks comprise an equal percentage of all murder victims, in cases in which the death penalty is imposed the victim is almost always white.

The author of the article explained this significant racial disparity by the rather simplistic argument that "[a] crucial point is that capital murders and non-capital murders are two very distinct categories." The author noted that capital murder cases are more aggravated than other murder cases, and the perpetrator usually has a longer criminal record, and concluded that the race of the victim was therefore irrelevant.

The fact that the victims in death penalty cases are almost always white, however, leads me to one of two possible conclusions. Either:

(1) whites belong to the unluckiest of races to be so often subject to aggravated murders by persons with long criminal records; or

(2) prosecutors, jurors, and judges in other states are more likely to view the murder of a white person as an aggravated offense, compared to the murder of a black person.

If the race of the victim were indeed irrelevant, as the author of the article claims, then whites who murder blacks, and blacks who murder whites, should receive the death penalty at about the same rate. That is not the case, however. A comprehensive study in Georgia in 1991 found that blacks who kill whites are four times more likely to be sentenced to death than whites who kill blacks. This disparity held, even when over 250 other variables were factored in. A study of sentencing patterns in Texas showed that when an African-American or a Mexican-American killed a white, 65% of the defendants faced the death penalty, whereas whites who killed African or Mexican-Americans faced the death penalty only 25% of the time. These data also show that a black who kills a white person is more likely to face the death penalty than a black who kills a black.

As indicated in previous testimony, there is little or no evidence to believe that the threat of the death penalty deters people from committing murders and protects the public. If one believes such a deterrent effect exists, then one could

also reach the conclusion that it only deters those who might murder white victims, and does little to deter those who murder blacks. In other words, assuming the death penalty protects the public, it is not the minority population being protected.

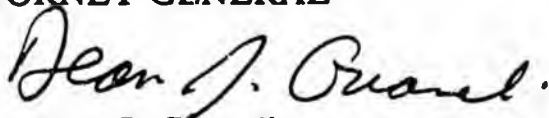
Based on the foregoing, I continue to stand by my testimony that the way in which capital punishment is administered has a disproportionate impact toward minorities -- both defendants and victims. As I indicated during my testimony, however, among the other reasons for opposing capital punishment are that our system is not perfect, thus running the risk of executing innocent people; that capital punishment tends to skew the case law that affects other criminal cases; and that the legal process leading to an execution is a lengthy and expensive one, that does not allow the families of victims to bring the matter to closure for many years. I believe that the present sentencing practices in Alaska, whereby first degree murderers routinely receive lengthy sentences averaging over 70 years, adequately protects the public.

As a final matter, you requested a citation to an article in the Stanford Law Review relating to innocent persons being executed. Charles Campbell tells me that the article is Badeau and Radelet, *Miscarriage of Justice in Potentially Capital Cases*, 40 Stanford Law Review 21 (1987),

Thank you for the opportunity to respond to your questions. As usual, I appreciated your courtesy during the committee hearing.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Dean J. Guaneli  
Chief Assistant Attorney General

cc: Members of the Senate Judiciary Committee

**SB**

**63**

HFIN

FILE

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 30, 1997

FURTHER REFERRALS:

Date of Committee Action: 1/30/98

The FINANCE Committee considered:

SB 63

SENATE BILL NO. 63

DEADLY WEAPON OFFENSES BY JUVENILES

"An Act providing for automatic waiver of juvenile jurisdiction and prosecution of minors as adults for certain violations of laws by minors who use deadly weapons to commit offenses that are crimes against a person, and relating to the sealing of the records of those minors."

recommends it be replaced with the following committee substitute HCS SB 63 (FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dep/Date)

4  fiscal note(s) AK Court Sys [ ] fiscal note(s) \_\_\_\_\_  
DDC; DDA; DDA; \_\_\_\_\_  
 2  zero fiscal note(s) DPS; DHSS [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault	✓			
<i>Mark Hanley</i>	Hanley	X			
<i>Rob Kelly</i>	Kelly	✓			
<i>Gordon Mulder</i>	Mulder	✓			
<i>Chris Martin</i>	Martin	X			
<i>J. Davis</i>	J. Davis			X	
<i>Grussendorf</i>	Grussendorf			X	
<i>Robins</i>	Robins	X			

CO-CHAIR'S SIGNATURE *Gene Theriault* *Mark Hanley*  
 Theriault Hanley

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. \*HCS SB 63 (FIN)

\*(Draft: 6/30/97)

Revision Date: 01/27/98  
Title: Juvenile Waiver/Deadly Weapons

Dept. Affected: Alaska Court System  
BRU: Trial Courts

Sponsor: Sen. Donlay  
Requestor: House Finance

Component: \_\_\_\_\_  
COMPONENT SERIAL NO. 788

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							
CHANGE IN REVENUES ( )							

Fund Source		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF	*	*	*	*	*	*	
1006 GF/Program Receipts							
1037 GF/Mental Health							
Other							
TOTAL	*	*	*	*	*	*	

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

Positions							
Full-Time							
Part-Time							
Temporary							

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

Because of the small number of juveniles anticipated to fall within the waiver provisions of this bill, the court system does not anticipate a fiscal impact. However, should the number significantly increase the court system may return to the Legislature for additional funding.

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: 01/27/98

Date: 01/27/98

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

HCS SB 63

Revision Date (Note if correction) 1/27/98 Dept. Affected Corrections  
 Title "An Act providing for automatic waiver of juvenile BRU Administration and Operations  
jurisdiction and prosecution of minors as adults for certain violation Component Office of the Commissioner  
 Sponsor Senator Donley  
 Requester House Finance Committee Component Serial No. #0694

**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	110.9	220.5	330.1	330.1	330.1	330.1
<b>TOTAL OPERATING</b>	<b>110.9</b>	<b>220.5</b>	<b>330.1</b>	<b>330.1</b>	<b>330.1</b>	<b>330.1</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	110.9	220.5	330.1	330.1	330.1	330.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>110.9</b>	<b>220.5</b>	<b>330.1</b>	<b>330.1</b>	<b>330.1</b>	<b>330.1</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

See attached page 2

Prepared by Bruce Richards Phone 465-3307  
 Division Commissioner's Office Date 1/27/98  
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 1-27-98  
 Agency Department of Corrections

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Assumptions

1. According to DFYS the number of juveniles who would be automatically waived under the proposed change to AS47.12.030(a) is approximately three per year. These juveniles would be convicted of felonies which would average a sentence of three years.
2. Each felony case will require a pre-sentence investigation (PSI) report for the court. Preparing a PSI report for class A felonies costs approximately \$630 each. Each class B felony PSI report costs approximately \$455.
3. The statewide average daily cost of incarceration is \$100.07. It is assumed that those convicted of AS 47.12.030(a) offenses will require incarceration in state correctional facilities, as opposed to lower-cost community residential centers.
4. The department (when possible) houses waived juveniles in single cells, at least during the initial months of incarceration, to determine their level of vulnerability to adult predators in the prison population. It is generally assumed that juvenile inmates require closer security than the average adult. The department does try to place juveniles with other juveniles when possible. However, this is more difficult to do in smaller facilities.

Operating Expenses

FY99:           3 class B felony offenses X \$455 per PSI report= \$1.4  
                  3 inmates X 365 days X \$100.07 per day = \$109.5  
TOTAL = \$110.9

YEAR	OLD- NEW	TOTAL	CLST PER DAY	DAYS	INCARC COST PER YEAR	PSI COSTS	TOTAL
FY99	3	3	\$100.07	365	\$109.5	\$1.4	\$110.9
FY00	3 + 3	6	\$100.07	365	\$219.1	\$1.4	\$220.5
FY01	6 + 3	9*	\$100.07	365	\$328.7	\$1.4	\$330.1

\*Beginning in FY02 the first offenders (3) under proposed AS 47.12.030(a) would be released. This results in a no net gain from this point forward since three would enter the system and three would be released.

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

SB 63

Revision Date (Note if correction) 1/21/98 Dept. Affected Corrections  
 Title "An Act providing for automatic waiver of juvenile BRU Administration and Operations  
jurisdiction and prosecution of minors as adults for certain violation Component Office of the Commissioner  
 Sponsor Senator Donley  
 Requester House Finance Committee Component Serial No. #0694

**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	295.8	588.0	880.2	880.2	880.2	880.2
<b>TOTAL OPERATING</b>	<b>295.8</b>	<b>588.0</b>	<b>880.2</b>	<b>880.2</b>	<b>880.2</b>	<b>880.2</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	295.8	588.0	880.2	880.2	880.2	880.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>295.8</b>	<b>588.0</b>	<b>880.2</b>	<b>880.2</b>	<b>880.2</b>	<b>880.2</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

See attached page 2

Prepared by Bruce Richards Phone 465-3307  
 Division Commissioner's Office Date 1/21/98  
 Approved by Commissioner Margaret M. Pugh Date \_\_\_\_\_  
 Agency Department of Corrections

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Assumptions

1. According to DFYS the number of juveniles who would be automatically waived under the proposed change to AS47.12.030(a) is approximately eight per year. These juveniles would be convicted of felonies which would average a sentence of three years.
2. Each felony case will require a pre-sentence investigation (PSI) report for the court. Preparing a PSI report for class A felonies costs approximately \$630 each. Each class B felony PSI report costs approximately \$455.
3. The statewide average daily cost of incarceration is \$100.07. It is assumed that those convicted of AS 47.12.030(a) offenses will require incarceration in state correctional facilities, as opposed to lower-cost community residential centers.
4. The department (when possible) houses waived juveniles in single cells, at least during the initial months of incarceration, to determine their level of vulnerability to adult predators in the prison population. It is generally assumed that juvenile inmates require closer security than the average adult. The department does try to place juveniles with other juveniles when possible. However, this is more difficult to do in smaller facilities.

Operating Expenses

FY99:           8 class B felony offenses X \$455 per PSI report= \$3.6  
                   8 inmates X 365 days X \$100.07 per day = \$292.2  
**TOTAL = \$295.8**

YEAR	OLD+ NEW	TOTAL	COST PER DAY	DAYS	INCARC COST PER YEAR	PSI COSTS	TOTAL
FY99	8	8	\$100.07	365	\$292.2	\$3.6	\$295.8
FY00	8 + 8	16	\$100.07	365	\$584.4	\$3.6	\$588.0
FY01	16 + 8	24*	\$100.07	365	\$876.6	\$3.6	\$880.2

\*Beginning in FY02 the first offenders (8) under proposed AS 47.12.030(a) would be released. This results in a no net gain from this point forward since eight would enter the system and eight would be released.

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 63

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Administration \_\_\_\_\_  
 Title "An Act providing for automatic waiver of juvenile jurisdiction and prosecution of minors..." BRU Legal & Advocacy Services  
 Component Office of Public Advocacy  
 Sponsor Senator Donley  
 Requester (S) JUD 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	***	***	***	***	***	***
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	***	***	***	***	***	***

<b>CAPITAL EXPENDITURES</b>	***	***	***	***	***	***
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<b>CHANG REVENUES ( )</b>	***	***	***	***	***	***
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	***	***	***	***	***	***

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time	***	***	***	***	***	***
Part-time						
Temporary						

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

Absent accurate projections of juvenile cases affected by the bill, OPA cannot quantify its anticipated costs.

Prepared by Brant McGee, Public Advocate  
 Division Office of Public Advocacy  
 Approved by Mark Boyer, Commissioner  
 Agency Department of Administration

Phone (907)269-3500  
 Date \_\_\_\_\_  
 Date 1/20/98

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**FISCAL NOTE**

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. SB 63**

Revision Date: \_\_\_\_\_  
 Title: "An Act providing for automatic waiver of juvenile jurisdiction and prosecution of minors as adults..."  
 Sponsor: Senator Donley  
 Requestor: (H) FIN

Department Affected: Administration  
 BRU: Public Defender Agency  
 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						
<b>TOTAL OPERATING</b>	***	***	***	***	***	***

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

(Thousands of Dollars)

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

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

**POSITIONS:**

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

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

This bill expands the number of crimes for which a minor will automatically be treated as an adult to include any crime against a person punishable as a felony in which the minor is alleged to have used a deadly weapon and was previously adjudicated or convicted of a felony offense against a person that involved the use of a deadly weapon. This is a large category of cases, ranging down to class C felonies. In juvenile court less focus is placed on trial and more energy is expended to find the appropriate treatment. As felonies in adult court, this bill will cause an increase in the numbers of cases to go to trial with attendant expenditures. Law predicted that eight cases of this nature would have occurred in FY 96. As the Public Defender is likely to be appointed, this will definitely increase Agency costs.

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

Phone: (907) 264-4414  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Bover  
 Agency: Department of Administration

Date: 1/20/98

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# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO: SB 63**

Revision Date: 01/19/98 Dept. Affected: Public Safety  
 Title: Minor felons using guns treated as adults. BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Sen. Donley  
 Requestor: House Finance **COMPONENT SERIAL NO. 0799**

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

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CHANGE IN REVENUES ( )</b> Revenue Code	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 98) 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 would not have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650  
 Division: Alaska State Troopers Date: 01/19/98  
 Approved by Commissioner: Ronald J. Otte Date: 1/19/98  
 Agency: Department of Public Safety

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adopted 1/30/98

**HOUSE CS FOR SENATE BILL NO. 63( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATORS DONLEY, Halford, Phillips, Lemman, Pearce, Kelly, Green, Sharp**  
**REPRESENTATIVE Rokeberg**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act providing for automatic waiver of juvenile jurisdiction and prosecution  
2 of minors as adults for certain violations of laws by minors who use deadly  
3 weapons to commit offenses that are crimes against a person, and relating to the  
4 sealing of the records of those minors."

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

6 \* Section 1. AS 47.12.030(a) is amended to read:

7 (a) When a minor who was at least 16 years of age at the time of the offense  
8 is arraigned on a charge for an offense specified in this subsection, this chapter and  
9 the Alaska Delinquency Rules do not apply to the offense for which the minor is  
10 arraigned or to any additional offenses joinder to it under the applicable rules of court  
11 governing criminal procedure. The minor shall be charged, prosecuted, and sentenced  
12 in the superior court in the same manner as an adult unless the minor is convicted of  
13 some offense other than an offense specified in this subsection, in which event the  
14 minor may attempt to prove, by a preponderance of the evidence, that the minor is

1        amenable to treatment under this chapter. If the court finds that the minor is amenable  
2        to treatment under this chapter, the minor shall be treated as though the charges had  
3        been heard under this chapter, and the court shall order disposition of the charges of  
4        which the minor is convicted under AS 47.12.120(b). The provisions of this  
5        subsection apply when the minor is arraigned on a charge

6                    (1) that is an unclassified felony or a class A felony and the felony is  
7        a crime against a person; [OR]

8                    (2) of arson in the first degree; or

9                    (3) that is a class B felony and the felony is a crime against a  
10        person in which the minor is alleged to have used a deadly weapon in the  
11        commission of the offense and the minor was previously adjudicated as a  
12        delinquent or convicted as an adult, in this or another jurisdiction, as a result of  
13        an offense that involved use of a deadly weapon in the commission of a crime  
14        against a person or an offense in another jurisdiction having elements  
15        substantially identical to those of a crime against a person, and the previous  
16        offense was punishable as a felony; in this paragraph, "deadly weapon" has the  
17        meaning given in AS 11.81.900(b).

18        \* Sec. 2. APPLICABILITY. This Act applies to offenses committed on or after the  
19        effective date of this Act. However, references to previous adjudications or convictions  
20        include offenses committed on, before, or after the effective date of this Act.

AMENDMENT

#1 Withdrawn  
✓ Replaced  
Am 2

OFFERED IN THE HOUSE

BY REP. DAVIES

TO: HCS SB 63 Work Draft

Page 2 , line 5, following "charge":

Delete lines 6 through 17 and

Insert:

"(1) that is a crime against a person and is

(A) an unclassified felony;

(B) a class A felony; or

(2) arson in the first degree; or

(3) that is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense as defined in AS 11.81.900(b) and the minor was previously adjudicated as a delinquent or convicted as an adult in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony and the new crime is punishable as

(A) an unclassified felony,

(B) a class A felony; or

(C) a class B felony."

AMENDMENT

#2 withdrawn 1/30/98

OFFERED IN THE HOUSE

BY REP. DAVIES

TO: HCS SB 63 Work Draft 1K

Page 2, line 5, following "charge":

Insert: "that is"

Delete lines 6 through 17<sup>8</sup> and

Insert:

"(1) a crime against a person and is

(A) an unclassified felony;

(B) a class A felony; or

(C) a class B felony in which the minor is alleged to have used a

deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900(b); or

(2) arson in the first degree."

0-LS0295\K  
Glover  
1/27/98

Adopted  
1/27/98

AS Amended  
pg 2

HOUSE CS FOR SENATE BILL NO. 63( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Phillips, Leman, Pearce, Kelly, Green, Sharp  
REPRESENTATIVE Rokeberg

A BILL  
FOR AN ACT ENTITLED

1 "An Act providing for automatic waiver of juvenile jurisdiction and prosecution  
2 of minors as adults for certain violations of laws by minors who use deadly  
3 weapons to commit offenses that are crimes against a person, and relating to the  
4 sealing of the records of those minors."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 47.12.030(a) is amended to read:

7 (a) When a minor who was at least 16 years of age at the time of the offense  
8 is arraigned on a charge for an offense specified in this subsection, this chapter and  
9 the Alaska Delinquency Rules do not apply to the offense for which the minor is  
10 arraigned or to any additional offenses joinable to it under the applicable rules of court  
11 governing criminal procedure. The minor shall be charged, prosecuted, and sentenced  
12 in the superior court in the same manner as an adult unless the minor is convicted of  
13 some offense other than an offense specified in this subsection, in which event the  
14 minor may attempt to prove, by a preponderance of the evidence, that the minor is

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amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is arraigned on a charge

(1) that is either

(A) an unclassified felony under AS 11; or

(B) a class A felony that is [AND THE FELONY IS] a crime against a person; [OR]

(2) of arson in the first degree; or

(3) that is a crime against a person punishable as a felony in which

the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900.

CLASS B felony and the felony is a crime against a person

\* Sec. 2. APPLICABILITY. This Act applies to offenses committed on or after the effective date of this Act. However, references to previous adjudications or convictions include offenses committed on, before, or after the effective date of this Act.

Adopted 1/21/98

~~Rescinded~~  
Replaced  
1/27

0-LS0295\B-  
Chenoweth  
6/30/97

HOUSE CS FOR SENATE BILL NO. 63( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Phillips, Leman, Pearce, Kelly, Green, Sharp  
REPRESENTATIVE Rokeberg

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for automatic waiver of juvenile jurisdiction and prosecution  
2 of minors as adults for certain violations of laws by minors who use deadly  
3 weapons to commit offenses that are crimes against a person, and relating to the  
4 sealing of the records of those minors."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 47.12.030(a) is amended to read:

7 (a) When a minor who was at least 16 years of age at the time of the offense  
8 is arraigned on a charge for an offense specified in this subsection, this chapter and  
9 the Alaska Delinquency Rules do not apply to the offense for which the minor is  
10 arraigned or to any additional offenses joinable to it under the applicable rules of court  
11 governing criminal procedure. The minor shall be charged, prosecuted, and sentenced  
12 in the superior court in the same manner as an adult unless the minor is convicted of  
13 some offense other than an offense specified in this subsection, in which event the  
14 minor may attempt to prove, by a preponderance of the evidence, that the minor is

1 amenable to treatment under this chapter. If the court finds that the minor is amenable  
2 to treatment under this chapter, the minor shall be treated as though the charges had  
3 been heard under this chapter, and the court shall order disposition of the charges of  
4 which the minor is convicted under AS 47.12.120(b). The provisions of this  
5 subsection apply when the minor is arraigned on a charge

6 (1) that is an unclassified felony or a class A felony and the felony is  
7 a crime against a person; [OR]

8 (2) of arson in the first degree; or

9 (3) that is a crime against a person punishable as an unclassified  
10 felony, a class A felony, or a class B felony in which the minor is alleged to have  
11 used a deadly weapon in the commission of the offense and the minor was  
12 previously adjudicated as a delinquent or convicted as an adult, in this or another  
13 jurisdiction, as a result of an offense that involved use of a deadly weapon in the  
14 commission of a crime against a person or an offense in another jurisdiction  
15 having elements substantially identical to those of a crime against a person, and  
16 the previous offense was punishable as a felony; in this paragraph, "deadly  
17 weapon" has the meaning given in AS 11.81.900(b).

18 \* Sec. 2. APPLICABILITY. This Act applies to offenses committed on or after the  
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**SENATE BILL NO. 63**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY SENATORS DONLEY, Halford, Phillips, Leman, Pearce, Kelly, Green, Sharp**

**REPRESENTATIVE Rokeberg**

**Introduced: 11.97**

**Referred: Judiciary, Finance**

**A BILL**

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13 some offense other than an offense specified in this subsection, in which event the  
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# SENATOR DAVE DONLEY

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ALASKA STATE LEGISLATURE

## **Sponsor Statement for the proposed committee substitute for Senate Bill 63 "Treating juvenile offenders with multiple convictions for violent offenses with deadly weapons as adults"**

The proposed committee substitute for Senate Bill 63 would create a strong deterrent to the repeated use of deadly weapons by juvenile and would treat minors age 16 and older, who for the second time use a deadly weapon to commit a violent crime, as adults.

The legislation would prosecute minors as adults who:

1. use a deadly weapon to commit a class B felony crime against a person;
2. are 16 or older, and
3. were previously adjudicated delinquent or convicted as an adult of using a deadly weapon to commit a crime against a person punishable as a felony.

The term "deadly weapons" is defined by AS 11.81.900 (b)(14) as  
... any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive."

Senate Bill 63 does not require any additional mandatory sentence or any specified punishment. Minors who are convicted of adult crimes, if incarcerated, are required by law to be segregated from adult prison populations as defined by AS 47.12.240.

The Department of Health & Social Services estimates that approximately 6 juveniles in FY'95 would have met the criteria under the previous version of Senate Bill 63. This total is misleading, however, because in three of the cases the juveniles committed offenses with "dangerous instruments" and not "deadly weapons" and therefore would not have waived to adult court under Senate Bill 63. Accordingly, the proposed CS would only increase automatic waiver by about three juveniles a year but clearly these will be the most serious of the offenders that are not currently waived.

The Anchorage Police Department compiled 1995 data which revealed a 200% increase in arrests of juveniles for violent crimes between 1990 and 1994. That same period showed only a 40% increase in juvenile arrests for property crimes. Alaska lawmakers can help curb this unprecedented increase in juvenile violent crime in Alaska by passing Senate Bill 63.

If you have further questions, please contact myself or James Armstrong of my staff at 465-3892.

DD/jja

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June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

---

**MEMBER:** Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

**SENATE BILL NO. 63**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY SENATORS DONLEY, Halford, Phillips, Leman, Pearce, Kelly, Green, Sharp**

**REPRESENTATIVE Rokeberg**

**Introduced: 1/27/97**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

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# SENATOR DAVE DONLEY

---

## ALASKA STATE LEGISLATURE

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If you have further questions, please contact myself or James Armstrong of my staff at 465-3892.

DD/jja

---

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*MEMBER:* Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House

Chapter 11.41. OFFENSES AGAINST THE PERSON

Crime Classification

Article 01. HOMICIDE

- Sec. 11.41.100. Murder in the first degree.
- Sec. 11.41.110. Murder in the second degree.
- Sec. 11.41.120. Manslaughter.
- Sec. 11.41.130. Criminally negligent homicide.

Unclassified Felony  
Unclassified Felony  
Class A Felony  
Class C Felony

Article 02. ASSAULT AND RECKLESS ENDANGERMENT

- Sec. 11.41.200. Assault in the first degree.
- Sec. 11.41.210. Assault in the second degree.
- Sec. 11.41.220. Assault in the third degree.
- Sec. 11.41.230. Assault in the fourth degree.
- Sec. 11.41.250. Reckless endangerment.
- Sec. 11.41.260. Stalking in the first degree
- Sec. 11.41.270. Stalking in the second degree.

Class A Felony  
Class B Felony  
Class C Felony  
Class A Misdemeanor  
Class A Misdemeanor  
Class C Felony.  
Class A Misdemeanor

Article 03. KIDNAPPING AND CUSTODIAL INTERFERENCE

- Sec. 11.41.300. Kidnapping.
- Sec. 11.41.320. Custodial interference in the first degree.
- Sec. 11.41.330. Custodial interference in the second degree.

Unclassified Felony  
Class C Felony  
Class A Misdemeanor

Article 04. SEXUAL OFFENSES

- Sec. 11.41.410. Sexual assault in the first degree.
- Sec. 11.41.420. Sexual assault in the second degree.
- Sec. 11.41.425. Sexual assault in the third degree.
- Sec. 11.41.434. Sexual abuse of a minor in the first degree.
- Sec. 11.41.436. Sexual abuse of a minor in the second degree.
- Sec. 11.41.438. Sexual abuse of a minor in the third degree.
- Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.
- Sec. 11.41.450. Incest.
- Sec. 11.41.455. Unlawful exploitation of a minor.
- Sec. 11.41.460. Indecent exposure.

Unclassified Felony  
Class B Felony  
Class C Felony  
Unclassified Felony  
Class B Felony  
Class C Felony  
Class A Misdemeanor  
Class C Felony  
Class B Felony  
Class B Misdemeanor

Article 05. ROBBERY, EXTORTION, AND COERCION

- Sec. 11.41.500. Robbery in the first degree.
- Sec. 11.41.510. Robbery in the second degree.
- Sec. 11.41.520. Extortion.
- Sec. 11.41.530. Coercion.

Class A Felony  
Class B Felony  
Class B Felony  
Class C Felony

- offenses Remain under CS.

# STATE OF ALASKA

DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

P.O. 110630

JUNEAU, ALASKA 99811-0630

PHONE: (907) 465-3170

FAX: (907) 465-3397

RECEIVED APR 4 1997

April 1, 1997

The Honorable Robin Taylor  
Chair, Senate Judiciary Committee  
Alaska State Senate  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Taylor,

This letter is in response to Senator Pearce's request during the Senate Judiciary committee hearing on March 27, 1997 for case information related to SB 63. I have identified those cases in FY 95 and 96 which would have meet the automatic waiver criteria of the bill. Bob Buttane has contacted the specific district probation offices responsible for the respective cases and I have summarized the case circumstances below. The offense referral which would have initiated an automatic waiver response under SB 63 is listed first.

#### Case #1

A 16 year old boy was referred to Youth Corrections on September 7, 1995 for an Assault in the Third Degree for recklessly causing injury to another student with a set of brass knuckles during an argument over stolen stereo speakers. This boy had a prior delinquency adjudication for an Assault in the Third Degree on July 25, 1994. During the 1994 incident, the boy pointed a loaded hand gun at another youth. A third youth attempted to disarm the boy and during the struggle, a single shot was fired into the air. No one was injured during the incident.

*Detail by  
W. J. P.*

#### Case #2

A 17 year old boy was referred to Youth Corrections on November 20, 1995 for an Assault in the Third Degree for using the vehicle he was driving in a manner which recklessly caused fear of imminent serious physical injury to the driver of another vehicle. After further investigation by the Youth Corrections probation officer and a review from the Department of Law, the arrest charge was reduced to an Assault in the Fourth Degree and adjusted with informal action. This boy had been previously adjudicated delinquent for an Assault in the Third Degree on August 30, 1993. In the 1993 incident, the boy cut another person in the neck with a knife during a fight on a downtown street.

*Dan  
Instur*

*W. J. P.*

page 2

Case #3

A 17 year old boy was referred to Youth Corrections on October 13, 1994 for an Assault in the Third Degree. This boy had instigated a series of events where another youth attacked and seriously injured a third young person. Investigation found sufficient evidence to hold this 17 year old fully accountable for the offense, even though he was not the one who had physical contact with the victim. Youth Corrections and the Department of Law considered a discretionary waiver petition, but felt the overall case circumstances were not sufficient to support this action. The case was adjudicated as a felony assault and the boy was placed in a youth corrections institution. The boy had previously been adjudicated for an Assault in the Third Degree on February 1, 1993. In that incident, the boy stabbed another boy in the hand with a knife after the other boy decided he could be returned home from a camping trip if he sustained some type of serious injury.

Case #4

A 17 year old girl was referred to Youth Corrections on October 9, 1995 for an Assault in the Second Degree. After the girl had sex with an adult male, a dispute arose over the amount of money he was to have given to her. During the ensuing argument, the girl stabbed the man. There were numerous inconsistencies in both the girl and man's rendition of the facts. After further investigation and negotiation between the girl's attorney and Department of Law, the girl admitted to an Assault in the Fourth Degree offense as part of an agreement to be institutionalized at a youth facility. The girl had previously been adjudicated delinquent for an Assault in the Third Degree on July 21, 1992. In the 1992 incident, the girl threatened and attempted to kill her older brother with a kitchen knife during a domestic violence disturbance in the family home.

Case #5

A 17 year old boy was referred to Youth Corrections on November 28, 1994 for an Assault in the Third Degree. This boy had been arguing and fighting with a group of other young people when he produced a pistol and fired two shots into the air. The boy had previously been adjudicated delinquent on an Assault in the Third Degree charge on April 22, 1993. The 1993 incident involved a domestic violence dispute with a sibling. The boy discharged two rounds from a handgun during an argument. There were no injuries, however the boy stipulated to an institutional placement at a youth facility for the incident.

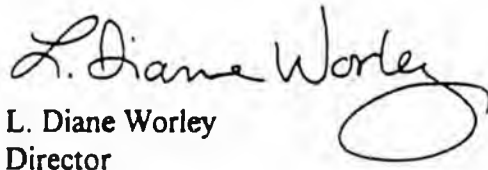
page 3

Case #6

A 17 year old boy was referred to Youth Corrections on February 8, 1995 for Assault in the Second Degree. Together with a co-defendant, this boy pulled another youth out of a vehicle and beat him in the head with a glass juice bottle because the victim had been pressuring the 17 year olds sister to engage in sexual intercourse. After review by Youth Corrections and the district attorney, the offense was reduced to Assault in the Third Degree. The boy had a prior adjudication for Assault in the Third Degree on April 20, 1993. During the 1993 incident, the boy, who was certified learning disabled by the school, became agitated in class. A teacher assistant directed him into a time out area. When the boy returned to the class room, he became agitated again and was asked to leave. As he walked out of the class room, he produced a pocket knife, opened it and waived the open blade in front of the teacher assistant's face. He inflicted no injury but did place her in fear of serious injury.

These are the total number of cases meeting the specific criteria of SB 63 during both fiscal years 1995 and 1996. I hope this provides you with the understanding of the specifics of these cases and assists you in your action regarding this bill. Please do not hesitate to contact me if you have additional questions.

Sincerely,

  
L. Diane Worley  
Director



**SENATOR DAVE DONLEY**  
**ALASKA STATE LEGISLATURE**

July 29, 1997

Representative Gene Therriault  
State Capitol Room 511  
Juneau, AK 99801

Dear Representative <sup>Gene</sup> Therriault:

I am writing to request your support for a proposed committee substitute to Senate Bill 63 which if adopted should address the Knowles' administration concerns with this legislation.

The proposed committee substitute would automatically waive juveniles, 16 and older, to adult court when they are charged with using a deadly weapon to commit a class B felony crime against a person when they have a previous adult conviction or a juvenile adjudication for using a deadly weapon to commit either a class B or C crime against the person.

During testimony last session, administration officials were concerned that the original bill would allow for the automatic waiver of some repeat juvenile offenders who committed class C felony offenses. Under the proposed CS, the commission of class C felony offenses would not trigger the automatic waiver of juveniles to adult court, only a class B felony offense could do so.

The administration also expressed concern that the reference to "deadly weapon" in the bill would unintentionally expand the list of offenses subject to automatic waiver. The Department of Family and Youth Services estimated that six juveniles would meet the automatic waiver criteria of the bill. This total is misleading, however, because in three of the cases the juveniles committed offenses with "dangerous instruments" and not "deadly weapons" and therefore would not have been waived to adult court under SB 63. Accordingly this proposed CS would only increase automatic waiver by about three juveniles a year but clearly these will be the most serious of offenders that are not currently waived.

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MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House

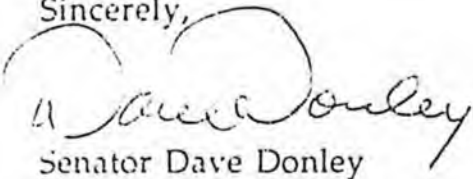
Representatives Therriault  
July 29, 1997  
Page 2

The proposed CS only waives those juveniles who have committed felony offenses with a "deadly weapon". I have included the statutory definitions (AS 11.81.900) for "dangerous instruments" and "deadly weapons" for your review.

The proposed committee substitute still strengthens existing law and creates a strong deterrent to the most serious type of repeat violent juvenile offenders and I request the House Finance Committee adopt CS SB 63, LS0295\B.

I have included a copy of CS SB 63 for your review. I appreciate your consideration of this request. Please call me at 258-8181 if you have any questions.

Sincerely,

  
Senator Dave Donley

enclosures: two

DD/jja

# LEGAL SERVICES

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

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

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


## MEMORANDUM

May 5, 1997

SUBJECT: "Dangerous weapon" and "deadly weapon"

TO: Senator Dave Donley  
ATTN: James Armstrong

FROM: Jack Chenoweth  
Legislative Counsel



I've been asked to respond to your question of Saturday to Tam Cook.

The Criminal Code (AS 11) regularly uses the term "deadly weapon." It defines the term as

... any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

AS 11.81.900(b)(14).

The Criminal Code does not use the term "dangerous weapon." It regularly uses the term "dangerous instrument" and, for that term, provides this definition:

... any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

AS 11.81.900(b)(12).

So, under the definitions of the Criminal Code, all "deadly weapons" are also to be treated as "dangerous instruments," but the opposite is not necessarily true.

Contemporary drafting practice involving addition to or amendment of AS 11 should keep with these terms and maintain the distinction between them. If "dangerous weapon" is

Senator Dave Donley

May 5, 1997

Page 2

offered as part of material to be added to AS 11, the term should not be offered without a definition.<sup>1</sup>

\*

The term "dangerous weapon" appears only once in the body of Alaska Statute law, at AS 12.35.070, part of the Code of Criminal Procedure.<sup>2/</sup> AS 12.35.070 is a statute that derives from before Statehood, and has not been amended since its inclusion in the 1962 general recodification of state statutes. It is also a statute for which there are no reported annotations.<sup>3/</sup>

JBC:lmb  
97-073.lmb

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<sup>1</sup> For the record, Oregon's Penal Code of 1971 does make use of the terms "dangerous weapon" and "deadly weapon," and supplies definitions for both terms. The term "dangerous weapon" of the Oregon Code equates to "dangerous instrument" under the Alaska Code of Criminal Procedure in that elements of its definition include consideration of the circumstances of use and the capability of causing death or serious physical injury. "Deadly weapon" under the Oregon Code is substantially similar to the like term as used in the Alaska Code of Criminal Procedure in that its definition considers the weapon's design and present capability of causing death or serious physical injury.

<sup>2/</sup> AS 12.35.070 addresses the ability of a judicial officer to order a warrantless search of an accused in the presence of the judicial officer:

When a person charged with a crime is believed by the judge or magistrate before whom that person is brought to have on the person a dangerous weapon, or anything that may be used as evidence of the commission of the crime, the judge or magistrate may direct the accused to be searched in the presence of the judge or magistrate, and the weapon or other thing be retained subject to the order of the judge or magistrate or the order of the court in which the defendant may be tried.

<sup>3/</sup> The statute, though modified, derives from sec. 2501 of the Act of March 3, 1899, the criminal code enacted by Congress for the Territory of Alaska. The 1899 enactment was generally based on the criminal laws of the State of Oregon.

# STATE OF ALASKA

DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

F.O. BOX 110630

JUNEAU, ALASKA 99811-0630

PHONE: (907) 465-3170

FAX: (907) 465-3397

January 27, 1998

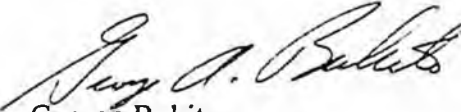
The Honorable Gene Therriault  
Co-Chair, House Finance Committee  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Re: SB 63, Request by Representative John Davies

Dear Representative Therriault,

Representative Davies has asked my office to identify the offenses related to the discretionary waiver cases and information about the FY 97 associated cases to HCS SB63 (Fin) reported in my January 26, 1998 letter to you. I have had my staff prepare this information for Representative Davies and the members of your committee and have attached this information to this letter.

Sincerely,

  
George Buhite  
Youth Corrections Administrator

Attachment.

Cc: James Armstrong, Aide to Senator Dave Donley  
Margot Knuth, Department of Corrections  
Annie Carpinetti, Department of Law

rb/GB

### Discretionary Waiver Cases FY 97

Name	Age	Waiver Date	Offense	Deadly Weapon	Dangerous Instrument
T.T.	17	08/07/97	Assault 4	No	No
J.D.	16	06/25/97	Negligent Homicide	No	Yes (Vehicle)
M.J.	16	07/11/97	Arson 2	No	No
C.O.	17	10/10/97	Crim. Tress. 2	No	No
B.G.	17	01/16/97	Assault 4	No	No
B.G.	17	06/23/97	Burglary 1	No	No

### HCS SB 63 (FIN) Related Cases During FY 97

Name	Age	Referral Date	Offense	Weapon Used	Prior Adjudication
B.N.	17	11/17/96	Assault 2	Metal Pipe	Assault 2
M.H.	17	11/02/96	MIW 2	Gun	Assault 3
R.H.	17	08/09/96	Assault 2	Gun	MIW 1

# STATE OF ALASKA

DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

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January 26, 1998

The Honorable Gene Therriault  
Co-Chair, House Finance Committee  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Re: SB 63

Dear Representative Therriault,

This letter is in response to the House Finance Committee's request for additional information on the number of juvenile cases which would have been effected had SB 53 been enacted in FY 97. Related to this, we had reported there were 7 discretionary waiver cases in FY 97. A further check of our records showed one of these cases was incorrectly coded and was an automatic waiver case not subject to the juvenile system under 47.12.030. The actual total number of cases resulting in a discretionary waiver action during FY 97 was 6.

We had reported a total of 8 cases would have fallen under SB 63. However, this number included the automatic waiver case discussed above. Subtracting this case, there would have been 7 additional waiver cases had SB 63 been in effect in FY 1997. None of these 7 SB 63 related cases were among the discretionary waiver cases discussed above.

Of the 7 SB 63 related cases, four were for C felony offenses. Under the draft HCS SB63 (FIN) which excludes C felony offenses, there would have been 3 cases subject to the automatic waiver provisions of AS 47.12.030 based on our FY 97 case numbers.

The tables on page two serve to illustrate these numbers.

Representative Therriault  
January 26, 1998

RE: SB 63

Page 2

**FY97**

	Discretionary Waiver	SB 63 Related	Total
Discretionary Waiver	6	0	6
SB 63 Related	0	7	7
Total	6	7	13

**FY 97**

HCS SB63 (FIN)	Total	Excluding C Felony Offenses	Total
SB 63 Offenses	7	(4)	3

Please do not hesitate to contact me if I can answer other questions on this matter.

Sincerely,

*George Buhite* by *RS*

George Buhite  
Youth Corrections Administrator

Cc: James Armstrong, Aide to Senator Dave Donley  
Margot Knuth, Department of Corrections  
Annie Carpinetti, Department of Law