

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5240 SHES SB 7 8/2

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB7

SB31 continued:

Personal Services

Anchorage

Attorney V Salary & Benefits	=	76.1
Attorney IV Salary & Benefits	=	71.4
Investigator III Salary & Benefits	=	48.9
Legal Secretary I	=	<u>30.2</u>
Subtotal Personal Services		226.6

Travel¹

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

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

Supplies

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

Office furniture & equipment for three professional positions at 2,429 each and one legal secretary at 6,838		<u>14.0</u>
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TOTAL: 825.9

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage.		Election District 8
Justification				
The Anchorage office of OPA is presently staffed with 3 legal secretaries who provide clerical support to 12 professional positions. The addition of 2 attorneys and 1 investigator will increase the Anchorage clerical workload dramatically. The complex issues involved in death penalty cases and the length of each case through sentencing and appeal necessitates the addition of a legal secretary to handle the increased workload.				
Type of Expenditure		Amount		
1	2	3		
Salary	22,020			
Benefits	3,164			
Premium Pay				
Other				
Total Personal Services		30,184		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		30,184		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	30,184		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

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Position Title Investigator III		No. of Positions 1	Range/Step 18/A	Barg. Unit G
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	37,356			
Benefits	11,570			
Premium Pay				
Other				
Total Personal Services		48,926		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		48,926		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	48,926		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
Justification				
<p>This position will perform all investigative duties in death penalty cases. Extensive experience in all areas of criminal investigations will be required to assure that defendants facing execution receive a thorough and effective investigation. This position will interview witnesses, examine the crime scene and all physical evidence, arrange transportation, serve subpoenas, follow-up and review the prosecution investigation and coordinate witness testimony.</p> <p>The OPA current has no investigator positions. It is anticipated that the position will work full time on death penalty cases.</p>				

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Position Title Attorney IV		No. of Positions 1	Range/Step 24/A	Barg. Unit X
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	56,244			
Benefits	15,177			
Premium Pay				
Other				
Total Personal Services		71,421		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		71,421		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	71,421		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
Justification				
<p>This position will act as co-counsel to the Attorney V position in all death penalty cases. As part of the death penalty team, this position will prepare motions, interview witnesses, write appellate briefs and assist the lead attorney in conducting the guilt and penalty phases of all death penalty cases. Two attorneys are required for each case in order to share the enormous workload and to assure effective representation of the accused.</p>				

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Position Title Attorney V		No. of Positions 1	Range/Step 25/A	Barg. Unit X
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Justification		
		This position would be the lead attorney of the death penalty team consisting of an additional lawyer, an investigator, and a legal secretary. The position is required to supplement the current attorney staff which falls short of LEAA national caseload standards.		
		This position would be responsible for supervising the investigator, the preparation of all pretrial and trial motions and the filing of appeals in state and federal court. The requirement of extensive court hearings and a lengthy trial in each case will necessitate that this position be assigned exclusively to death penalty cases.		
Amount				
1	2	3		
Salary	60,252			
Benefits	15,808			
Premium Pay				
Other				
Total Personal Services		76,060		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		76,060		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	76,060		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

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**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____
 Revision Date: _____
 Title: "An Act authorizing capital punishment..."
 Sponsor: Sen. Abood, Sen. Kelly
 Requestor: Senate Judiciary

Bill Version: SB7
 Publish Date: _____

Agency Affected: Dept. of Administration
 BRU: Public Defender Agency

Components: Third Judicial District
Fourth Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		743.1	772.8	803.7	835.9	869.3
TRAVEL		225.0	234.0	243.4	253.1	263.2
CONTRACTUAL		450.0	468.0	486.7	506.2	526.5
SUPPLIES		27.0	28.1	29.2	30.4	31.6
EQUIPMENT		60.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		1505.1	1502.9	1563.0	1625.6	1690.6

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		1505.1	1502.9	1563.0	1625.6	1690.6
FEDERAL FUNDS						
OTHER						
TOTAL		1505.1	1502.9	1563.0	1625.6	1690.6

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: Dana Fabe, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: Feb. 25, 1987

Approved by Commissioner: Garrey Peska Date: 2/14/87
 Agency: Department of Administration

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

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

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

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

1. Personal Services

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

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

2. Travel and Contractual Fees.

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

CONTINUATION of FISCAL NOTE ANALYSIS

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3. Equipment and Supplies.

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

BUDGET SUMMARY

Personal Services:

Guilty and Penalty Team-Anchorage			
Attorney V	79.7		
Attorney IV	74.8		
Investigator III	51.1		
Legal Secretary I	31.5		
Appellate Team - Anchorage			
Attorney V	79.7		
Attorney IV	74.8		
Investigator III	51.1		
Legal Secretary I	31.5		
Guilty and Penalty Team-Fairbanks			
Attorney V	90.7		
Attorney IV	85.0		
Investigator III	58.1		
Legal Secretary I	<u>35.1</u>	TOTAL	743.1

Travel:

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

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

Supplies:

Office, law library	27.0
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Equipment:

Office furniture and machines	<u>60.0</u>
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TOTAL 1505.1

Position Title Attorney V		No. of Positions 1	Range/Step 25A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Justification				
This Attorney V will serve as a death penalty team leader in the guilt and penalty phases of capital cases in Anchorage and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.				
Type of Expenditure		Amount		
1	2	3		
Salary \$5021/mo	60,252			
Benefits	19,437			
Premium Pay				
Other				
Total Personal Services		79,689		
Travel		50,000		
Contractual		110,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		245,189		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		245,189		
I-A Receipts 1006				
CIP Receipts 1061				
Other				

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Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Justification				
<p>This Attorney IV will serve as a death penalty team member in the guilt and penalty phases of capital cases in Anchorage and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.</p>				
Type of Expenditure		Amount		
1	2	3		
Salary	\$4687/mo	56,244		
Benefits		18,551		
Premium Pay				
Other				
Total Personal Services		74,795		
Travel		50,000		
Contractual		110,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		240,295		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	240,295		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

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Position Title Investigator III			No. of Positions 1	Range/Step 18A	Barg. Unit GG	
Time Status PFT	Staff Months 12.0		Location Anchorage	Election District 92		
Type of Expenditure			Justification			
			<p>This Investigator III will serve as a death penalty team member in the guilt and penalty phases of capital cases in Anchorage and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities. The travel and contractual are included in the requests for attorneys.</p>			
1		2				3
Salary	\$3113/mo	37,356				
Benefits		13,763				
Premium Pay						
Other						
Total Personal Services						51,119
Travel						-0-
Contractual						-0-
Commodities						-0-
Equipment			2,500			
Other						
Total Cost			53,619			
Funding Source for Total Cost						
Federal Receipts		1002				
G. F. Match		1003				
General Fund		1004	53,619			
I-A Receipts		1006				
CIP Receipts		1061				
Other						

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Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage .		Election District 92
Justification				
This Legal Secretary I will provide support services to a death penalty team in Anchorage and other parts of the state. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor				
Type of Expenditure		Amount		
1	2	3		
Salary \$1835/mo	22,020			
Benefits	9,431			
Premium Pay				
Other				
Total Personal Services		31,451		
Travel		-0-		
Contractual		-0-		
Commodities		3,000		
Equipment		12,500		
Other				
Total Cost		46,951		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	46,951		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

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Position Title Attorney V		No. of Positions 1	Range 2 A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Type of Expenditure		Justification		
		This Attorney V will serve as a death penalty team leader in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year. Travel will be to Seattle for the Ninth Circuit Court of Appeals and to Washington, D.C. for the United States Supreme Court. Contractual is to cover printing costs for motions and briefs to the Federal Appellate Courts.		
Amount				
1	2	3		
Salary \$5021/mo	60,252			
Benefits	19,437			
Premium Pay				
Other				
Total Personal Services		79,689		
Travel		10,000		
Contractual		5,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		100,189		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		100,189		
I-A Receipts 1006				
CIP Receipts 1061				
Other				

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Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
		Justification		
Type of Expenditure		Amount		
1	2	3		
Salary \$4687/mo	56,244			
Benefits	18,551			
Premium Pay				
Other				
Total Personal Services		74,795		
Travel		10,000		
Contractual		5,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		100,189		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		100,189		
I-A Receipts 1006				
CIP Receipts 1061				
Other				

This Attorney IV will serve as a death penalty team member in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year. Travel will be to Seattle for the Ninth Circuit Court of Appeals and to Washington, D.C. for the United States Supreme Court. Contractual is to cover printing costs for motions and briefs to the Federal Appellate Courts.

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Position Title Investigator III		No. of Positions 1	Range/Step 18A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage.		Election District 92
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary	\$3113/mo	37,356		
Benefits		13,763		
Premium Pay				
Other				
Total Personal Services		51,119		
Travel		5,000		
Contractual		-0-		
Commodities		-0-		
Equipment		2,500		
Other				
Total Cost		58,619		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	58,619		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

This Investigator III will serve as a death penalty team member in the appellate phases of capital cases for all parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III and a Legal Secretary I. It is projected that this appellate team will handle ten capital cases per year.

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Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92
Justification				
This Legal Secretary I will provide support services to the appellate death penalty team in all parts of the state. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor.				
Type of Expenditure		Amount		
1	2	3		
Salary \$1835/mo	22,020			
Benefits	9,431			
Premium Pay				
Other				
Total Personal Services		31,451		
Travel		-0-		
Contractual		-0-		
Commodities		3,000		
Equipment		12,500		
Other				
Total Cost		46,951		
Funding Source for Total Cost				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004		46,951		
i-A Receipts 1006				
CIP Receipts 1061				
Other				

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Position Title Attorney V		No. of Positions 1	Range/Step 25A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94
		Justification		
Type of Expenditure		Amount		
1		2		3
Salary	\$5773/mo	69,726		
Benefits		21,432		
Premium Pay				
Other				
Total Personal Services		90,708		
Travel		50,000		This Attorney V will serve as a death penalty team leader in the guilt and penalty phases of capital cases in Fairbanks and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.
Contractual		110,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		256,208		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	256,208		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

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Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94
		Justification		
Type of Expenditure		Amount		
1		2		3
Salary	\$5385/mo	64,620		
Benefits		20,403		
Premium Pay				
Other				
Total Personal Services				85,023
Travel				50,000
Contractual				110,000
Commodities				3,000
Equipment				2,500
Other				
Total Cost				250,523
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			250,523
i-A Receipts	1006			
CIP Receipts	1061			
Other				

This Attorney IV will serve as a death penalty team member in the guilt and penalty phases of capital cases in Fairbanks and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.

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Position Title Investigator III		No. of Positions 1	Range/Step 18A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94
Type of Expenditure		Justification		
		This Investigator III will serve as a death penalty team member in the guilt and penalty phases of capital cases in Fairbanks and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities. The travel and contractual are included in the requests for attorneys.		
Amount				
1	2	3		
Salary \$3565/mo	42,768			
Benefits	15,291			
Premium Pay				
Other				
Total Personal Services	58,059			
Travel	-0-			
Contractual	-0-			
Commodities	-0-			
Equipment	2,500			
Other				
Total Cost	60,559			
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	60,559		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

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 Revised Date 2/25/87

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Fairbanks.		Election District 94
Type of Expenditure		Justification		
		This Legal Secretary I will provide support services to a death penalty team in Fairbanks and other parts of the state. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor		
Amount				
1	2	3		
Salary \$2072/mo	24,864			
Benefits	10,235			
Premium Pay				
Other				
Total Personal Services		35,099		
Travel		-0-		
Contractual		-0-		
Commodities		3,000		
Equipment		12,500		
Other				
Total Cost		50,599		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	50,599		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Department of Administration
 BRU Public Defender Agency
 Component Fourth Judicial District

FY 88

Page 16 of 16
 Revised Date 2/25/87

POSITION PAPER

SB7

"An Act authorizing capital punishment. . ."

This bill authorizes capital punishment for first degree murder and establishes procedures for imposing death sentences.

The enactment of capital punishment would have an enormous impact upon the Alaska judicial system. Such cases will consume prosecution and defenses resources, as well as those of the judicial system, out of all proportion to their actual numbers. Even after costly and lengthy proceedings in the trial court have been completed both federal and state appeals will continue for years.

The Office of Public Advocacy and the Public Defender Agency oppose the establishment of capital punishment in Alaska. Aside from any moral consideration of the issue, the evidence compels the conclusion that it will not protect the public and its extreme cost will divert budget resources from other law enforcement goals. This opposition is based upon the following reasons:

1. Considerable research in the United States has provided no evidence that the death penalty deters crime more effectively than other punishments.
2. The evidence suggests that race -- especially that of the victim -- has an important bearing on the eventual likelihood of a death sentence. Research in Florida, Georgia, Texas and other states has shown that homicides involving white victims are far more likely to be charged as capital offenses and result in death sentences than those involving black victims.
3. The death penalty is irrevocable and can be inflicted on an innocent person despite the most stringent judicial standards. A recent study collected information on over three hundred cases in the United States this century in which innocent people were wrongly convicted of offenses punishable by death; some fifty of them occurred after 1970. Since 1900 twentythree wrongly convicted prisoners have been executed.
4. The cost and length of proceedings in capital cases have placed heavy burdens on the criminal justice system. The enormous concentration of law enforcement, prosecution, defense, and judicial resources on a relative handful of cases diverts resources from more effective areas of law enforcement.

5. Although most capital punishment bills contain guidelines intended to eliminate arbitrary sentencing in capital trials, the possibility of the death sentence is largely determined by decisions taken by prosecutors at an early stage of the judicial process. Prosecutors have wide discretion in whether or not to seek the death penalty in criminal homicide cases, and in practice, only a minority of crimes which death is a possible penalty are tried as capital offenses. Decisions to seek the death penalty may be largely determined by factors beyond the circumstances of the crime, including the financial resources available at the time of the prosecution, local feeling as to the death penalty and the level of publicity or community pressure in a particular case.

Brant McGee

Brant McGee, Public Advocate
Office of Public Advocacy

2/22/87

Date

Garrey Peska

Commissioner Garrey Peska
Department of Administration

3/4/87

Date

COMMITTEE BILL FILE WORK-UP ON:

Bill #: SB7 Capital Punishment
 Sponsor: Good
 Room #: C423 Phone #: 4522

Durlo

- 1/19 1 Receive Original Bill and Log In.
- 1/19 2 Duplicate Work Copies for Committee File and Senator's File.
- 1/19 3 File Original Bill in Special Locking File.
- 1/20 4 Set-Up Weekly Schedule of Hearings (2 Weeks in Advance if possible).
- 1/30 5 Notify Senate Secretary (5 Day Rule Applies - Allows Time to Get it Printed in Journal). A Copy of the Committee Agenda is Sufficient.
- 1/30 6 Move Work File to "Active" File Drawer.
- _____ 7 Notify the Following Persons of the Hearing Date: 7N 2/23

Committee Members	_____	Department	<u>Br. Fischer/Courts</u>	<u>264-0545</u>
	_____	Liaisons	<u>Mr. Mappranath</u>	<u>Public Safety</u>
	_____		<u>Bill Kuhnig</u>	<u>Corrections</u>
Bill Sponsor	<input checked="" type="checkbox"/>	Governor	_____	<u>4336 2/2</u>
	<u>1/30</u>	If Necessary	_____	<u>3376 2/2</u>

Durlo 1/30

- 1/30 8 Request Back-Up Information from Bill Sponsor As Soon As Possible.
- _____ 9 Request Witness Roster of Persons the Sponsor Has Notified or Desires to Have Notified.
- _____ 10 If First Committee of Referral, Request Fiscal Note from Pertinent Department Liaison(s) for each bill change (ie. SS, CS etc) - (5 Day Rule Applies).
- 1/30 *2/1 Rec*
12 Durlo 11 If Necessary, Prepare or Request Sectional Analysis from Legal (3867) when pertinent for each change (ie. SS, CS etc). This is Pretty Much a Judgement Call.
- _____ 12 Research and Prepare Back-Up Material as Necessary.
- _____ 13 Prepare Committee Files (8 Copies: 1 ea for: Committee Members, Committee Aide, Senate Pol Secretary).
- _____ 14 Prepare 10-15 Copies of All Documents to Hand Out to Public During the Hearing (ie. Bill, Short Synopsis, Others at Sponsor's Request). 1/31
- 1/30 15 Distribute Committee Agenda (Schedule).
- _____ 16 If Requested, Provide Files As Soon As Possible On the Day of the Hearing. Otherwise, Provide the Files at the Beginning of the Hearing in the Committee Room.

WITNESS ROSTER WORK SHEET

Bill # Title Date of Hearing

1. Name: Sen Abood
Address: _____ Phone #: 4714
Representing: _____ Title: Sen.

2. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

3. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

4. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

5. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

6. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

7. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

8. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

9. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

10. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

11. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

12. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 4, 1987

SUBJECT: Sectional Analysis of CSSB 7(HESS),
authorizing capital punishment

TO: Senator Mitch Abood

FROM: Keith B. Levy ^{KB}
Legislative Counsel

You have requested a sectional analysis of the above described bill. As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends AS 11.31.100(d) to provide that an attempted capital felony is a class A felony.

Section 2 amends AS 11.31.110(c) to provide that solicitation of a capital felony is a class A felony.

Section 3 amends AS 11.41.100(b) to designate murder in the first degree as a capital felony punishable under AS 12.55.125 rather than an unclassified felony.

Section 4 amends AS 12.55.117 to include a capital felony conviction among those under which a defendant may not be released on bail before sentencing or during the appeal process.

Section 5 amends AS 12.55 by adding a new section, 12.55.117. Subsection (a) provides that a sentence of death for a capital crime must be given a priority review by the Alaska supreme court within 60 days of sentencing unless extended by the supreme court. On review the court must determine whether the sentence was imposed under the influence of passion, prejudice, or arbitrary factors, whether the evidence sup-

ports the finding of the required aggravating factor, and whether the sentence was excessive in comparison to similar cases and defendants.

Subsection (b) requires that after affirming a death sentence, the Supreme Court issue a death warrant specifying a date of execution between 30 and 60 days after the date of the warrant. The warrant goes to the Commissioner of Corrections who is required to specify the time, place and manner of execution. Before determining the manner, the commissioner must provide the defendant an opportunity to choose to be executed by lethal injection or by firing squad.

Subsection (c) provides that execution by firing squad is to take place at a state prison designated by the Commissioner of Corrections. The firing squad will consist of six peace officers, compensated in an amount determined by the commissioner.

Subsection (d) provides for the selection of a drug to be used in executions by lethal injection.

Subsection (e) requires the Commissioner of Corrections and a licensed physician to be present at an execution and permits the commissioner to choose up to nine citizens to also be present, although no individual may attend an execution as a matter of right.

Subsection (f) requires the commissioner to return the death warrant showing the time, place, and manner of the execution.

Subsection (g) requires the commissioner to permit up to six members of the media to attend the execution.

Subsection (h) prohibits the use of photographic or recording equipment at the execution until it is completed. Violation of this provision is a class B misdemeanor.

Subsection (i) provides that persons attending an execution are subject to a reasonable search as a condition of attendance.

Subsection (j) specifically prohibits individuals under 19 years of age and other unauthorized people from attending an execution.

Subsection (k) requires the Department of Corrections to adopt regulations regarding attendance at executions.

Section 6 amends AS 12.55.125(a) to provide that a person convicted of a capital felony must be sentenced to a term of imprisonment between 20 and 99 years, or to death.

Section 7 amends AS 12.55 by adding several new sections.

Section 12.55.177 (a) provides that after a defendant is convicted of a capital offense, the court must conduct a separate sentencing proceeding before the trial jury as soon as practicable. If the defendant was not tried by a jury, or if the defendant pleads guilty, a jury must be impanelled for the sentencing proceeding.

Subsection (b) permits the presentation at sentencing of evidence that the court considers probative, regardless of admissibility at trial, as long as the defendant has an opportunity to rebut hearsay statements and assert any evidentiary privileges available under the Alaska Rules of Evidence. The subsection prohibits the introduction of evidence secured by unconstitutional means. It requires that both the prosecution and defense be permitted oral argument at sentencing.

Section 12.55.178 requires that the jury deliberate after the sentencing hearing and give an advisory verdict to the judge that includes findings whether an aggravating factor justifies death, whether mitigating factors outweigh aggravating factors, and whether the defendant should be sentenced to prison or death.

Section 12.55.179(a) provides that after considering the evidence and advisory verdict of the jury, the court must pass a sentence of imprisonment or death. The death sentence may not be imposed unless the jury recommends it and finds an aggravating factor that is not outweighed by mitigating factors. If the jury does not recommend the death penalty, the court must sentence the defendant to a term of imprisonment.

Subsection (b) provides that, upon a sentence of death, the court must make written findings of the aggravating factors that justify the sentence and of the mitigating factors that were considered.

Subsection (c) provides for automatic review by the Alaska Supreme Court upon a judgment of death.

Section 12.55.180 provides that a death sentence may not be imposed unless one of a list of aggravating factors is found to exist and that factor is not outweighed by mitigating factors. The aggravating factors are

- (1) deliberate cruelty involving sexual assault in the first degree, kidnapping, assault in the first degree, torture, or an aggravated battery;
- (2) the death of two or more people, other than an accomplice;
- (3) a risk of imminent physical injury to three or more people, other than an accomplice;
- (4) a prior conviction for a felony involving violence or murder;
- (5) the offense was knowingly directed at the President of the United States or the Governor of Alaska;
- (6) the offense was knowingly directed at an active or former officer of the court, prosecuting attorney, law enforcement officer, correctional employee, or fireman during or because of the exercise of that person's official duties; and
- (7) the offense was committed pursuant to an agreement that the defendant pay or be paid for the commission of the offense; and
- (8) the defendant was on release for another felony charge or conviction having assault as an element.

Section 12.55.181 requires the court and the jury to consider all mitigating factors, including the following:

- (1) the offense was committed under a significant degree of duress, coercion, threat, or compulsion insufficient to constitute a defense;
- (2) the conduct of a youthful defendant was substantially influenced by a person more mature than the defendant;
- (3) the defendant acted with serious provocation from the victim; and

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

Section 12.55.182(a) provides that the Commissioner of Public Safety must inform the court, the prosecutor, and the defense attorney in writing if a defendant awaiting execution is believed to be pregnant or incompetent. The execution must then be stayed pending further order of the court.

Subsection (b) provides that upon notice of possible incompetency of a defendant sentenced to death the defendant must be evaluated for competency under AS 12.47.070 as if being evaluated for competency to stand trial. Upon a finding of incompetency, the sentencing court must inform the Supreme Court and the Commissioner of Public Safety and order the defendant committed under AS 12.47.110. Upon a finding of competency, the court must inform the Supreme Court and the Commissioner of Public Safety. The Supreme Court must then deliver another death warrant to the Commissioner of Public Safety specifying a date of execution between 30 and 60 days ahead.

Subsection (c) provides that upon a finding that a defendant awaiting execution is pregnant, the sentencing court must inform the Supreme Court and the commissioner. The Supreme Court then issues a stay during the pregnancy. After the pregnancy ends the sentencing court informs the Supreme Court and the commissioner. The Supreme Court then delivers another death warrant to the commissioner specifying a date of execution between 30 and 60 days ahead.

Sections 8 and 9 amends AS 22.07.020 to except from the jurisdiction of the state court of appeals a prosecution for a capital offense for which a death sentence is imposed.

Section 10 requires the lieutenant governor to place before the voters during the next general election the question of whether capital punishment for murder in the first degree as authorized by law should go into effect on August 15, 1989. The vote is advisory and not binding on the legislature.

Section 11 provides for an effective date of August 15, 1989 for sections 1-9 of the Act. This allows the legislature one session to respond to the advisory vote before the bill becomes effective.

Senator Abood
February 4, 1987
Page 6

Section 12 provides for an immediate effective date for section 10 of the Act.

KBL:mkr
m8/089

MEMORANDUM

February 20, 1987

TO: Senator Mitch Abood

FROM: Senator Paul Fischer, Chairman
Senate Health, Education & Social Services Committee
by: Margaret A Leavitt, *ML*

SUBJECT: Research Request

I have requested research on the following aspects of the impact of capital punishment legislation if the services could be contracted out of State as is presently done with our maximum security prisoners. I specifically requested that they draw a parallel between the fiscal requirements for services for a convicted criminal both with and without the death penalty. (ie under the present system requiring incarceration and in the event the capital punishment legislation should pass)

- 1) What is the average number of years each criminal will spend in incarceration?
- 2) What is the average cost per year, per each inmate of contracting with another state for the correction services required?
- 3) Specifically, what additional costs would be incurred to accommodate the actual death of an inmate under the penalty of capital punishment? (ie over the standard housing, food, clothing allowances, etc.)
- 4) Finally, what savings would this represent to the State of Alaska for each inmate and for the annual corrections program for each year.

I will forward a copy to your office as soon as it arrives.

MEMORANDUM

February 23, 1987

TO: Senate Advisory Council

FROM: Senator Paul Fischer, Chairman
Senate Health, Education & Social Services Committee
by: Margaret A Leavitt *ML*

SUBJECT: Research Request

I would like to have you research the following aspects of the impact of capital punishment legislation if the services could be contracted out of State as is presently done with our maximum security prisoners. Please draw a parallel between the fiscal requirements for services for a convicted criminal both with and without the death penalty. (ie under the present system requiring incarceration and in the event the capital punishment legislation should pass)

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- 4) Finally, what savings would this represent to the State of Alaska for each inmate and for the annual corrections program for each year.

MEMORANDUM

February 20, 1987

TO: Representative Alyce Hanley

FROM: Senator Paul Fischer, Chairman
Senate Health, Education & Social Services Committee
by: Margaret A Leavitt *MLK*

SUBJECT: Research Request

As per our phone conversation today, following is the context of the request that I would like to have submitted to the House Research Agency. Thank you very much for your help.

* * * * *

I would like to have you research the following aspects of the impact of capital punishment legislation if the services could be contracted out of State as is presently done with our maximum security prisoners. Please draw a parallel between the fiscal requirements for services for a convicted criminal both with and without the death penalty. (ie under the present system requiring incarceration and in the event the capital punishment legislation should pass)

- 1) What is the average number of years each criminal will spend in incarceration?
- 2) What is the average cost per year, per each inmate of contracting with another state for the correction services required?
- 3) Specifically, what additional costs would be incurred to accommodate the actual death of an inmate under the penalty of capital punishment? (ie over the standard housing, food, clothing allowances, etc.)
- 4) Finally, what savings would this represent to the State of Alaska for each inmate and for the annual corrections program for each year.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

February 3, 1987

Senator Paul Fischer
Chair, Senate HESS Committee
P. O. Box V
Juneau, Alaska 99811

Dear Senator Fischer:

I writing with regard to Senate Bill 7 and Senate Bill 31, both relating to capital punishment.

The court system anticipates submitting fiscal notes on these two measures. To some extent, the fiscal impact will reflect the impact on the Department of Law, since the court's workload would depend on the number of capital punishment cases which are filed. However, the court's fiscal note will also reflect costs incurred separately by the court system in processing these cases, such as the cost of increased courtroom security.

Once the administrative office has an opportunity to review executive branch fiscal notes on these measures, we will prepare appropriate fiscal notes and forward them to the Legislature. In the meantime, if you have any questions or need additional information from the court system, please let me know.

Sincerely,

Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Senator Tim Kelly
Senator Jan Faiks
Senator Mitchell Abood
Senator Jay Kerttula
Arthur H. Snowden, II, Administrative Director
Robert Fisher, Fiscal Officer

2/3/87-9

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE

DRAFT

Bill Version: CSSB 7 (HESS)

Publish Date: _____

REQUEST: _____

Revision Date: _____

Title: An Act authorizing capital

capital punishment....

Sponsor: Sen. Abood, Kelly, & Faiks

Requestor: Sen. Abood

Agency Affected: Public Safety

BRU: DPS Administration

Alaska State Troopers

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

JNR
2/9/87

Prepared by: Kathy Niles, Admin Assistant

Phone: 465-4336

Division: Commissioner's Office

Date: 2/09/87

Approved by Commissioner: [Signature]

Date: 2-9-87

Agency: Public Safety

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

page _____ of _____

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSSB 7 (HESS)

Publish Date: _____

Revision Date: _____

Agency Affected: Department of Law

Title: "An Act authorizing capital punishment."

BRU: Prosecution

Sponsor: Sen. Abood

Components: Criminal Appeals and

Requestor: Sen. Abood

Special Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES				214.4	220.8	227.4
TRAVEL				42.5	43.8	45.1
CONTRACTUAL				120.7	124.3	128.0
SUPPLIES				14.4	8.7	9.0
EQUIPMENT				12.5	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING				404.5	396.7	409.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND				404.5	396.7	409.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME				4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: Feb. 6, 1987

Approved by Commissioner: Richard L. Pegues (for)
Grace Berg Schaible, Atty. Gen.

Date: Feb. 6, 1987

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and it was not outweighed by mitigating factors. Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist to justify the death sentence; whether mitigating factors exist to outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death.

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

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

Based on these considerations, at least two full-time attorneys, together with paraprofessional and secretarial support elements, will be required to handle the additional work made necessary by capital cases, sentencing trials, and the appeals that result from death sentences. Other fiscal note costs include witness travel and subsistence (\$25.0) that will be required by the provision for sentencing trials. The cost for U.S. Supreme Court and U.S. Circuit Court of Appeals brief printing (\$30.0, each), which is a new required

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

expense, has also been included. The positions required by this bill will be located in the Office of Special Prosecutions and Appeals at Anchorage.

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

Cost Summary

<u>Object</u>	<u>Atty IV</u>	<u>Atty IV</u>	<u>P/A II</u>	<u>Leg Sec I</u>	<u>Total</u>
<u>100</u> - Salaries & Benefits	70.6	70.6	42.5	30.7	214.4
	<u>70.6</u>	<u>70.6</u>	<u>42.5</u>	<u>30.7</u>	<u>214.4</u>
<u>200</u> - Travel					
Witness travel and subsistence for sentencing trials	10.0	10.0	5.0	-0-	
Travel instate for sentencing trials and out-of-state trial to defend appeals in the U.S. Circuit Court of Appeals and the U.S. Supreme Court.	7.5	7.5	2.5	-0-	
	<u>17.5</u>	<u>17.5</u>	<u>7.5</u>		<u>42.5</u>
<u>300</u>					
Communications, copy & document production	3.6	3.6	2.4	2.4	
U.S. Supreme Court and U.S. Court of Appeals brief printing	15.0	15.0	-0-	-0-	
Expert witness	30.0	30.0	-0-	-0-	
Office space leases	4.1	4.1	3.3	2.2	
WP Maintenance	-0-	-0-	-0-	1.4	
Westlaw	1.2	1.2	1.2	-0-	
	<u>53.9</u>	<u>53.9</u>	<u>6.9</u>	<u>6.0</u>	<u>120.7</u>
<u>400</u> - Commodities					
Office consumables	1.2	1.2	1.2	1.2	
Law Library	1.2	1.2	1.2	-0-	
New Position Supplies	1.5	1.5	1.5	1.5	
	<u>3.9</u>	<u>3.9</u>	<u>3.9</u>	<u>2.7</u>	<u>14.4</u>
<u>500</u> - Equipment					
New Position Equipment	1.5	1.5	1.5	1.5	
Word Processor	-0-	-0-	-0-	6.5	
	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>8.0</u>	<u>12.5</u>
 TOTAL	 147.4	 147.4	 62.3	 47.4	 404.5

Costs beyond FY 90 include a 3 per cent inflation factor.

Position Title Attorney IV		No. of Positions 2	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 24	Location EBA - Anchorage		Election District 8
Type of Expenditure:		Amount		
1	2	3		
Salary	112,488			
Benefits	28,616			
Premium Pay				
Other				
Total Personal Services		141,104		
Travel		35,000		
Contractual		142,800		
Commodities		7,800		
Equipment		3,000		
Other				
Total Cost		329,704		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	329,704		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
Justification				
<p>This is to request two Attorney IV positions that will be required to handle capital punishment sentencing trials and to handle the appeals that arise from death sentences. Sentencing trials are expected to nearly double the time now required for murder trials. Substantial appeals work will also be required as defendants seek to have death sentences overturned in the federal court system. First degree murder trials require highly skilled prosecutors and that is why the department has requested the full working level prosecutor classification of Attorney IV.</p>				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Criminal Appeals & Special Prosc.

Page 1 of 3
 Revised Date

FY 88

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Darg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Justification				
This paralegal assistant position is requested to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. Furthermore, the position will also assist in legal research necessary in defending against appeals seeking to overturn death penalty sentences. Allocation to the full-working paraprofessional level of Paralegal Assistant II is recommended.				
Type of Expenditure		Amount		
1	2	3		
Salary	32,424			
Benefits	10,093			
Premium Pay				
Other				
Total Personal Services		42,517		
Travel		7,500		
Contractual		6,900		
Commodities		3,900		
Equipment		1,500		
Other				
Total Cost		62,317		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	62,317		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Criminal Appeals & Special Prosc.

Page 2 of 3
 Revised Date _____

FY 88

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : CSSB 7 (HESS)

Publish Date : _____

Revision Date: _____

Agency Affected: Department of Law

Title: "An Act authorizing capital punishment."

BRU: Prosecution

Sponsor: Sen. Abood

Components: Criminal Appeals and

Requestor: Sen. Abood

Special Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES				214.4	220.8	227.4
TRAVEL				42.5	43.8	45.1
CONTRACTUAL				120.7	124.3	128.0
SUPPLIES				14.4	8.7	9.0
EQUIPMENT				12.5	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING				404.5	396.7	409.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND				404.5	396.7	409.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME				4	4	4
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: Feb. 6, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.

Date: Feb. 6, 1987

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

This bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and it was not outweighed by mitigating factors. Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist to justify the death sentence; whether mitigating factors exist to outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death.

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

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

Based on these considerations, at least two full-time attorneys, together with paraprofessional and secretarial support elements, will be required to handle the additional work made necessary by capital cases, sentencing trials, and the appeals that result from death sentences. Other fiscal note costs include witness travel and subsistence (\$25.0) that will be required by the provision for sentencing trials. The cost for U.S. Supreme Court and U.S. Circuit Court of Appeals brief printing (\$30.0, each), which is a new required

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

expense, has also been included. The positions required by this bill will be located in the Office of Special Prosecutions and Appeals at Anchorage.

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7 (HESS)

Cost Summary

<u>Object</u>	<u>Atty IV</u>	<u>Atty IV</u>	<u>P/A II</u>	<u>Leg Sec I</u>	<u>Total</u>
<u>100</u> - Salaries & Benefits	70.6	70.6	42.5	30.7	214.4
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	70.6	70.6	42.5	30.7	214.4
 <u>200</u> - Travel					
Witness travel and subsistence for sentencing trials	10.0	10.0	5.0	-0-	
Travel instate for sentencing trials and out-of-state trial to defend appeals in the U.S. Circuit Court of Appeals and the U.S. Supreme Court.	7.5	7.5	2.5	-0-	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	17.5	17.5	7.5		42.5
 <u>300</u>					
Communications, copy & document production	3.6	3.6	2.4	2.4	
U.S. Supreme Court and U.S. Court of Appeals brief printing	15.0	15.0	-0-	-0-	
Expert witness	30.0	30.0	-0-	-0-	
Office space leases	4.1	4.1	3.3	2.2	
WP Maintenance	-0-	-0-	-0-	1.4	
Westlaw	1.2	1.2	1.2	-0-	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	53.9	53.9	6.9	6.0	120.7
 <u>400</u> - Commodities					
Office consumables	1.2	1.2	1.2	1.2	
Law Library	1.2	1.2	1.2	-0-	
New Position Supplies	1.5	1.5	1.5	1.5	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	3.9	3.9	3.9	2.7	14.4
 <u>500</u> - Equipment					
New Position Equipment	1.5	1.5	1.5	1.5	
Word Processor	-0-	-0-	-0-	6.5	
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	1.5	1.5	1.5	8.0	12.5
 TOTAL	147.4	147.4	62.3	47.4	404.5

Costs beyond FY 90 include a 3 per cent inflation factor.

Position Title Attorney IV		No. of Positions 2	Range/Step 24A	Barg. Unit PX	
Time Status PFT	Staff Months 24	Location EBA - Anchorage		Election District 8	
Type of Expenditure		Justification			
		<p>This is to request two Attorney IV positions that will be required to handle capital punishment sentencing trials and to handle the appeals that arise from death sentences. Sentencing trials are expected to nearly double the time now required for murder trials. Substantial appeals work will also be required as defendants seek to have death sentences overturned in the federal court system. First degree murder trials require highly skilled prosecutors and that is why the department has requested the full working level prosecutor classification of Attorney IV.</p>			
Amount					
1	2				3
Salary	112,488				
Benefits	28,616				
Premium Pay					
Other					
Total Personal Services					141,104
Travel					35,000
Contractual					142,800
Commodities					7,800
Equipment					3,000
Other					
Total Cost		329,704			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	329,704			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

**Request For
New Position**

Agency Department of Law
 BRIT Prosecution
 Component Criminal Appeals & Special Prosc.

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 Revised Date _____

FY 88

Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 6A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Justification				
This paralegal assistant position is requested to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. Furthermore, the position will also assist in legal research necessary in defending against appeals seeking to overturn death penalty sentences. Allocation to the full-working paraprofessional level of Paralegal Assistant II is recommended.				
Type of Expenditure		Amount		
1	2	3		
Salary	32,424			
Benefits	10,093			
Premium Pay				
Other				
Total Personal Services		42,517		
Travel		7,500		
Contractual		6,900		
Commodities		3,900		
Equipment		1,500		
Other				
Total Cost		62,317		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	62,317		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Criminal Appeals & Special Prosc.

Page 2 of 3
 Revised Date

FY 88

Position Title Legal Secretary I			No. of Positions 1	Range/Step 10B	Barg. Unit GGU	
Time Status PFT	Staff Months 12		Location EBA - Anchorage	Election District 8		
Type of Expenditure			Justification			
			<p>This Legal Secretary position is needed to provide office services support for the two attorneys and one paralegal who will be required to handle capital punishment trials and appeals that arise from death sentences. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs at both the state and federal levels, requiring full-time secretarial support.</p>			
1		2				3
Salary		22,716				
Benefits		8,033				
Premium Pay						
Other						
Total Personal Services						30,749
Travel						-0-
Contractual						6,000
Commodities						2,700
Equipment			8,000			
Other						
Total Cost			47,449			
Funding Source for Total Cost						
Federal Receipts	1002					
G. F. Match	1003					
General Fund	1004		47,449			
I-A Receipts	1006					
CIP Receipts	1061					
Other						

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component Criminal Appeals & Special Prosc.

Page 3 of 3.
 Revised Date

FY 88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSSB 7
Publish Date: _____

Revision Date: _____
Title: "An act authorizing capital
punishment, classifying murder...."
Sponsor: Senator Mitch Abood
Requestor: Senate Judiciary

Agency Affected: Dept. of Corrections
BRU: Southcentral Region
Components: Spring Creek C.C.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES			473.1	993.5	1043.2	1095.3
TRAVEL			4.0	8.4	8.8	9.3
CONTRACTUAL			17.5	36.8	38.6	40.5
SUPPLIES			4.0	8.4	8.8	9.3
EQUIPMENT			3.1			
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	501.7	1047.1	1099.4	1154.4
CAPITAL	-0-	2683.5	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2683.5	501.7	1047.1	1099.4	1154.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	2683.5	501.7	1047.1	1099.4	1154.4

POSITIONS:

FULL-TIME	-0-	-0-	20	20	20	20
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

It is not anticipated that the Committee Substitute to Senate Bill 7 will appreciably alter the cost of this legislation.

See Attached

Prepared by: Susie Riley, Program Budget Analyst
Division: Administrative Services

Phone: 465-3376
Date: Feb. 4, 1987

Approved by Commissioner: William W. Ludwig
Agency: Department of Corrections

Date: 2/4/87

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 7

ANALYSIS

A. Assumptions:

Enactment of Senate Bill 7 would change the State law to permit capital punishment for a capital felony. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 5 or 6 years. The fact that the sentence is subject to review within 60 days by the State Supreme Court is not expected to appreciably affect the average length of time spent on death row since most cases proceed immediately to the federal courts. Therefore, we are predicting the need for a maximum of 20 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.
2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.
3. Two fixed guard posts will be required plus one post for roving patrol, and one post for shift supervisor due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 personnel.
4. Inflation is estimated at 5% per year.
5. The unit will be available for occupancy January 1989.

B. Estimated Costs

1. Capital Expenditures

- a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 20-cell complex.
- b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 7

- c. Assumes only the usual 6% equipment factor and does not include costs for whatever type of equipment would be appropriate for the specified method of execution.
- d. It is estimated that the cost will be \$300 per square foot, considering the fact that this unit must be more secure than other facilities under construction and the relatively small size of the building. No indoor recreation room has been projected.

<u>Area Identification</u>	<u>Square Footage</u>
Core Area (44' x 44')	1936
-Control Room, Sallyport	
-Visitation (Attorney, Secure)	
-General Movement	
-Storage	
-Mechanical Room	
Housing Wings	
(2 @ 37' x 47' + 200 sq. ft.)	3678
-20 Cells @ 80 sq. ft. gross each	
-Three Shower Areas	
-Two Movement/Indoor Recreation Area	
Execution Area	1000
Total (Gross)	6614/sq. ft.
	x \$300/sq. ft.
Cost of Structure	\$1,984,200
Secure Outdoor Recreation	
(2 @ 16' x 20')	
-640 sq. foot @ \$125/sq. foot	80,000
Total Building Cost	\$2,064,200
-30% Administration/Overhead	619,260
TOTAL PROJECTED COST	\$2,683,460

- 2. Salaries and related costs are detailed on "Request for New Positions" attached. It is estimated that Operating Costs would not begin until January of 1989 due to time needed for construction, so funds are included for only six months of FY89.

Position Title Correctional Officer II		No. of Positions 15	Range/Step 13B	Barg. Unit GGU														
Time Status PFT	Staff Months 90	Location Seward		Election District														
Type of Expenditure		Justification																
1	2	3																
Salary	249,885	<p>This facility, even though attached to an existing institution, would require two additional fixed guard posts and one post for roving patrol, due to the high security and high risk nature of the unit.</p> <p>To man one post 24 hours per day, 7 days per week requires at least 5 Correctional Officer II's. Three additional posts will require a minimum of 15 CO II's.</p> <p>The cost for one-half FY89 is as follows:</p> <table style="margin-left: 40px;"> <tr> <td>\$16,659</td> <td>Salaries</td> </tr> <tr> <td>6,419</td> <td>Benefits</td> </tr> <tr> <td><u>\$23,078</u></td> <td></td> </tr> <tr> <td>200</td> <td>Travel (training)</td> </tr> <tr> <td>200</td> <td>Standard Supplies (\$400 per year)</td> </tr> <tr> <td>150</td> <td>Equipment</td> </tr> <tr> <td><u>\$23,628</u></td> <td></td> </tr> </table>			\$16,659	Salaries	6,419	Benefits	<u>\$23,078</u>		200	Travel (training)	200	Standard Supplies (\$400 per year)	150	Equipment	<u>\$23,628</u>	
\$16,659	Salaries																	
6,419	Benefits																	
<u>\$23,078</u>																		
200	Travel (training)																	
200	Standard Supplies (\$400 per year)																	
150	Equipment																	
<u>\$23,628</u>																		
Benefits	96,285																	
Premium Pay																		
Other																		
Total Personal Services	346,170																	
Travel	3,000																	
Contractual																		
Commodities	3,000																	
Equipment	2,250																	
Other																		
Total Cost	354,420																	
Funding Source for Total Cost																		
Federal Receipts	1002																	
G. F. Match	1003																	
General Fund	1004	354,420																
I-A Receipts	1006																	
CIP Receipts	1061																	
Other																		

**Request For
New Position**

Agency Department of Corrections
 BRU Southcentral Region
 Component Spring Creek Correctional Center

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 Revised Date

FY 88

SECTIONAL ANALYSIS FOR SB 7

"An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies." -

SECTION 1 - Amends AS 11.41.100(b) by making murder in the first degree a capital felony.

SECTION 2 - Amends AS 12.30.040(b) so that a person may not be released on bail either before sentencing or pending appeal when convicted of a capital felony.

SECTION 3 - Adds a new section (AS 12.55.117) which makes the death penalty subject to automatic review by the supreme court within 60 days after the sentence is imposed, but the 60 days may be extended by the court. If the sentence is upheld the execution would take place not less than 30 days nor more than 60 days after the date of the death warrant. The person sentenced to death could choose to be executed by lethal injection or by firing squad. The Department of Corrections would be responsible for adoption of regulations governing an execution.

SECTION 4 - Amends AS 12.55.125(a) by adding language which has a person convicted of a capital felony sentenced to at least 20 years, but not more than 99 years of imprisonment, or sentenced to death.

SECTION 5 - Amends AS 12.55 by adding new sections as follows:

Sec. 12.55.177. SENTENCING PROCEDURE FOR A CAPITAL FELONY. Sets up a separate sentencing procedure for capital felonies. After a jury convicts someone of a capital felony the court is required to conduct a separate sentencing proceeding before the trial jury as soon as possible. Sentencing before a jury would be required even if a jury trial has been waived or if the defendant pleads guilty. Evidence and character testimony and oral arguments could be presented as well as any aggravating or mitigating factor the court considers valuable for proving guilt or innocence, "regardless of the admissibility of the evidence under the exclusionary rules of evidence, provided the defendant has an opportunity to rebut hearsay statements." Would not authorize the introduction of evidence secured in violation of state or federal constitutions.

Sec. 12.55.179. SENTENCE IMPOSITION FOR CAPITAL FELONY. A death sentence could not be imposed unless the jury finds "at least one aggravating factor that is not outweighed by the mitigating factors and the jury recommends that the defendant be sentenced to death." If the death sentence is not

PAGE TWO
SECTIONAL ANALYSIS FOR SB 7

recommended by the jury, the court shall set a term of imprisonment.

Se. 12.55.180. AGGRAVATING FACTORS. Lists aggravating factors to be considered: deliberate cruelty involving sexual assault, kidnapping, or first degree assault; the death of two or more people; prior murder convictions; assassination of the President or Alaska's governor; murdering of law enforcement, judicial or corrections officer during the exercise of official duties; killing a child under the age of nine; contract murders; killing someone while avoiding arrest or during or after an escape.

Sec. 12.55.181. MITIGATING FACTORS. Lists mitigating factors to be considered: committed the offense under duress, coercion, threat, or compulsion; a youthful defendant was substantially influenced by an older person; the defendant was seriously provoked by the victim; the defendant assisted authorities to detect or apprehend other persons involved.

Sec. 12.55.182. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO DEATH. An execution could be stayed if a defendant is incompetent or pregnant. When the defendant was no longer considered to be incompetent or pregnant the execution would proceed.

SECTION 6 - Amends AS 22.07.020(a) by excluding prosecution for a capital felony in which the death sentence is imposed from the Court of Appeals.

SECTION 7 - Amends AS 22.07.020(b) by excluding prosecution for a capital felony in which the death sentence is imposed from the Court of Appeals.

SECTION 8 - Adds a new section to AS 33.30.

Sec. 33.30.095. ADMINISTRATION OF THE DEATH PENALTY. The Commissioner of Corrections will establish the procedure for execution of the death sentence and provides for the death sentence to be carried out in a state correctional facility.

This bill does not provide for an effective date (becomes law 90 days after governor signs bill).

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: Senate Bill 7
Publish Date: _____

Revision Date: _____
Title: "An act authorizing capital punishment, classifying murder...."
Sponsor: Senator Mitch Abood
Requestor: Senator Mitch Abood

Agency Affected: Dept. of Corrections
BRU: Southcentral Region

Components: Spring Creek C.C.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES			473.1	993.5	1043.2	1095.3
TRAVEL			4.0	8.4	8.8	9.3
CONTRACTUAL			17.5	36.8	38.6	40.5
SUPPLIES			4.0	8.4	8.8	9.3
EQUIPMENT			3.1			
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	501.7	1047.1	1099.4	1154.4

CAPITAL	-0-	2683.5	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	2683.5	501.7	1047.1	1099.4	1154.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	2683.5	501.7	1047.1	1099.4	1154.4

POSITIONS:

FULL-TIME	-0-	-0-	20	20	20	20
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Susie Riley, Program Budget Analyst
Division: Administrative Services

Phone: 465-3376
Date: Jan. 27, 1987

Approved by Acting Commissioner: William W. Ludwig
Agency: Department of Corrections

Date: 2/3/87

Distribution (by preparer):

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

page 1 of 5

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

ANALYSIS

A. Assumptions:

Enactment of Senate Bill 7 would change the State law to permit capital punishment for a capital felony. Current estimates indicate three convictions per year for this offense would involve executing the death penalty. Because of the lengthy appeal process in cases where the death penalty has been imposed, it is anticipated that a significant number of persons would have to be confined in a separate confinement area. The national average length of time between sentencing and execution of the death penalty is 5 or 6 years. The fact that the sentence is subject to review within 60 days by the State Supreme Court is not expected to appreciably affect the average length of time spent on death row since most cases proceed immediately to the federal courts. Therefore, we are predicting the need for a maximum of 20 death row beds.

1. Capital expenditures required to provide specialized space not currently available in existing State correctional centers. Details follow in B-1.
2. The new space will be adjacent to an existing facility, but isolated. Existing authorized staff could not provide for the necessary security of inmates housed in the area designated for prisoners sentenced to execution.
3. Two fixed guard posts will be required plus one post for roving patrol, and one post for shift supervisor due to the high security and high risk nature of the unit. To man one post 24 hours per day, 7 days per week requires 5 personnel.
4. Inflation is estimated at 5% per year.
5. The unit will be available for occupancy January 1989.

B. Estimated Costs

1. Capital Expenditures

- a. Functions and square footage allocations are derived from accepted space standards and are adjusted to an existing design for a 20-cell complex.
- b. Assumes this structure will be an addition to an existing institution with all activity for prisoners sentenced for execution to be limited to this maximum security unit.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

- c. Assumes only the usual 6% equipment factor and does not include costs for whatever type of equipment would be appropriate for the specified method of execution.
- d. It is estimated that the cost will be \$300 per square foot, considering the fact that this unit must be more secure than other facilities under construction and the relatively small size of the building. No indoor recreation room has been projected.

<u>e. Area Identification</u>	<u>Square Footage</u>
Core Area (44' x 44')	1936
-Control Room, Sallyport	
-Visitation (Attorney, Secure)	
-General Movement	
-Storage	
-Mechanical Room	
Housing Wings	
(2 @ 37' x 47' + 200 sq. ft.)	3678
-20 Cells @ 80 sq. ft. gross each	
-Three Shower Areas	
-Two Movement/Indoor Recreation Area	
Execution Area	1000
Total (Gross)	6614/sq. ft.
	x \$300/sq. ft.
Cost of Structure	\$1,984,200
Secure Outdoor Recreation	
(2 @ 16' x 20')	
-640 sq. foot @ \$125/sq. foot	80,000
Total Building Cost	\$2,064,200
-30% Administration/Overhead	619,260
TOTAL PROJECTED COST	\$2,683,460

- 2. Salaries and related costs are detailed on "Request for New Positions" attached. It is estimated that Operating Costs would not begin until January of 1989 due to time needed for construction, so funds are included for only six months of FY89.

Position Title Correctional Officer II		No. of Positions 15	Range/Step 13B	Barg. Unit GGU																																																											
Time Status PFT	Staff Months 90	Location Seward		Election District																																																											
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**Request For
New Position**

Agency Department of Corrections
 BRU Southcentral Region
 Component Spring Creek Correctional Center

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 Revised Date

FY 88

Position Title Correctional Officer III		No. of Positions 5	Range/Step 15A	Barg. Unit GGU																																																		
Time Status PFT	Staff Months 90	Location Seward		Election District																																																		
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**Request For
New Position**

Agency Department of Corrections
 BRU Southcentral Region
 Component Spring Creek Correctional Center

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 Revised Date

FY 88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB 7

Publish Date: _____

Revision Date: _____

Title: "An Act authorizing capital punishment..."

Agency Affected: Public Safety

BRU: DPS Administration
Alaska State Troopers

Sponsor: Sen. Abood and Kelly

Requestor: Sen. HESS

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

JNR
2/3/87

Prepared by: Kathy Niles, Admin. Assistant

Phone: 465-4336

Division: Commissioner's Office

Date: 2/03/87

Approved by Commissioner: [Signature]

Date: 2/3/87

Agency: Public Safety

Distribution (by preparer):

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

Chapter

4

CRIMINAL JUSTICE

Is the Death Penalty Just?

VIEWPOINT

1

"The death penalty will deter, in my firm opinion, some murders."

Arguments For the Death Penalty

Evelle J. Younger

On July 15, 1977, Evelle J. Younger, then California Attorney General, spoke before the Commonwealth Club of California. Younger's address was a strong plea favoring the reintroduction of the death penalty in California. The following viewpoint is an excerpt from that speech.

Consider the following questions while reading:

1. What does Younger mean when he says that his position in support of capital punishment "has to do with cost?"
2. List some of the arguments against the death penalty which the author says are invalid. Why does the author believe that they are invalid?
3. Do you agree with the author's arguments? Why or why not?

Evelle J. Younger, "Capital Punishment: The Peoples' Mandate", *Vital Speeches of the Day*, September 1, 1977. Reprinted by permission.

So far as I'm concerned, I'm human enough to think my position in support of capital punishment is a valid one, and simply stated, has to do with cost...

A few years ago, I strongly supported an amendment to the law making the sale of heroin a mandatory prison sentence, because absent that mandatory prison sentence, 80 percent of those who sold heroin were getting probation. And it's a little hard being Attorney General charged with the responsibility of enforcing laws relating to the sale of heroin, if those violating the law get probation in four out of five cases. The price isn't high enough in other words to discourage someone who wants to go into the business of selling heroin.

PRICE MUST BE HIGH

Ditto absent capital punishment, the price for killing someone under certain circumstances isn't high enough. For example, absent capital punishment, there is no reason for a rapist to leave his victim alive. Because a rape calls for life imprisonment, absent capital punishment, murder calls for the penalty of life imprisonment. So the rapist can murder his victim and eliminate a witness, and increase his chances of avoiding successful prosecution, all secure in the knowledge that if he is caught and punished, he hasn't increased the price of his crime one whit.

Ditto a person who holds up a filling station, and binds and gags the attendant. Absent capital punishment, there's no reason for the gunman to not execute the attendant. I'd like to give the gunman a reason for leaving the attendant bound, gagged and alive on the floor of the filling station.

That's my rationalization. That's my reason for strongly supporting capital punishment. I don't believe the death penalty will deter all murders. It won't even deter most murders. It will deter, in my firm opinion, some murders. And, when you're talking about deterring the murder of innocent people, I don't think you have to deal in thousands before you can justify what I believe to be a very realistic penalty...

PUBLIC SUPPORT

I want to identify some of those reasons for opposing capital punishment that I regard as unsupportable. I just think the arguments are not valid. For example, one of the favorite arguments for anyone who opposes capital punishment is that it really doesn't have public support. If people were asked a

question by someone taking a poll, they'll say 'I'm for capital punishment,' but if they're put on a jury where they have to act on it as a juror or a private citizen, they don't really support the concept.

That argument is absolutely and completely untrue. It's rather remarkable that the argument was stated so forcefully by our own state Supreme Court in 1972. They said in an attempt to rationalize their legislatively abolishing the death penalty in California, that although death penalty statutes remain on the books of many jurisdictions, the frequency of its application suggests that among persons called upon to carry out the death penalty, it's being repudiated with ever increasing frequency...

Capital punishment has been infrequently applied because Appellate Courts have repeatedly interfered. In 1972, when the California Supreme Court struck down this state's death penalty, 107 persons whom judges or juries had sentenced to death, including Charles Manson and Sirhan Sirhan, were spared. In that same year, the United States Supreme Court invalidated the as then applied death penalty laws nationwide, and approximately 600 persons under sentence of death could not be executed.

Before the California Supreme Court again struck down the last law in December of 1976, approximately 69 additional persons had been condemned to die. Therefore, it's hard to see how anybody could conclude the death penalty lacks public support...

A DETERRENT TO CRIME

Nearly all the evidence we have shows capital punishment is a general deterrent to deadly crime...

M. Stanton Evans, *Human Events*, February 3, 1980.

EQUAL JUSTICE

Another false concept that's been foisted on substantial portions of our population relates to the concept that only the

poor and friendless get the death penalty. Of course, the argument that juries are likely to inflict the death penalty on the indigent rather than the wealthy is just not valid.

Under California's death penalty law struck down last December, the death penalty was possible only for those first degree murderers in which aggravating special circumstances occurred, such as hired killings, killing more than one person, killing while committing rape, child molesting, kidnapping, robbery or burglary, killing a witness to prevent his testimony, or killing a peace officer in line of duty where proved beyond a reasonable doubt.

ELIMINATES REPEAT CRIMES

The idea that capital punishment "deters no one" does not explain the rapid rise of homicides in America while the death penalty was virtually outlawed. Deterrent or not, it effectively eliminates the possibility of a repeat crime.

Jenkin Lloyd Jones, *Human Events*, June 23, 1979

Seven of the inmates on death row were there because they agreed to pay others to commit murders. The occupations of the 69 persons on death row at that time were seven owners of businesses, one housewife, 35 skilled workers, eleven laborers, 12 unemployed and three unknown. Makes it pretty clear that California's judges and juries haven't been concerned just with the occupation or economic status of the killer in applying the death penalty.

They're really concentrated on the aggravated nature of the murder instead. I think it's also significant that of those 69 on death row, when the decision commuted their sentences to life imprisonment, 24 were on death row because they had killed a witness to avoid prosecution for some other crime. It's true there are not many millionaires on death row. That's true but not valid, because millionaires do not commit crimes that rate a position on death row. Millionaires do not hold up filling stations and execute the attendant.

PAROLE A SAFETY VALVE

Another argument, a favorite of those who oppose the death penalty, is that we can accomplish the same thing by life imprisonment without possibility of parole. There's several things wrong with that. There is no such thing in our nation or in our state as true life imprisonment, nor should there be.

The governor has, and always should have, the power to commute. In any civilized system, the chief executive has to have the power to pardon. That's the safety valve that will work when everything else fails. So I wouldn't be in favor of, if we could, and it would be impossible, to try and take away the governor's power to commute. Given that power to commute, there's no such thing as life imprisonment. You simply substitute the governor's clemency hearing for a parole hearing now...

Also, another argument for not having in your system the concept of life imprisonment without parole, is that there is always the possibility of escape. Now those who favor life imprisonment without possibility of parole minimize that.

There's one other reason why life without possibility of parole is not a realistic alternative, and that is that you cannot run a prison without giving those in prison some hope of eventual release. Heavens knows it's bad enough in prison now...If everyone in prison, or even a substantial portion, were there literally for life, there'd be no way you could maintain any degree of order.

The one thing that makes most prison communities manageable now is the fact that the vast majority of persons are on good behavior looking forward to that day when someone says, "O.K., we're going to put you on parole."

Of course, there are arguments to the effect that mistakes are always possible, and if a person is executed there is no way to correct the mistake. Well, maybe. But as a practical matter, it's impossible, inconceivable that an innocent person would ever be executed.

The system tilts heavily, and properly so, in favor of a person accused of crimes. We have so many checks and protections now that didn't exist 20 years ago. The problem today is not that we are going to convict an innocent person of murder, the problem is how do you convict those that are admittedly guilty?

“One of these days we are going to look at the death penalty and strike it from our statutes.”

Arguments Against the Death Penalty

Clinton T. Duffy

Clinton T. Duffy is one of the most prominent and respected penologists in the U.S. The son of a prison guard at San Quentin prison, “Duffy of San Quentin” began his corrections work there as secretary to the warden. His career includes 11 years as warden of San Quentin, followed by three terms on the California state parole board. Mr. Duffy, a staunch opponent of the death penalty, has served as vice-president of the National League to Abolish Capital Punishment. The following viewpoint is taken from a 1978 interview of Duffy by James Breig.

Consider the following questions while reading:

1. Why did Duffy's conversations with condemned prisoners lead him to conclude that capital punishment does not deter murder?
2. Do you agree with Duffy that public executions would lead to the abolition of the death penalty? Why or why not?

James Breig interviewing Clinton T. Duffy. “Does Killing Criminals Stop Crime?” May 1978. Reprinted with permission from *U.S. Catholic*, published by Claretian Publications, 221 W. Madison Street, Chicago, IL 60606.

Many people who support capital punishment rely on the argument that it deters crime. What's been your experience on that?

I have talked with every man and the two women who came under my jurisdiction to be executed and asked them if they thought about the death penalty prior to the commission of their act. I have yet to have one tell me they thought about it. They would say it was a crime of passion, jealousy, rage, or hatred; that it was temporary insanity; or, in a few cases, ‘I didn't expect to get caught.’ I have also talked to hundreds of lifers in the big yard and got the same answers from them and from second- and third-degree murderers and potential murderers, people who committed crimes with weapons.

Why are you opposed to the death penalty?

The number-one reason can be put down in a very short sentence, easy for everyone to understand: it is wrong to kill. It is wrong for these people to have killed in the community, but it is also wrong for the state to premeditate another murder. Two wrongs do not make a right.

Also, it is not equal justice. I could take you into San Quentin, Sing Sing, Folsom, Joliet, you name it, and I'll find many men and women whose crimes are just as bad — and sometimes worse — as the crimes of those on condemned row...

You can't bring back the victim either, many people argue. I am sure you have had people accuse you of being more concerned for the criminal than for the victim.

I do think of the victims. The victims are important people. Their lives should not have been taken from them. I've talked with the loved ones of victims — parents, wives, children. I've counseled them, tried to direct and guide them; I've prayed with them and cried with them. I thoroughly understand that when someone you know is brutally murdered you feel that the person who did it should be executed.

But you have to look at the other side also. If your son or daughter or husband or friend committed a homicide, would you say, “Execute my son or wife or mother or father”? No, you would not. People will say, “But my loved ones would not commit a murder.” That's what the relatives of people on condemned row have told me, too.

Much of your opposition to capital punishment comes from your personal experience. When did you witness your first execution?

My first official one was about 1930 when I had to participate with the warden in a hanging.

But I was involved in hangings almost as a baby because we lived within a block of the main entrance of the prison. We knew when there was going to be an execution because the prisoners were not out in the yard. I learned early about the things that happen when people are hanged.

DEATH-ROW CENSUS (APRIL 20, 1981)

TOTAL number of persons under sentence of death: 792

By race:	Black	322	40.66%
	Hispanic	35	4.42%
	Native American	4	.50%
	Asian	2	.25%
	TOTAL minority	363	45.83%
	TOTAL white	429	54.17%
		<u>792</u>	<u>100.00%</u>

By sex:	Male	784	99%
	Female	8	1%

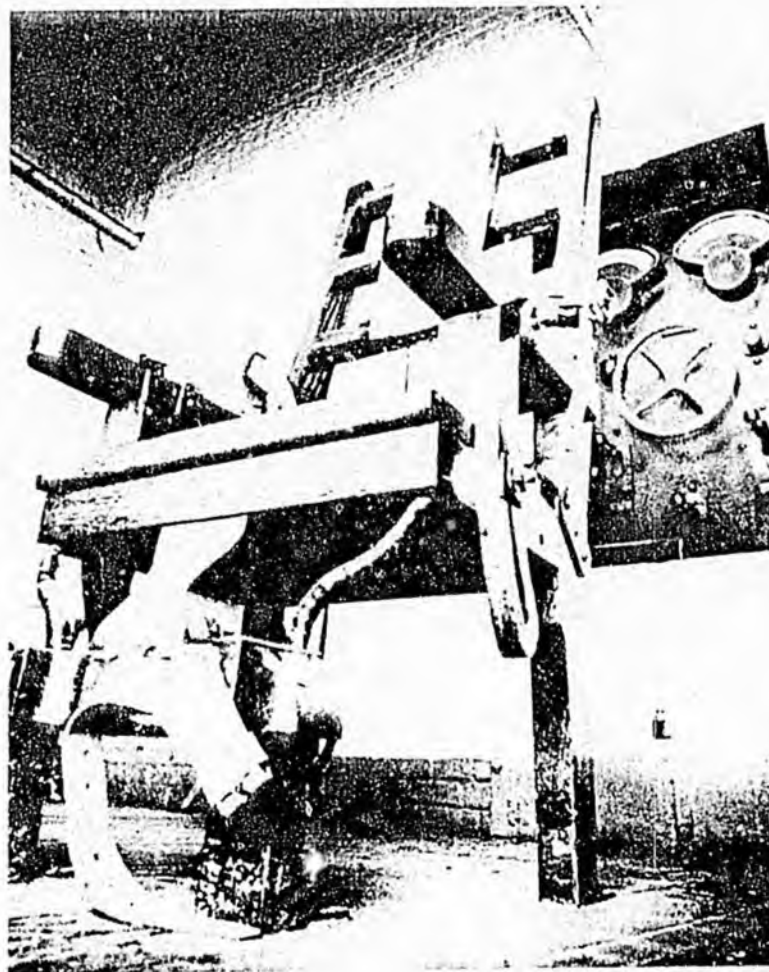
By crime:	Aggravated murder	791
	Forcible rape of a minor	1

Statistics compiled by the National Coalition Against the Death Penalty.

What happens when a man is executed?

The executioner for a hanging straps the prisoner's arms to his side with a belt around the middle. They walk up the 13 stairs and strap his feet together. A black cap is placed over his head. The noose is slipped on and hitched up around his left ear.

ELECTRIC CHAIR: TRENTON STATE PRISON, NEW JERSEY



Religious News Service Photo

The trap is sprung, and the man hits bottom. He perspires, he wheezes, he squeals, he wiggles, he kicks, he urinates, he defecates. Droppings fall to the floor. The stench is terrific, and witnesses pass out. Between 8 and 12 minutes later, according to the vitality of the prisoner, he is pronounced dead.

Electrocutions are similar. But his head is shaved, and his pants leg is split. When he's strapped down, electrodes are placed on his calf and head. The warden throws the switch, and the body cringes, pulls, fights. The eyes pop, and the tongue swells. The skin swells almost to the breaking point, and many times the body smells like cooked meat.

The gas chamber is not as gruesome only because the body doesn't smell like cooked meat. All else is the same.

They are all gruesome. There's no easy or humane way to kill people whether it is done by the murderer or the prison or during war...

ABOLISH CAPITAL PUNISHMENT

We believe that in the conditions of contemporary American society, the legitimate purposes of punishment do not justify the imposition of the death penalty. Furthermore, we believe that there are serious considerations which should prompt Christians and all Americans to support the abolition of capital punishment.

U.S. Catholic Conference statement on capital punishment.

If people did what you did, do you think they could still favor capital punishment?

If we held electrocutions in Times Square, New York would outlaw the death penalty. If we held firing squads in front of the Mormon Tabernacle in Salt Lake City, Utah would abolish the death penalty. If we gassed people in the bandstand of Golden Gate Park in San Francisco, California would abolish the death penalty.

One of these days we are going to look at the death penalty

and strike it from our statutes. When the gas chamber, hangman's noose, and the electric chair are done away with, as were the rack, screw, burling at the stake, drowning, throwing to the lions, and other barbaric methods, then we will all be the better for it.

What would you do with murderers?

Life imprisonment. Let them die in prison if necessary. People ask, "Why should we keep these kinds of people in prison all their lives at our expense when we could execute them and be ahead in money?" That's not true. From the time of arrest, conviction, and execution versus arrest, conviction, and death in prison naturally, it costs a lot more to execute. A survey was made, and it revealed it costs \$20,000 more to execute.

The feeling is, though, that murderers go free.

I made a survey of California prisons and found that 86 lifers had died in prisons over a ten-year period. All murderers are not released. Many die in prison and should because they are too dangerous.

But many are ordinary persons who can change enough to make it in the community. A man called me a while ago who had worked for me while I was warden. He had been out for 38 years. He is a good family man, a worker; he pays his taxes and bills and enters into community activity. He had been a lifer who served 18 years.

If capital punishment doesn't deter crime, what would?

Building a better child. We'd better develop a system to make bad kids into good ones who will become productive people who, in turn, will raise good children. We need a prevention program...

My plan would cost millions and would save billions, but more important, it would save human beings.

Another way out is to train better parents. I often ask people, "Why didn't your kids or mine commit murders?" The reason is that where there is love, understanding, religion, discipline, and direction, rarely will you have a delinquent child or an adult criminal.

“History and present conditions in the world show that murder and homicide are most prevalent where the punishment for them is moderate and limited.”

The Death Penalty: A Necessary Evil

William R. Cannon

William R. Cannon is bishop of the Atlanta Area of the United Methodist Church. Essentially, he believes that capital punishment is an evil. But he writes that when the death penalty is “assessed in terms of the interests of society as a whole,” it becomes a necessary evil which we must learn to endure.

Consider the following questions while reading:

1. How does Bishop Cannon compare divorce to killing to protect a loved one?
2. Which great Christian thinkers does the Bishop refer to? What was their attitude toward capital punishment?
3. What does the author suggest as a possible alternative to capital punishment?

William R. Cannon, “An Abhorrent But Necessary Evil”. Reprinted from the January 1980 issue of *engage/social action* magazine, copyright 1979 by the United Methodist Board of Church and Society.

Capital punishment is an evil. The very thought of it is abhorrent to me.

However, in the world in which we live, we do not always have a choice between absolute good and absolute evil. It is not simply a matter of deciding between unequivocal right and wrong. More often than not, our only choice is between the greater and the lesser of two evils.

Marriage is a divinely ordained institution, and to dissolve a marriage by divorce is evil. Even so, divorce may be the only means possible to save a husband and a wife from destroying themselves. It is much less wrong, therefore, to permit the divorce than to accept its alternative. Almost any morally responsible person would kill a criminal if this were the only means he had of preventing the criminal from killing his friend or loved one; moreover, Christian conscience would exonerate him for his act, though it would not term the deed “good.” Christian conscience recognizes that it is far less evil to kill a criminal than it is to stand idly by and permit him to kill someone else.

The Well-being of All the People

Capital punishment cannot be evaluated only in terms of the person on whom it is inflicted, that is, on the condemned criminal alone; instead, it must be assessed in terms of the interests of society as a whole, in terms of the well-being of all the people, of whom the criminal is but one. It is a lopsided and distorted moral evaluation when our only concern is the action we take toward a murderer, with no consideration whatever of the action the murderer took against the person he murdered. If capital punishment is abolished, warned an eminent French jurist of an earlier generation, “the law will guarantee the lives of none but murderers.”

We covet a society where capital punishment is unnecessary because the strength of the law is so great that crimes of violence such as murder would be impossible. A few decades ago we thought we were making such progress in handling crime that we could afford to abolish capital punishment. Indeed, it was the opinion of many, and I was one of them, that capital punishment had become an anachronism because crimes commensurate with such punishment seemed to be decreasing in number and that the form of punishment that would be inflicted for the commission of the crime really had no bearing on whether the crime would be committed. Many sociologists still contend that capital punishment is no deterrent whatever to homicide and murder.

But both history and present conditions in the world show



William Cannon

that murder and homicide are most prevalent where the punishment for them is moderate and limited. They are rare, indeed, where their punishment carries the finality of death. When I wrote this article, on November 1, 1979 the last count of homicides in Atlanta, Ga., during 1979 were 203. Atlanta has a population of approximately 1.75 million people. The number of homicides in Athens, Greece, for a comparable period of time was only three persons. The population of Athens is about twice that of Atlanta.

The difference between the two cities is that in Greece the system of criminal justice is swift and severe, while in Georgia it is slow, inexact, and lenient. Convicted murderers have been released on parole, according to reports in *The Atlanta Journal*, in as short a time as three years, and one man who buried a college girl alive for ransom, and almost cost her her life, was set free after only a few years imprisonment on condition that he never return to Georgia. The parole board was willing to take a risk on him—somewhere else.

EXECUTION PREVENTS FUTURE VICTIMS

"It is better by far that a murderer be executed than that still another person in the future be victimized by his crime."

The Welfare of the Community

I agree with the assessment of a panel of Scottish jurists: "It would not be for the interests of humanity that the well-conducted and useful members of the community should be more exposed to deprivation of life by murder in order that the lives of the murderers may be saved." It is better by far that a murderer be executed than that still another person in the future be victimized by his crime. Always and invariably the welfare of the community takes precedence over that of the individual, whose rights can be defined and protected only in relationship to the rights of all others with whom he dwells. Since a person exists only within a community, whatever rights he has, states St. Thomas Aquinas, are derived from those of the community.

St. Thomas therefore insists that the community has the right to "cut away" a diseased member from its collective body. Since it is a moral body, a member may be amputated from the body because of heinous moral defects.

Justice is the basic moral requirement of any viable society; therefore, penalties must be commensurate with crimes. If a penalty is more severe than the crime, it then becomes a crime itself. If it is less severe, it mocks justice by disregarding the rights and welfare of the person or persons against whom the crime was committed, and it endangers the moral order of society. The death penalty, which is ultimate, is exactly commensurate with an ultimate crime such as murder. Willfully to inflict death upon another is to invite death on one's self.

St. Augustine taught that civil authority is obligated to impose the death sentence on a murderer and that in executing him acts impartially and without malice to therefore free from guilt. Indeed, according to Augustine, in a Christian commonwealth, the state acts in such matters for God himself.

The great doctors of the Church, along with her other major theologians, have supported capital punishment since the beginning of organized Christianity. The proscription of capital punishment by Christian bodies through their ecclesial pronouncements, such as our own United Methodist "Social Principles," is therefore a recent and contemporary development. It is not supported by tradition and history.

RELATION TO HOMICIDE RATE

As long as capital punishment was viewed as a realistic prospect by violent criminals, the homicide rate in this country was relatively low, and falling. But as capital punishment was phased down and at last abolished in the 1960s, the homicide rate turned around and began moving rapidly upward.

M. Stanton Evans, *Human Events*, February 23, 1980.

Mercy Must Be Based on Justice

It is based, of course, on our laudable concern for compassion and mercy and forgiveness. But mercy is actually unmer-

ciful unless it is based on justice. And forgiveness is hollow and meaningless unless there is a genuine desire on the part of the wrongdoer to be forgiven. The Cross symbolizes to all of us God's own sense of justice as well as his mercy. Jesus took upon himself the guilt of our sins, and he died for them on Calvary. God can afford to be merciful only because, first, he is just. Even so, the mercy of God is dependent upon our willingness to receive it. Before he can forgive us our sins, we must ask to be forgiven. When we repent he expects us to bring forth "works meet for repentance."

Applied to criminal justice, this principle means that before a murderer can be properly released from the due punishment of his crime, he must show clear signs of genuine penitence and be willing in some way to compensate for the loss he has inflicted. If society should devise a means whereby the penitent murderer could do constructive work for the rest of his life, with the benefits of his labor accruing to the family of his victim, this would be far better than capital punishment.

But merely to abolish capital punishment, with no corresponding just compensation for crime as a substitute for such punishment, is not a virtue but a vice, not a moral achievement but a heinous sin, not a support to the well-being of society but a dire threat to its very existence.

When a murderer repents and desires to make reparations, then his life should be spared and he should be given another chance. Therefore, we should exert our efforts as a church in trying to convert criminals, rather than in defending them.

We mock justice when we strain every means at our disposal to keep alive some hardened and unrepentent murderer on death row, but do little to protect the innocent and the helpless against his crimes.

Like the voice of the blood of Abel, the voice of their blood cries to Almighty God from the ground.

"If we deal with persons who have 'brutally killed' someone by killing them, we encourage dealing with all human problems in this harsh and summary manner."

The Death Penalty: A Barbaric Relic of the Past

Jack M. Tuell

Jack M. Tuell is bishop of the Portland Area of the United Methodist Church. He views capital punishment as an unchristian holdover from a brutal past. With the death penalty, we move "away from humanness toward brutality," he writes.

Consider the following questions while reading:

1. What three reasons does Bishop Tuell offer for calling capital punishment a "peculiar form of killing?"
2. Why does the author believe that capital punishment brutalizes our society?
3. Compare Bishop Tuell's arguments to others in this chapter opposed to capital punishment.

Jack M. Tuell, "A Barbaric and Unchristian Relic of the Past". Reprinted from the January 1980 issue of *engage/social action* magazine, copyright 1979 by the United Methodist Board of Church and Society.

I BELIEVE THAT CAPITAL PUNISHMENT IS MORALLY WRONG AND BASICALLY UNCHRISTIAN

My belief here is not based on an absolutist interpretation of "Thou shalt not kill," although that commandment carries great weight. I am not prepared to say that killing is never justifiable. There may be situations of self-defense, or defense of others, where killing can be justified as the lesser of two evils. As one who does not profess to be a pacifist in an absolute sense, I believe that it is possible to have situations where war is justifiable, although they would be extremely limited.

But capital punishment is a peculiar form of killing. First, it could not be more pre-meditated — it is done coolly and deliberately, with certain form and ceremony, to a helpless incarcerated person.

Second, it purports to make every citizen of the state a participant in the killing, since an order of execution is made by a judge after a trial bringing charges by "the people" against an individual. When a hangman springs the trap, he does it for all of us.

Third, unlike war, where killing is done in the name of securing some ideological objective, capital punishment is based almost solely on retribution and revenge. Many honest proponents will grant this freely, recognizing that deterrence cannot be proved.

I resent, in other words, being made party to the premeditated killing of a person out of revenge. I resent that as a person and as a citizen of a country of which I am proud and which professes to be a nation "under God," a nation built upon Christian values. I believe such killing accomplishes nothing toward achieving the goals of our society, and is, in fact, destructive of them.

I BELIEVE THAT CAPITAL PUNISHMENT DOES NOT DETER CRIME

Without going into the various studies that have been made here, it would appear to be clear that no one has established that capital punishment actually deters other people from killing. But in line with my non-absolutist position mentioned earlier, I would have to say that if an objective study could conclusively demonstrate that the killing of a murderer would indeed prevent the murder of two or three innocent persons in the future, I would feel obliged to re-study the whole question.



Jack M. Tuell

I might still come down against capital punishment, but it would have to be in the light of the new findings of the study.

However, I would have to say that the possibility of such a study emerging is very remote. In the meantime, I must act on the assumption, which is actually fairly well documented, that capital punishment does not deter.

DEATH PENALTY INHUMANE

Thus we would regard it as barbarous and inhumane for a criminal who had tortured or maimed a victim to be tortured or maimed in return. Such a punishment might satisfy certain vindictive desires that we or the victim might feel, but the satisfaction of such desires is not and cannot be an objective of a humane and Christian approach to punishment.

U. S. Catholic Conference statement on capital punishment.

I BELIEVE THAT CAPITAL PUNISHMENT BRUTALIZES OUR SOCIETY

The church has sought to be a "civilizing" agent in society, helping government to deal more civilly and humanely with people. This grows out of the church's respect for all persons as beings made in the image of God, and as those for whom Christ died. Capital punishment is a resort unworthy of those who see divine value in human life. It copies the behavior of the worst tyrants and brutes of history in their methods of dealing with those who offended them.

If we deal with persons who have "brutally killed" someone by killing them, we encourage dealing with all human problems in this harsh and summary manner. Thus, our whole society moves away from humanness toward brutality.

CAPITAL PUNISHMENT IS IRREVOCABLE

Judges and juries, like all human beings, make mistakes. From time to time we read accounts of how someone has been