

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5291 SJUD SB 1 - SB 7

83

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

Bill Version: SSB-1 HESS
 Publish Date: 1987 3-5-87

REQUEST:

Revision Date: _____
 Title: Rights of Physically and
Mentally Disabled Persons
 Sponsor: Duncan and Szymanski
 Requestor: Health, Education and Social
Services, Judiciary & Finance

Agency Affected: Office of the Governor
BRU: Commissions/Special Offices
 Components: Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		46.9	46.9	46.9	46.5	
TRAVEL		10.5	10.5	10.5	10.5	
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		.5	.5	.5	.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		57.9	57.9	57.9	57.9	

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		57.9	57.9	57.9	57.9	
FEDERAL FUNDS						
OTHER						
TOTAL		57.9	57.9	57.9	57.9	

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	
PART-TIME						
TEMPORARY						

ANALYSIS :

Establish (1) PFT position HRFER III to handle the increased caseload (intake and processing) of complaints anticipated to be filed by disabled persons due to SB-1.

Prepared by: Michael A. Nizich, Director *MAN*
 Division: Administrative Services

Phone: 465-3616
 Date: Feb. 2., 1987

Approved by Commissioner: Carol P. Kastelic *CPK*
 Agency: Exec. Assistant, Office of the Governor

Date: Feb. 2, 1987.

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version:
Publish Date:

CS SB 1 HESS
3-5-87

REQUEST:

Revision Date:
Title: Rights of physically and
mentally disabled persons
Sponsor: Duncan & Fischer
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services
Travel
Contractual	4.6	4.6	4.6	4.6	4.6
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	4.6	4.6	4.6	4.6	4.6
<hr/>						
CAPITAL
<hr/>						
REVENUE

FUNDING:		(Thousands of Dollars)				
General Funds	0.0	4.6	4.6	4.6	4.6	4.6
Special Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	4.6	4.6	4.6	4.6	4.6

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

ANALYSIS:

See attached analysis.

Prepared by: Robert G. Fisher, Fiscal Officer
Division: Alaska Court System

Phone: 264-8215
Date: 2-24-87

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

Date: 2-24-87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

ALASKA COURT SYSTEM
SB 1 - RIGHTS OF PHYSICALLY AND MENTALLY
AND DISABLED PERSONS

FISCAL IMPACT

This legislation allows physically and mentally disabled individuals to serve on juries. Additionally, interpreters are provided for deaf persons while on jury duty. Providing interpreters for deaf persons will impact the Court's contractual budget. The other aspects of the legislation will not impact the Court.

Historically, six to eight percent of all eligible persons are required to perform jury duty. The Center for Deaf Adults estimates that between 250 and 300 deaf individuals would be eligible for jury duty. The Center estimates that 200 are located in Anchorage, 10 are in Juneau, and 10 are in Fairbanks. The remainder live outside urban areas. To be eligible for jury service, the deaf juror would have to be proficient in the use of sign language. Each deaf juror would require an interpreter for all activities in the court.

Based on past experience, it is estimated that approximately fourteen deaf individuals could be called for service in a year. Based on probabilities of jury service for 1986, it is projected that thirteen of the jurors would be called for service in Anchorage and the other juror would be called in either Fairbanks or Juneau. Qualified interpreters are available in these locations.

Interpreter fees are estimated to cost \$4,600 per year.

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

Bill Version CS S.B. 1 HESS
Publish Date: 3-5-87

REQUEST: _____

Revision Date: _____
Title: An Act Relating To The Rights Of
Physically & mentally disabled persons.
Sponsor: Duncan
Requestor: _____

Agency Affected: Health & Social Services
BRU: Community Mental Health
and Developmental Disabilities
Components: Developmental Disabilities

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						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

Prepared by: Christine L. Hagmeier Phone: 465-3370
Division: Mental Health and Developmental Disabilities Date: 1/22/87

Approved by Commissioner: Kam Rudul Date: 1/30/87
Agency: Health and Social Services

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1987

SUBJECT: Comparative analysis of CSSB 1 (HESS)
and SB 1

TO: Senator Paul Fischer
Chairman, Senate HESS Committee

FROM: Edward H. Hein *E.H.*
Legislative Counsel

CSSB 1 (HESS) (2/20/87 draft) would remedy several problems with SB 1. First, it would eliminate a conflict between criminal penalties under AS 18.06.040 and AS 18.80.270. Both penalty sections (if the bill is passed in its unamended form) make it a misdemeanor to discriminate against a physically or mentally disabled person with regard to public accommodations. Yet, the penalty under AS 18.80 is only half the penalty provided under AS 18.06. Therefore, there is a potential for a constitutional due process violation because of the prosecutor's discretion to choose differing penalties for the same conduct.

Second, the CS removes questions and ambiguities about the state Human Rights Commission's authority and duty to enforce provisions relating to discrimination.

Third, the CS eliminates some very badly drafted language in AS 18.00 that makes certain provisions unenforceable criminally. For example, at page 3, lines 16 - 17 of the bill, the phrase "or otherwise interferes with the rights of a physically or mentally disabled person" is probably impermissibly vague.

Section 1 is identical in both versions.

Sec. 2 is the so-called "white cane" law that imposes on motor vehicle drivers a higher duty of care with respect to pedestrians who are physically disabled and identifiable because they are using a white or metallic cane, a wheel chair, crutches or other mobility equipment, or a service

animal, such as a dog guide. This provision has been placed in AS 09, the Code of Civil Procedure, because it relates to civil liability. In SB 1, the white cane law appears in Sec. 5. In the CS, the mentally disabled are omitted from this section because they do not use white canes, mobility equipment, or service animals, and are not readily identifiable by motorists. Definitions are inserted for "physically disabled pedestrian" and "service animal". Language in SB 1 at page 3, lines 2 - 11, was deleted. The language there relating to rights of disabled in accommodations is covered under Sec. 10 of the CS; the language providing that failure to carry a cane is not evidence of contributory negligence is obsolete because Alaska now recognizes comparative negligence, not contributory negligence.

Sec. 3 establishes the crime of interference with the rights of a disabled person. This provides that it is a class B misdemeanor to prevent or restrict a physically or mentally disabled person from using streets, sidewalks, and walkways to the same extent as any other pedestrian. It is also a class B misdemeanor under this section to refuse to allow a physically disabled person to bring his or her service animal into a common carrier or other place open to the public. The service animal must be certified as having completed a training course, and the disabled person is liable for any damage the animal does to the property. In SB 1, these criminal provisions appeared in Secs. 4 and 6.

Sec. 4 is identical to Sec. 2 of SB 1.

Sec. 5 in the CS is an amended version of Sec. 8 of SB 1. Sec. 5 directs the state Human Rights Commission to adopt regulations about when reasonable accommodations must be made for disabled persons in employment, financing, credit, public accommodations, housing, and government of services. Sec. 8 of SB 1 required the commission to adopt regulations specifying when it would be permissible to consider a person's disability. In conjunction with this change, Sec. 17 of SB 1 was deleted. Sec. 17 provided that AS 18.80 does not require any alterations or remodeling of buildings or vehicles. Under Sec. 5 of the CS, the commission would have the authority to adopt regulations requiring some alteration necessary to make reasonable accommodation for a disabled person.

Senator Fischer
February 23, 1987
Page 3

Sec. 6 of the CS was Sec. 9 of SB 1. The CS deletes paragraph (7), which would have required the state Human Rights Commission to enforce AS 18.06.

Sec. 7 of the CS was Sec. 10 of SB 1. The new language at page 4, lines 15 - 18 of the CS was moved from page 5, lines 16 - 18 of SB 1. This change made this provision a finding rather than policy to avoid the implication that the state Human Rights Commission was being required to develop and implement public education programs about physical and mental disabilities. At page 4, lines 25 - 27 of the CS, new policy language appears. This language was transferred from Sec. 3 of SB 1.

Secs. 8 - 13 of the CS are identical to Secs. 11 - 16 of SB 1.

Sec. 14 of the CS is a definitions section and is identical to Sec. 18 of SB 1.

Sec. 15 repeals AS 18.06. The provisions of that chapter have been transferred to AS 09, AS 11, and AS 18.80. Sec. 15 also repeals AS 18.80.300(11), which is the definition of "physical handicap" for purposes of AS 18.80.

EHH:csh
c7/066

POSITION PAPER

SENATE BILL 1

"An Act relating to the rights of physically and mentally disabled persons."

EFFECT OF SENATE BILL 1

A.S. 09.20.010(b) is amended to prohibit the disqualification of persons from serving as jurors solely on the basis of their visual, hearing or mobility impairments.

A.S. 09.20.010(c) is added to require the court system to pay for the costs of interpreters or readers when a hearing or visually impaired person requires such services while serving as a juror.

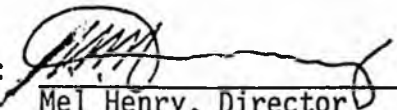
A.S. 12.55.155(c)(22) is amended to include physically and mentally disabled persons among the protected class of individuals to be considered under this statute.

A.S. 18.060 is amended to include physically and mentally disabled persons among the protected class of individuals who are entitled to full and equal access to public accommodations, services, employment, credit and financing, housing, and other property.

A.S. 18.060 also entitles physically and mentally disabled persons to be accompanied or assisted by service animals when accessing any of the locations or services listed in this section.

RECOMMENDATION

The Department of Health and Social Services supports the passage of Senate Bill 1.

Recommended by: 
Mel Henry, Director

Date: 1-30-87

Approved by: 
Myra M. Munson, Commissioner

Date: 1-30-87

NY Times Sunday Feb. 22, 1987

share of an additional... cases with undetermined causes may have spread through heterosexual intercourse as well.

Part of the mystery and fear about AIDS arises from the fact that many carriers of the virus are not aware of it. The virus can lurk in the body without causing disease and, among those who develop AIDS, the average time between infection and diagnosis of AIDS may be five years or more.

While much remains to be learned about AIDS, scientists assert with confidence that studies of victims and disease patterns have provided a clear picture of how the virus has spread in this country, and how it has not.

Q. How does AIDS spread?

Many studies have documented the spread of the AIDS virus to an uninfected person through anal or vaginal

cause anal sex often involves breaks in rectal tissues, thus allowing easier entry of the virus into the bloodstream. Studies suggest that the receptive partner in anal sex is at greater risk. One study has suggested that the virus may be able to directly infect cells in the colon.

Q. Can the virus spread from an infected person in vaginal intercourse?

believe the virus may also enter through mucous membranes or other soft tissues in the genital areas. No one knows if the virus can penetrate the lining of the male urethra, the tubelike passage through which urine flows.

Q. What is the risk of getting the virus from a single act of vaginal intercourse with an infected person?

Precise data are lacking. From indirect evidence, Federal scientists judge the risk of transmission in a single encounter to be low. Quantification is complex: Some infected people have said they had only a single exposure, while other people who have had hundreds of exposures have escaped infection. Still, several studies have shown that with repeated intercourse, as many as half the sexual partners of infected men or women become infected.

In Africa, where vaginal intercourse is believed to be the major means of spreading AIDS, studies suggest that the virus may pass more easily among people who have had gonorrhea, genital herpes or other sexually transmitted diseases, perhaps as a result of open sores in the skin of the genital area and the presence there of larger than usual numbers of the types of white blood cells that the virus invades.

Q. Can the virus spread through oral sex?

and condoms are... high degree of protection. However, condoms are not foolproof: They may tear, slip or be misused, and in one study two cases were documented in which the virus passed between partners who used condoms in intercourse over an extended period. Because the virus may be present in men's pre-ejaculation emissions and in vaginal secretions, experts recommend that

Bishops Say Condoms May Not Prevent AIDS

DALLAS, Feb. 14 (AP) — More than 150 Roman Catholic bishops meeting here have concluded that abstinence and marital fidelity are better weapons to fight AIDS than are condoms, which they believe create a false sense of security, a bishop said Friday.

The group determined that health officials, in promoting condoms, might be misleading the public since condoms do not always prevent transmission of the disease, said Bishop Leroy Matthiesen of Amarillo. The Catholic church has long opposed artificial birth control.

Catholic bishops from the United States, Mexico and Central America took part in the conference this week on medical research. The group plans to develop an educational program emphasizing abstinence for single people and fidelity for married couples, the Bishop said.

At the conference, Dr. Lamber N. King of St. Vincent's Hospital in New York presented a paper citing studies that showed condoms offered 70 percent protection from acquired immune deficiency syndrome.

If condom advertisements are put on television, "It's going to boomerang with people who do not listen carefully," Bishop Matthiesen said.

Msgr. William B. Smith, professor of moral theology at St. Joseph Seminary in New York, outlined an ethical pastoral approach for the bishops.

Bishop Matthiesen said the monsignor's theme was that the bishops should be kind when dealing with AIDS victims. The Bishop said: "The way he phrased it is that is we don't condone sin, but neither do we condone self-righteousness, judging people. There's a natural temptation to do that."

"We want to have a strong emphasis on marital fidelity," he said, adding that the threat of AIDS was a new argument in support of fidelity. "And for those who are not married," he added, "we are going to emphasize celibacy."

Deaf Woman Sues Over Jury

PITTSBURGH, Feb. 14 (AP) — A woman barred from serving on a jury because she is deaf has sued the Blair County judge who dismissed her, alleging she was a victim of discrimination.

The woman, JoAnn DeLong, alleged in her suit that the judge, R. Bruce Brunbaugh, violated a Federal act that prohibits discrimination against the handicapped in any activity in which Federal funds are used when he dismissed her in October.

The lawsuit, filed Wednesday in Federal District Court, is intended to establish that Federal funds help finance county court operations, her lawyer, Robert W. Lape, said Thursday.

Ms. DeLong is seeking no financial damages, only a court order to permit the disabled to participate on juries.

Judge Brunbaugh did not return telephone calls made to his office.

Ms. DeLong was called as a potential juror for a civil case, but Judge Brunbaugh rejected her before lawyers for either side questioned her, Mr. Lape said.

Ms. DeLong had full hearing until the age of 7 and "can speak amazingly well," he said. An illness left her without any hearing.

She uses an interpreter who translates word by word under the Signed English system, Mr. Lape said. Under another system, American Sign Language, translators skip some words in favor of concepts, he said.

In dismissing Ms. DeLong, Judge Brunbaugh cited a Pennsylvania case in which a criminal defendant received a new trial after it was learned that one juror's hearing was impaired.

A general argument against seating deaf jurors is that jurors often must weigh the credibility of witnesses by subtle aspects of the way they answer questions.

"That's probably the major argument," Mr. Lape said. "We say the deaf are used to judging from facial expressions and other nonverbal demeanor. Deaf people may even be more perceptive visually."

Hearing impairment probably not discovered until after trial.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 3, 1987

Honorable Paul Fischer
Chair
Health, Education & Social
Services Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

MAR 3 1987

Re: SB 1 (disabled persons)

Dear Senator Fischer:

Yesterday, your assistant, Margaret Leavitt, called Assistant Attorney General Art Peterson, to ask for this department's "position" on sec. 1 of SB 1. Essentially, that section provides for blind and deaf people to serve on juries.

This department has no position on that proposal. I understand that Assistant Attorney General Gayle Horetski testified before your committee on February 25 concerning the issues raised by sec. 1. While we certainly support the idea of removing as many barriers as possible for people with various types of disabilities, the issues mentioned by Gayle, including constitutional ones, are significant. Similarly, we have no position on the remainder of the bill.

Yours truly,

Grace Berg Schaible
Grace Berg Schaible
Attorney General

GBS:AHP:md

cc: Hon. Jim Duncan
Alaska State Senate

George Sullivan
Legislative Liaison
Governor's Office

JUSTICE

Can Justice Be Deaf, Too?

A fight over jury service

When Allen Hammel was called to jury duty in Blair County, Pa., last month, he attracted more attention than the assault case he helped decide. The 3-year-old postal worker is deaf, and he has assisted throughout the two-day trial and jury deliberations by an interpreter using sign language. Hammel performed well, according to fellow jurors. "He was more observant than some people with all their senses," said foreman Josette Shiffler of Altoona. But Hammel is one of only a handful of hearing-impaired people who have been allowed to serve on juries. Earlier this month, JoAnn DeLong, a deaf assembly-line worker in the same county, filed suit in federal court challenging her exclusion from a jury by a different Blair County judge. "I didn't feel like an American citizen anymore," she says.

Only a few years ago exclusion of deaf



PAUL SINGER—ALTOONA MIRROR

'I didn't feel like a citizen': DeLong with interpreter

people from juries was automatic; Arkansas still has a court-approved ban on seating deaf jurors. "With so many people who don't want to serve on jury duty, it's really incredible that deaf people are still excluded," says Muriel Strassler of the National Association of the Deaf, which is lobbying states for new jury laws.

Few states have laws governing jury service by the deaf. Most, including Pennsylvania, leave the decision to individual trial judges, and practices differ widely,

sometimes within the same courthouse. But as the hearing-impaired press for full opportunities, prohibitions are crumbling. A few states—including California, Colorado, Connecticut, Illinois and Michigan—not only permit the practice, but pay for courtroom interpreters. One deaf woman spent months as a grand juror in Florida. Another served as foreman of a federal trial jury in Denver last year.

Those who oppose the idea argue that jurors who can hear may be distracted by an interpreter's hand movements and lose track of testimony. Others say deaf jurors may miss crucial nuances in a trial; an interpreter may not be able to convey emotions or a witness's tone of voice. Some opponents also believe that the presence of a 13th person in the jury room violates the sanctity of deliberations.

Body posture: That's nonsense, contends Kenneth Rust, a board member of the Registry of Interpreters for the Deaf, which certifies translators. Through such tactics as body posture and speed of gestures, interpreters can convey the meaning of language as accurately as the spoken word, he

says. Rust believes that the presence of an extra person during deliberations is irrelevant, because interpreters are ethically bound to convey only the conversation, without injecting their feelings or opinions. Most states already require the courts to provide interpreters for deaf defendants and witnesses in criminal cases. "What's the difference?" Rust asks.

Opponents also fear that interpreters could prove costly. But advocates say the cost averages only around \$20 an hour. One deaf juror in Oregon answered that argument with finality. When the court refused to pay for his interpreter, he footed the \$400 bill himself.

That same brand of determination gave birth to JoAnn DeLong's lawsuit. "I've been fighting for my rights all my life," said DeLong, who lost her hearing at seven to spinal meningitis.

change things for other deaf people." If necessary, she says, she'll ask the U.S. Supreme Court to determine if justice can be deaf as well as blind.

GINNY CARROLL

RELIGION

The Condom Preacher—And His Pantless Past

Two weeks ago the Rev. Carl F. Thitchener became famous as the minister who handed out condoms at his church outside Buffalo, N.Y. (NEWSWEEK, Feb. 16). The point, said Thitchener, was not to promote promiscuity but to educate the public on the danger of AIDS and how to slow its deadly spread. Now the Unitarian Universalist's sudden notoriety has plunged him into deeper controversy: according to police files, Thitchener has an arrest record that stretches back 30 years.

Thitchener's last brush with the law occurred in 1984, when he was put on five years' probation following his second conviction for drunken driving. Two years earlier a woman Scout leader who was conducting a meet-

ing in a church with a group of Brownies told police that a man with no pants or underwear was parading outside. Later, police arrested Thitchener after he drove through a MacDonald's restaurant in a similar state of undress. He pleaded guilty to disorderly conduct and was fined \$75. His record also includes a conviction for public exposure in 1958. And the year before that, charged with attempted rape and attempted burglary, he had pleaded guilty to second-degree assault.

Thitchener, who was ordained in 1980 and hired a year later by the Unitarian Universalist church in Wilkes-Barre, Pa., claimed the 1982 incidents involve someone who stole his driver's license. The police disagree.

Nevertheless, the church's board of trustees unanimously voted to support their beleaguered preacher. "I think his message on AIDS is going to save lives," says former board member Victor Doyno. "If any of this material about his past is true, he was very brave for having gone ahead with his sermon."

Notorious: Thitchener
JOE TRAVEL—GAMMA-LIAISON





PEOPLE - ANIMAL - CONNECTION

February 11, 1987

Dear Senator Fischer:

I am president of People-Animal-Connection/Delta Society. This letter is in support of SB1. We are the group which in conjunction with Alaska SPCA train the service animals for the physically/mentally disabled individual. Alaska is the only state in the USA which does not have legislation regarding service animals.

We presently have 20 service animals in Alaska with requests for many more, but need the legislation before we can place these animals.

We define a service animal as an animal which is trained as a hearing/blind guide animal or as a support animal for a person who has physical disabilities such as stroke or accident patient *WHO MAY BE CONFINED TO BED OR WHEELCHAIR*

Our trainer is a certified obedience trainer who has trained with numerous other institutions that train and place service animals. Our main facility is at the training center of the Alaska SPCA and our trainers home kennel as well as field work areas.

These animals pass a vigorous physical/temperment test and upon completion of their training are certified by a committee ~~from~~ the PAC/Delta Society.

These animals are then provided with the proper ID colored collar/harness and the owner is given a certified card which states the animal to be a certified service animal. Our animals have been placed in Anchorage, Valdez, Palmer, and Fairbanks.

The animals provide a vital function for many people in our state. They provide physical support, mental support and love to persons who otherwise may not have any support network. These service dogs and their owners need this legislation as protection for their rights and abilities to work together and live together as a team.

If SB1 cannot find support for its passage then I encourage the HESS committee to take the service animal portion out of SB1 and introduce it as a separate bill. Originally, the service animal bill was separate legislation but in the last 2 years it has become "hung up" with other legislation. I urge strongly either the passage of SB1 or separate legislation for the service animal. Many people in Alaska are concerned with this and I hope they will be contacting the committee members over the next few days.

I would be willing to answer any questions regarding my letter or support of legislation for the service animal. *WE DO HAVE NO DEL LEGISLATION FROM OTHER STATES OR ORGANIZATIONS WHICH WE WOULD BE HAPPY TO PROVIDE*
Thank you very much.

Sincerely,

Joyce M. Murphy
Joyce M. Murphy, D.V.M.



THE ALASKA
ALLIANCE FOR THE MENTALLY ILL

"An affiliate of the National Alliance for the Mentally Ill"

February 7, 1987
Box 211247
Auke Bay, 99801

Senator Jim Duncan
Alaska State Senate
Juneau, Alaska, 99801

Dear Senator Duncan and Members of
the Senate Health and Social Services
Committee:

The Alaska State Alliance for the Mentally Ill endorses Senate Bill 1 as introduced this year. We believe the draft as presented offers substantial gains in equity for disabled persons in Alaska. By including the disabled populations in this Statute, discrimination is prohibited in many significant areas. Since this law is parallel to Federal legislation, the disabled have long been denied equal protection under the law.

In particular, we wish to commend you on solving some of the more difficult problems with the bill that were advanced last session. The decision to submit to the regulation process those details which caused concern to the banking and housing industries is a much fairer way to address the issue. To what extent and under what circumstances an employer, a lender, or landlord has a right to know of a persons disability, whether or not it is physical or mental, must be carefully determined on the greater need and we believe the Civil Rights Commission has the expertise to make that determination.

One of the most controversial parts of the bill last year was whether or not to include the mentally ill among the disabled population. We would like to advance the following supportive information on this issue:

* The mentally ill are no more "dangerous" than the general population, and courts are now supporting the civil rights of the mentally ill in cases involving zoning laws restricting group homes.

* Those with long time or serious mental illness are among the minority of those who have had mental illness. For example in the State of Alaska, of the 8,000 cases treated by the Community Mental Health Centers, only 613 of these have serious mental illness. Should those who just have one episode or who have a situational distress which causes them to receive treatment be required for the rest of their lives to disclose that treatment? Among those with even the most serious mental illness schizophrenia, about 1/3 of the cases recover after only one episode.

* The mentally ill are the most stigmatized of any subgroup in the United States. Last year our members reported several incidents of discrimination. One of them involved a person having to disclose being under treatment for mental illness on their drivers license and another was denied general health insurance because of a nervous breakdown. In both cases, the question was not related to the request. Being a safe driver does not necessarily relate to having had an incidence of mental illness whereas perhaps a more appropriate question would be " Are you under medication which would make you drowsy ?" Why should someone be a greater risk of breaking a leg or contracting cancer simply because they have experienced mental illness? We know of no research which supports this. Certainly having cancer would be of concern to lenders but there is no requirement for persons with illnesses which might be considered "terminal" to have to disclose their condition.

This is not to say that the mentally ill are all worthy of extended credit, every individual in our State must qualify according to the rules of the lending agency providing assurances of their assets etc. Decisions must be made on a case by case basis. However, to the extent that they are functioning members of society the mentally ill should have the same rights to seek employment, have access to public facilities and other rights afforded citizens of the State of Alaska.

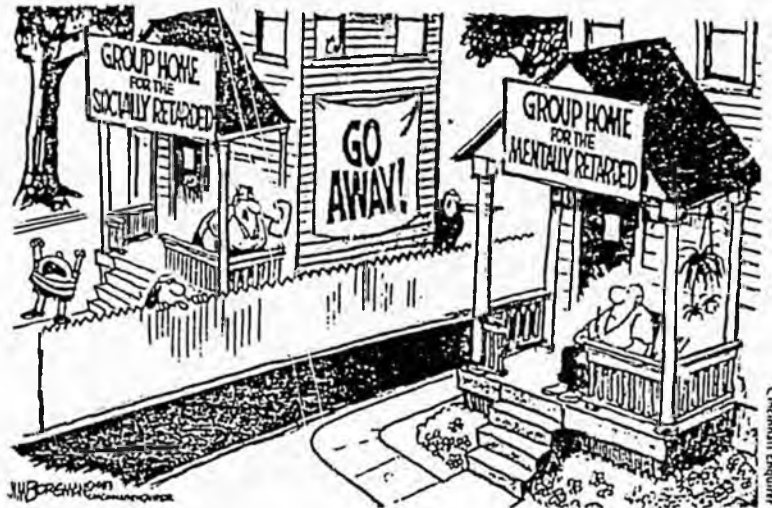
Sincerely,

Sharon Lobaugh
Pres. Alaska Alliance
for the Mentally Ill

Mainstreaming Group Homes

By Daniel Lauber

A recent U.S. Supreme Court decision put some new twists on zoning for group homes. Here, questions and answers about how to adapt to the changes.



Zoning made it to the U.S. Supreme Court this year in the form of a case regarding group homes for developmentally disabled adults. The result was a landmark decision that should change the way most zoning ordinances treat group homes. Further, the decision will force local officials to confront the popular misconceptions about group homes and their residents that so frequently lead to stiff neighborhood opposition.

Group homes pose a zoning challenge that nearly every community in the country eventually will face. Over the past decade, the number of group homes increased from 700 to over 6,000. There's no end in sight because the need for them remains so great. The disabled are living longer, thanks to better health care and increasing deinstitutionalization.

Local officials often are at a loss when it comes to zoning for group homes. Most zoning ordinances fail to provide for them, as cities typically (and improperly) treat group homes as hospitals for the insane or feeble-minded. In other places, ordinances contain exclusionary provisions that keep group homes out of the very residential districts in which they function best.

Here are answers to some of the most frequent questions local officials and planners ask about zoning for group homes, particularly in light of the Supreme Court's latest edict on this type of zoning provision.

What are they?

Q Before we go any further, what are group homes and who lives in them?

A A group home usually houses individuals who are mentally ill or developmentally disabled. Congress defines "developmental disability" as a severe, chronic, and permanent disability due to a mental and/or physical impairment, manifested before age 22, that results in substantial functional limitations in at least three of the following major life activities: self-care, language, learning, mobility, capacity for independent living, economic self-sufficiency, and self-direction.

Traditionally, these special, "service-dependent" individuals were warehoused in large institutions. But as the professionals who work with these special populations came to understand them, they realized that large institutions hindered the recovery of the mentally ill and the progress of the developmentally disabled. If they are ever to overcome or cope with their conditions, these people need to live in a relatively normal household environment in the community.

The group home provides that setting. Depending on the size of the house, anywhere from two to about 15 service-dependent people live in the group home with professional staff, who function as surrogate parents. Residents and staff seek to emulate a traditional family. The group

home constitutes a single housekeeping unit in which residents share responsibilities, meals, and recreation.

The group home's primary purpose is to provide supervision and support, in a family-like setting, for persons unable to live independently in the community. It is not a clinic or hospital, where treatment is the principal or essential service. While a treatment regime may be incorporated into the daily routine of handicapped persons wherever they live—whether with their own families, in an institution, or in a group home—treatment is merely incidental to the group home's primary purpose of helping residents adjust to community living, and in many cases to live on their own in the community.

Q Then why are group homes a zoning problem?

A Many zoning ordinances simply don't provide for group homes. When a group home sponsor seeks to open a group home under such an ordinance, city officials often stretch their imaginations to fit the proposed group home under the zoning definition of some other use. Most often, they claim the group home is a nursing home or hospital for the insane or feeble-minded.

Q We have to do that all the time with uses that didn't exist when our zoning ordinances were written. What's so bad about that?

A Group homes are not nursing homes



Photograph by Michael Portney

An ordinary dinner table? That's exactly the point for group home residents functioning as a family.

or hospitals. A group home is a residential use—a place where inhabitants live as a family, albeit a generic family, as one court put it. In contrast, nursing homes and hospitals are primarily medical institutions that provide no education or simulated family setting for patients. Group homes are most appropriate in residential areas, while nursing homes and hospitals belong in commercial areas.

Q Didn't the U.S. Supreme Court case deal with a Texas city that treated group homes for the developmentally disabled as a hospital for the feeble-minded?

A Yes, the zoning ordinance for Cleburne, Texas, didn't provide for group homes. So city officials decided that the Cleburne Living Center's proposed group home for 13 developmentally disabled adults would be treated as a "hospital for the insane or feeble-minded."

Q How did that decision lead all the way to the Supreme Court?

A Cleburne's zoning ordinance allows all hospitals, except those for the "insane or feeble-minded or alcoholics or drug addicts," as permitted uses in the R-3 residential zone where the Cleburne Living Center (CLC) sought to locate its group home. It also allows apartments, boarding and lodging houses, and fraternities, sororities, and dormitories as of right in that zone.

Although the proposed group home complied with all federal and state licens-

ing regulations that ensured the house itself would be adequate to house the 13 mentally retarded residents plus staff, Cleburne denied the special use permit application. CLC sued. While the federal district court found that the city's denial "was motivated primarily by the fact that the residents of the homes would be persons who are mentally retarded," it held that no fundamental rights had been violated and that the ordinance, as written and applied, was rationally related to the city's legitimate interests in "the legal responsibility of CLC and its residents, . . . the safety and fears of residents in the adjoining neighborhood," and the number of people to be housed in the home.

After the Fifth Circuit U.S. Court of Appeals reversed in favor of CLC, the city appealed to the U.S. Supreme Court. The Court unanimously invalidated the zoning ordinance as applied to CLC (although three justices would have invalidated the ordinance on its face) in *City of Cleburne v. Cleburne Living Center*, 105 S.Ct. 3249 (1985).

The Court speaks

Q Why is this decision so important?

A The Court put cities on notice that they need a clear, rational reason if they want to treat group homes for the developmentally disabled (and probably for other service-dependent populations as

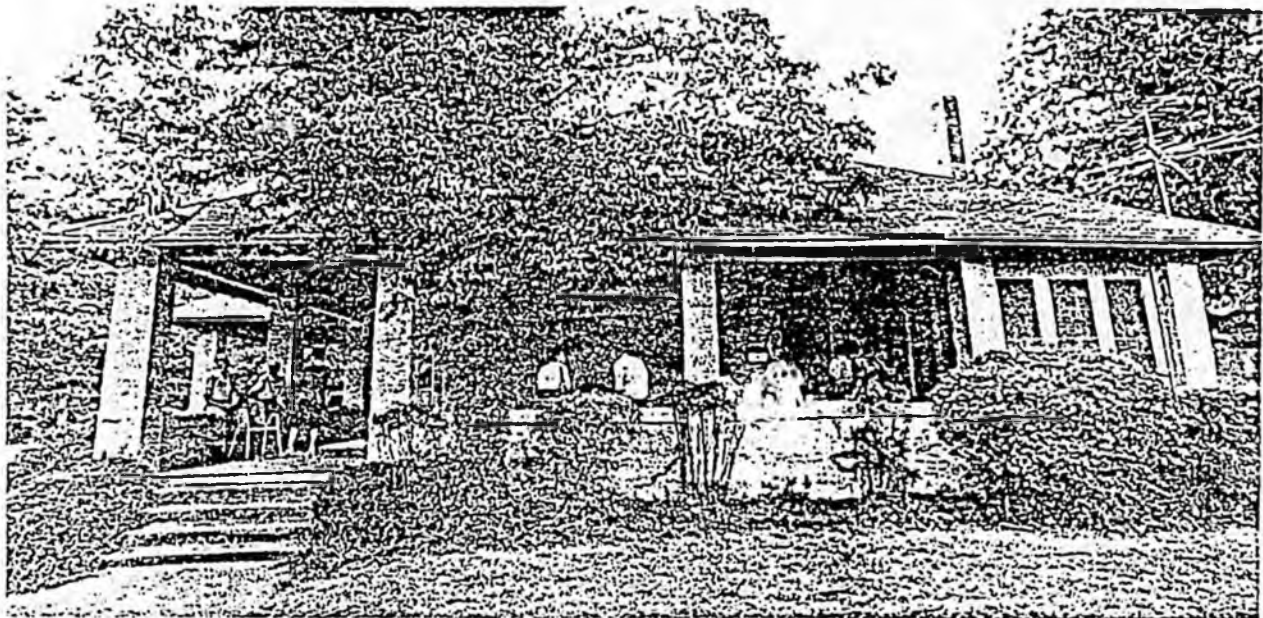
well) differently from other residential uses. The Court started its analysis by noting that the equal protection clause of the Fourteenth Amendment essentially requires that "all persons similarly situated should be treated alike."

Cleburne, though, had created a classification in which a group home for the mentally retarded must obtain a special use permit in an R-3 zone even though apartment houses, boarding and lodging houses, fraternity and sorority houses, nursing homes for the aged, and other specific uses were allowed as of right. Although a city's zoning ordinance is presumed valid, the classifications it creates must be "rationally related to a legitimate state interest" to be upheld.

The Court noted that while the "mentally retarded as a group are indeed different from others" who don't share "their misfortune" and are allowed to locate in an R-3 zone without a special use permit, "this difference is largely irrelevant unless the [group] home and those who would occupy it would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not." The Court searched the trial record and could find no rational basis to believe that the group home "would pose any threat to the city's legitimate interests."

Q You mean that none of the city's reasons for denying the special use permit were legitimate?

Open house at the Cleburne group home.



A Right. Opposition from neighbors, based on unsubstantiated fears, continues to be the major reason that cities deny special use permits for group homes. But the Court confirmed a long line of rulings that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like." While neighbors may have biases against group home residents, "the law cannot, directly or indirectly, give them effect."

The Court rejected all of the city's reasons for denying the permit. The city council had doubts about who had legal responsibility for the actions of the mentally retarded group home residents. But the Court found that the council had no concern about the legal responsibility for other uses permitted in the zoning district, such as boarding houses and fraternities. The Court could not see how the group home would present a hazard different from other uses. Nor could the Court understand how the city could object to the location of the group home because it was on a 500-year floodplain, yet not be concerned about other uses located on the floodplain.

Q Given the Court's decision, for what reasons can a city deny a special use permit for a group home?

A Remember that the Court said the denial was based on prejudices and unsubstantiated fears. The most common fears are that group home residents will engage in criminal behavior, that the home will be poorly maintained, and that the mere presence of the home will depress property values in the neighborhood. If true, these are legitimate reasons to deny a special-use permit.

Q Can any of these fears be substantiated?

A So far, fairly extensive research says, "Not at all!" A large body of research shows that the mentally ill are no more criminally prone than the rest of us. And 66 years of studies have found the developmentally disabled to be harmless. The most pertinent study covered the state of Virginia. *The Report on the Incidence of Client Crime Within Community-Based Programming* (1979) found a crime rate of 0.8 percent among the developmentally disabled who lived in group homes, as compared to a four to six percent crime rate among the general population.

Q And what about property maintenance and property values?

A Every one of the 20 or so studies on this topic has found that group homes simply do not affect the selling prices of neighboring properties or the turnover rate of properties. The studies uniformly report that group homes are invariably well-maintained—often better maintained than

neighboring private homes. The few studies that have inquired have found that group homes are so inconspicuous that barely half the people on the same block know they exist, fewer than half on the next block know of them, and fewer than 30 percent of the residents three block away are aware of them. Small wonder that group homes have virtually no effect on property values.

Q If group homes are so innocuous, why regulate them at all?

A One study did find that five group homes on the same block might, in fact, have an adverse effect on the neighborhood. Further, if large numbers of group homes cluster on the same block or in the same neighborhood, they could undermine a basic premise of group homes—namely that, to be effective, they must locate in "normal" residential neighborhoods where able-bodied neighbors can serve as role models for the disabled or mentally ill.

At some indeterminate point, the capacity of the neighborhood to absorb service-dependent people could be exceeded, and the proportion of service-dependent persons in the neighborhood could become so great as to recreate the institutional atmosphere from which the group home is supposed to provide an escape. So there is a need to ensure that group homes do not cluster on the same block and that they are spread throughout



People who might once have been institutionalized receive closer attention in group homes. Below, a visiting nurse in a Detroit-area group home.



the safe neighborhoods of a city.

For a variety of reasons, however, group homes frequently have been forced to cluster. As a 1983 study by the U.S. General Accounting Office reported, more than a third of the group homes for developmentally disabled persons were located within two blocks of another group home or an institution. A disproportionately high number of group homes locate in poor neighborhoods because political opposition to them is weak there and because they are excluded from better neighborhoods due to well-organized and politically powerful community opposition or exclusionary zoning.

To protect the welfare of group home residents, it is essential to ensure that group home operators comply with state or local licensing requirements. A zoning ordinance should not allow a group home to open unless it is licensed or will be licensed by the proper authority.

The bottom line

Q Given the *Cleburne* ruling, what's the bottom line: how should my city or county zone for group homes?

A In a word, rationally. The *Cleburne* decision is a bit deceptive. While the Court says it is applying the standard "rational relationship" test, its inquiry into *Cleburne's* reasons for denying the special use permit is really an example of the sort of heightened judicial scrutiny

usually reserved for cases of discrimination based on sex, race, or religion. The lesson of *Cleburne* is that the zoning provisions for group homes must be based on the sound planning principles that call for zoning provisions grounded in an understanding of what group homes are, what their impacts are, and the types of neighborhoods in which they function best.

Q What are these sound principles on which we should base our zoning provisions for group homes?

A There are four. By following them, you'll be able to write zoning provisions that should withstand even the Supreme Court's new version of the rational relationship test.

- Group homes, being residential in nature, are appropriate uses in all residential zoning districts.

- Group home residents are service-dependent persons who require special protection to ensure their safety in the home. Those protections—that the group home must provide adequate safety, sanitation, and program standards—define the subject matter of licensing requirements.

However, the zoning ordinance is not the place to specify licensing criteria—that's the business of the licensing agency. One of the simplest ways to require licensing is to include the licensing requirement in your ordinance's definition of a group home.

- Controls are needed to prevent concentrations of group homes. Two types of controls will prevent clustering and ensure dispersal throughout a community. The first is a spacing requirement by which the zoning ordinance imposes a minimum distance between group homes and between group homes and institutions.

It is vital, however, that there be some rational basis for this distance. According to one widely accepted theory, the most elementary form of social impact is the degree to which neighborhood residents become aware of a change. Because the research shows that few residents living three blocks from a group home even know it exists, it seems appropriate to establish a spacing requirement equal to at least three city blocks so that each group home will be beyond the "impact area" of any other group home or institution.

However, the ability of a neighborhood to absorb service-dependent residents is thought to vary with density. Presumably, higher-density neighborhoods have a higher absorption level that would warrant a shorter spacing requirement than lower-density neighborhoods.

The Westchester County Planning Department has suggested spacing requirements of 200 to 300 feet for urban areas where the population density is less than 1,000 persons per square mile, 300 to 400 feet for densities of 1,000 to 2,000 persons per square mile, and 400 to 500 feet for den-

Teaching residents to function in the community is an important aspect of group homes.



sities of 5,000 to 9,999; and 800 to 400 feet for densities over 10,000 persons per square mile. In contrast, Evanston, Illinois, has arbitrarily established an unusually high 2,500-foot spacing requirement between group homes. With no rational reason for that great a distance in an inner-ring suburb like Evanston, *Cleburne-style* judicial review could invalidate Evanston's requirement.

The second control is a dispersal or density requirement that establishes a cap on the total population permitted to live in group homes and institutions in a designated geographic area. Ideally, this figure should approximate the proportion of service-dependent individuals a neighborhood can absorb. For example, if three percent of a state's population is service-dependent, the proportion of service-dependent population per census tract could be limited to three percent.

• Zoning should recognize that group homes come in different sizes. The smaller home, for six or fewer residents, is roughly the size of a large family. There is no sound planning reason not to allow such "family homes" in all residential zoning districts as of right as long as they obtain or prove they are eligible for a license, meet the specified spacing and density requirements, and obtain an administrative occupancy permit.

This permit is needed to ensure that the home complies with these requirements and to provide a record for the planning

agency so it can enforce spacing and density requirements. The ordinance should provide a special use permit process to allow for circumstances that might justify exceptions to the spacing and dispersal requirements for family homes. These should be similar to those suggested below for larger group homes.

Because group homes for seven to 15 persons exceed the size of all but the very largest families, municipalities should subject proposals for these "family group homes" to somewhat greater scrutiny than the smaller family homes. Family group homes, however, should be allowed in all residential districts as special uses. There's no sound planning principle for excluding family group homes from even the largest-lot single-family district. In fact, when the sponsoring agency can afford the cost, the larger houses in lowest-density districts offer excellent sites.

However, to minimize subjectivity and lessen the influence of fear, prejudice, and political pressure on decisions about group homes, the zoning ordinance should state reasonably objective relevant standards by which the special use permit application is to be evaluated. Appropriate standards should require the applicant to: obtain a license or evidence of eligibility for a license from the appropriate agency; meet specified spacing and density requirements; register with the municipality's planning department; submit a statement of the

exact nature of the home planned, the qualifications of the home operator, the type and number of personnel, and the number of residents; conform to the general zoning requirements for the residential district, with the exception of the number of unrelated individuals permitted and the off-street parking requirements; and conform, to the extent possible, to the type and outward appearance of the residences in the area.

The ordinance should allow for a waiver of the spacing and dispersal requirements under certain conditions. Primarily, the decision-making body must find that the cumulative effect of allowing the group home (in addition to existing group homes and institutions for service-dependent populations) will not alter the residential character of the neighborhood, create an institutional setting, nor exceed the capacities of existing community recreational and social service facilities.

Daniel Lamber, APA President, consultant and attorney who has been involved in zoning for group homes since 1974. His recent draft paper, *Toward a Sound Zoning Treatment of Group Homes for the Developmentally Disabled*, includes model definitions for a group home provision in a zoning ordinance. It is available for \$17.00 from Planning Communications, 20337 60th St., Evanston, IL 60202.

THE FEDERATION, THE HEALTH SPA, THE LEGISLATOR,
AND THE ATTORNEY GENERAL

by Marc Maurer

Dr. Jacobus tenBroek drafted the Model White Cane Law in 1966. The intent of this model law is clear and to the point. The blind face discrimination in all activities of daily life. This inequality and second-class status must be eradicated.

Dr. tenBroek was a scholar. He knew that revolutions do not start in the streets. They start in the library and the classroom. But he also knew that the road from classroom to health spa, from library to the office of the Attorney General is often long and rough, spanning decades of hope and heartache. Yet, the journey must begin; the foundation must be laid—and if the initial work has been carefully and thoroughly done, the ultimate success is certain. It is not a question of whether but only of when.

In April of 1984 Daryl and Jeanine Diller (a blind couple living in Laurel, Maryland) decided to get some exercise. They tried to join the Grecian Health Spa and Fitness Center and were met with misunderstanding, condescension, prejudice, and a flat denial of their application for membership. Their letter to the Maryland state President, Jim Omvig, shows the treatment they received. It reads:

Laurel, Maryland
May 7, 1984

Dear Mr. Omvig:

My husband and I are a blind couple who live in Laurel, Maryland. Approximately one month ago I became interested in becoming more physically fit. At that time I began calling the health spas in Laurel to gather information concerning length of fitness programs, costs of programs, etc. When I called the Grecian Health Spa and Fitness Center in Laurel, I could get no information over the phone. Therefore, on Saturday, April 21, 1984, between three and five p.m. my family and I went into the Grecian Health Spa and Fitness Center to see what we could find out about their fitness programs. We were told, very rudely and very unceremoniously, that it was not the policy of the Grecian Health Spa and Fitness Center to allow blind people to use their facility. When we asked why this was the case, we were only given the name of the owner of the Grecian Health Spa and Fitness Center and a phone number where we could reach him on the following Wednesday. Needless to say, we were not very pleased to learn of the Grecian Health Spa and Fitness Center's policy.

On Monday, April 23, 1984, I was contacted, by phone, Mr. Lou Andrews,

who is the owner of the Grecian Health Spa and Fitness Center. Mr. Andrews told my husband that he would not accept the responsibility for having blind people in his place of business due to insurance reasons.

After my husband and I had talked over what Mr. Andrews had said, we decided that even though he would not permit us to use his facility, we would ask him to take us on a noncommittal tour of his spa so that we might learn what nautilus equipment was available and how it worked. We had never seen nautilus equipment before and did not know whether we could even use it. Of the three fitness centers in Laurel, the Grecian Health Spa and Fitness Center is the closest one to our home.

On Tuesday, April 24, 1984, my husband again contacted Mr. Andrews by phone and asked him for the noncommittal tour. He also told Mr. Andrews that his spa was the closest one to our home, and Mr. Andrews again flatly refused us access.

We refused to accept Mr. Andrew's decision, contacted you by phone, and were advised to write you this letter...

Sincerely,
Mr. & Mrs. Daryl L. Diller

The response of the National Federation of the blind to this call for help was characteristically fast and vigorous. Jim Omvig protested this discrimination in a letter to Mr. Lou Andrews. Mr. Andrews was urged to be reasonable and to deal with blind people in a courteous and forthright manner. He was also informed of our organization and treated as normal human beings with all

of the rights and responsibilities which that implies:

Baltimore, Maryland
May 23, 1984

Dear Mr. Andrews:

Let me begin by telling you that I find you truly to be an "amazing" individual, and no, I do not use the word "amazing" with all of its usual positive connotations. Let me show you what I mean.

I have been aware since the early fall of 1983 that you have a policy of violating the laws of the state of Maryland by discriminating in membership against blind citizens in this state. Two individuals have previously contacted me about your behavior, but for various reasons we chose not to pursue the matter at that time. The reason I indicated above that I find you to be "amazing" is that I am fully aware that at the time you denied membership to other blind citizens of Maryland you were advised that your policy is in direct violation of law established by the General Assembly of this state. Yet, witness the attached letter from Daryl and Jeanine Diller. In the past you might have been able to plead ignorance (although this is not a legal defense) for your behavior. But, in the instant situation, you have done what you have done in the full knowledge that you are in violation of the law of the state.

In case you are not aware, you should know that in 1983 the Maryland General Assembly amended our anti-discrimination law to increase the fine for violation

from \$50 to \$500 and also to establish a new provision which gives blind persons the right to bring a private action for damages in civil court. I am confident that the state General Assembly did not make these changes for frivolous reasons. The state of Maryland respects those of us who are blind and intends to see to it that our rights are protected. We intend to do likewise!

According to the attached letter, your great fear seems to be that your insurance rates will be increased if you permit blind persons to enjoy their civil rights. This is nonsense and I am sure that you know that it is. Maryland has one of the strongest anti-discrimination laws concerning the availability of insurance for blind persons of any state in this nation. You might better have said, "My only concern is for your welfare." This is the phrase most commonly used by those feebly attempting to justify discrimination against persons who are blind. This excuse won't wash either.

Your response to this letter will determine our course for further action. If you respond with reason rather than emotion and prejudice, the Dillers will be admitted to membership and the matter will be closed. If you choose to respond negatively or, indeed, fail to respond at all, you will leave us no alternative but to take certain steps. We may or may not file a formal complaint against you with the state of Maryland. Or we may or may not file a civil action for damages. Or we may or may not decide to take the issue to the press so that the public can have knowledge of your attitude toward human beings who happen to be blind. Or we may or may not bring a group of blind

persons (with appropriate media coverage) to your facility and insist upon our right to enter. Or we may or may not simply remain outside, picket your facility, and encourage others to refrain from doing business with you. Or we may or may not do all of the above. As I say, your attitude and your reaction to this letter will determine the course of action we must take. I can assure you of this: We of the National Federation of the Blind are simply no longer willing to be treated as second-class citizens and to be walked on like rugs.

Ah, what a great row over a simple issue which should be no issue at all since you are fully aware of existing Maryland law. But the issue is not simple to us—it is significant to us. For we are talking about civil rights: The right to be independent; the right to be free; the right to live with dignity and self-respect; and the right to enjoy those pleasures which are available to other of our citizens.

It is my earnest hope that you will consider this letter with reason and logic and that you will admit the Dillers (and other blind persons who may request it) into membership. We wish no strife or controversy with anyone.

Sincerely,
James H. Omvig, President
National Federation of the Blind
of Maryland

P.S. Enclosed for your information please find a copy of "What Is The National Federation of the Blind."

The response of the Grecian Health Spa was not encouraging. Mr. Andrews' letter was poorly written and full of condescension. The letter itself demonstrates the discriminatory attitude of Mr. Andrews. It reads:

Fulton, Maryland
May 30, 1984

Dear Mr. Omvig:

To your reply of May 23, 1984. For the past 15 years we have never discriminated anyone at our spa.

If the Dillards or any blind person can use our facilities and equipment freely without any special assistance by our staff and there would be no liabilities, injury to themselves or other members also follow or workout procedures and our rules and regulations that is required by all our members we would consider admitting them as members.

Sincerely,
Louis W. Andrews, President
Grecian Health Spa

The next step was to assure Mr. Andrews that we meant what we said, and we would do what we promised. This we did. We told Mr. Andrews that we intended to meet with him, and we intended to tour the Grecian Health Spa. He told us that he would not meet with us, but we were welcome to speak with his lawyer. We responded that we would come to the health spa and demand admittance. We intended to do it in the presence of the press. If Mr. Andrews would not

talk with us inside, we would meet with reporters outside.

On July 18, 1984, approximately thirty-five blind people and their friends appeared before the Grecian Health Spa to insist upon the right of blind persons to fair and equal treatment. Delegate Elijah Cummings, the Chairman of Maryland's Black Caucus, was prominent in insisting that blind people not be victims of discrimination. He went with us to confront Mr. Andrews. Delegate Cummings was familiar with the White Cane Law, because he had worked closely with leaders of the National Federation of the Blind of Maryland to have that law strengthened. In the midst of television cameras and newspaper reporters Mr. Louis Andrews (apparently having decided that he would meet with us after all) attempted to explain why the blind would not be admitted. It was unsafe for the blind, he said, and the insurance rates would go up. Mr. Andrews insisted that he knew all about discrimination, for he was the son of immigrant parents. But, he said, "The blind people might stumble over others who were exercising, they might bump into the machinery and hurt themselves, or they might accidentally fall into the pool." Mr. Andrews protested that he didn't have a nurse on the premises, and what would he do in case of injury?

Finally, he agreed to show five people through the spa. In this tour Mr. Andrews attempted to demonstrate just how unsafe the health spa was for the blind. He dropped weights on the floor in the walkway; he showed Mr. Omvig a weight machine; and he bumped Mr. Omvig with a metal bar and said that if Mr. Omvig wasn't careful, he might hurt himself.

At the conclusion of the tour Mr. Andrews had not changed his position. He would not permit blind people in his spa unless they could prove that no accident could happen—a test which is impossible for anyone.

The Baltimore Sun reported it this way:

**Blind Couple Tour Spa
That Doesn't Want Them In**

by Richard H. P. Sia
Sun Staff Correspondent
July 19, 1984

Laurel—The maze of humid, narrow hallways leading to the swimming pool, whirlpool, exercise rooms, lockers and sauna at the Grecian Health Spa and Fitness Center on Washington Boulevard here did not deter Daryl and Jeanine Diller yesterday.

The Dillers, both of whom are blind, toured the center with their guide dogs to find out what lay inside the exercise rooms they had been barred from entering since April.

"We were told very unceremoniously they had a policy not to allow blind people in," said Mrs Diller as she stepped into a room jammed with equipment and about a dozen women lifting weights or dancing to the beat of an aerobics routine on a television screen.

"I only wanted to see what's in there. I never said I wanted to join," said the 33-year-old mother of three children.

In seeking legal help, she and her husband, a 35-year-old computer engineer for the U.S. Defense Department, placed state Senator Thomas P. O'Reilly (D-Prince Georges) in a political quandary.

As a lawyer, Mr. O'Reilly represents the spa's owner, Louis W. Andrews. As a state senator, he voted last year for a bill that increased the penalty for discriminating against the blind from \$50 to \$500.

Mr. O'Reilly declined to discuss a contention by others close to the dispute that he had advised Mr. Andrews to permit the blind to join his spa. "I feel very uncomfortable being quoted in any way against my client," he said.

Late yesterday afternoon, Mr. Andrews agreed to let the couple inside when they showed up with Delegate Elijah E. Cummings (D-Baltimore) and the president and several members of the National Federation of the Blind of Maryland. Delegate Cummings was the sponsor of last year's legislation.

Mr. Andrews, a trim, balding man of 62 who has owned the business for 15 years, admitted in an interview that he told his receptionist to deny the Dillers entrance when they asked for a tour last April 21.

"I've accepted people who've had epileptic fits and cerebral palsy," he said. "One man came in, and on the first night had a seizure. We didn't know what to do.

"I do not know how I can let blind people in. They might cause damage and injuries to other people," he said. But Andrews added: "If they can show me they can use the facilities, well, that's all I ask. I'm not trying to discriminate. I know what that is, coming from two immigrant Greek parents."

Mr. Andrews met last evening with two members of the Federation, but the session ended without agreement. He declined to sign a declaration prepared by

the Dillers and the group vowing never to discriminate "on the basis of blindness."

James H. Omvig, the President of the Federation, who also is blind, said afterward that his group intended to file a complaint with the state Human Relations Commission within 10 days.

Mr. Andrews recalled that a few days after he denied the Dillers entry to the spa, they called him to protest. "I said, 'To be honest with you, I don't know how to accommodate you. I don't have facilities for the handicapped,'" he said.

He said Mrs. Diller disputed the label of "handicapped," and expressed confidence that she and her husband would be able to manage inside the spa including its swimming pool.

As he played guide to the couple, to the Delegate, and to Mr. Omvig, Mr. Andrews repeatedly told of problems he said blind exercisers would encounter at his spa.

He kicked a 20-pound weight that lay on the floor and complained loudly that people forget to put such things away. "How can he step over them?" he asked the Delegate, removing several dumbbells from a rack and dropping them to the floor.

"It is a complicated, complex kind of operation," he told the visitors. "You must have someone (to accompany the blind). I don't think a blind person can use the spa."

"Let us decide what we can and can't do," Mrs. Diller shot back. Her husband added quickly, "We couldn't even get a chance to decide."

In addition to this article in the Baltimore Sun, there was widespread radio and television coverage. Our next step was to take the matter to Stephen H. Sachs, Maryland's Attorney General. We asked him for his opinion about the coverage of Maryland's White Cane Law. In a closely reasoned and thorough review of similar legislation from throughout the United States, Attorney General Sachs concluded that the health spa is covered by the White Cane Act, and it is unlawful to deny membership to the blind. Because of its detailed analysis and thorough treatment of the issues, this opinion should be of importance throughout the country, serving as an authoritative precedent:

Baltimore, Maryland
August 6, 1984

Dear Delegate Cummings:

You have requested our opinion on whether the exclusion of a blind person from membership in a health club or similar facility that is otherwise open to the general public violates this State's "White Cane Law," Article 30, Section 33 of the Maryland Code. More specifically, you ask whether such a health club is a "public facility" within the meaning of that law.

For the reasons given below, we have concluded that a health club which otherwise opens its membership to the general public is a public facility subject to the provisions of Article 30, Section 33. Accordingly, it is prohibited by law from denying the blind (or, indeed, any person with a visual or hearing impairment) "full and equal"

access to and use of its facilities (footnote 1).

Opinion of the Attorney General

Cite as: Opinion No. 84-020 (August 6, 1984) (to be published at 69 Opinions of the Attorney General (1984))

I. The Statute

Article 30, Section 33 (d) (1) and (g) of the Maryland Code makes it unlawful in this State to deny or interfere with the admittance to or enjoyment of "public facilities" by persons with visual or hearing impairments:

"(d)(1) The blind or the visually handicapped and the deaf or hearing impaired are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or other public conveyances or modes of transportation, hotels, lodging places, places of public accommodations, amusement, or resort, or other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable to all persons....

"(g) Any person or persons, firm, or corporation, or the agent of any person or persons, firm, or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in this section, or otherwise interferes with the rights of a blind or visually handicapped person or a deaf or hearing impaired person under this section, is guilty of a misdemeanor and subject upon conviction to a fine not

exceeding \$500 for each offense."

As originally enacted in 1964, the law was designed to "prohibi[t] discrimination against blind persons in places of accommodations when such persons are accompanied by their dog guides." Chapter 137, Laws of Maryland 1964. The term "place of public accommodation" was then somewhat narrowly defined to include only an "establishment ... regularly engaged in the business of providing sleeping accommodations, or serving food, or both, for a consideration, and which is open to the general public."

In 1966 the law was revised to "mak[e] it unlawful for any person to prohibit, hinder, or interfere with" the right of a blind person "to take a dog guide into certain public places." Chapter 190, Laws of Maryland 1966. Again, the range of "public places" subject to the law was a relatively narrow one, limited to "any public building, restaurant or eating place, conveyance, hotel, inn, tourist cabin or motel, elevator, or other similar public place."

But, just one year later, in 1967, the scope of this law was significantly broadened. No longer did the statute focus primarily on the right of the blind to use guide dogs. Rather, the statute was revised generally to "make it unlawful to interfere or deny admittance to or enjoyment of public facilities or to otherwise interfere with the rights of blind ... persons." Chapter 663, Laws of Maryland 1967. And, for this purpose, the range of "public facilities" to which the blind were guaranteed "full" access was itself broadened to include "all ... places of public accommodation, amusement or resort, and other places ... which are

general public is invited."

In 1971, this broad prohibition became part of a new "White Cane Law," providing for equal rights and treatment for blind or visually handicapped persons in employment, public accommodations, and housing." Chapter 390, Laws of Maryland 1971. New rights with respect to housing and public employment were added, and what is now Section 33(d)(1) was expanded to provide both "the blind [and] the visually handicapped" with "full and equal" access to the broad range of public facilities there enumerated—including, again, "all ... place of public accommodations, amusement, or resort, or other places to which the general public is invited" (footnote 2).

II. Analysis

A health club, quite obviously, does not fall within the statute's more specific listing of "common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or other public conveyances or modes of transportation, hotels [and] lodging places." The question, then, is whether it falls within the statute's far broader reference to "places of public accommodations, amusement, or resort, or other places to which the general public is invited." We have no doubt but that it does (footnote 3).

The phrase "places of public accommodations, amusement, or resort" is not uncommon to public accommodations laws. And, when following a list of specifically described places, this and similar phrases have been construed by courts around the country to be an enlargement upon that list and, as such, to encompass a wide range of other

places and facilities not specifically listed. These include, for example, pool rooms, Village of Atwood v. Otter, 129 N.E. 573 (Ill. 1920); swimming pools, State of New Jersey v. Rosecliff Realty Co. 62 A.2d 488 (N.J. Super. Ct. App. Div. 1948); race tracks, Suttles v. Hollywood Turf Club, 114 P.2d 27 (Cal. Ct. App. 1941); roller skating rinks, Jones v. Broadway Ice Rink Co. 118 N.W. 170 (Wis. 1908); cemeteries, Pennsylvania Human Relations Comm'n v. Alto-Reste Park Cemetery Ass'n, 306 A.2d 881 (Pa. 1973); little league baseball organizations, National Organization for Women, Essex County Chapter v. Little League Baseball, Inc. 318 A.2d 33 (N.J. Super. Ct. App. Div. 1974); marathon courses, New York Roadrunners Club v. State Division of Human Rights, 437 N.Y.S. 2d 681 (N.Y. App. Div. 1981); amusement parks, Drews v. State, 236 Md. 349 (1964); golf clubs, Brown v. Loudon Golf and Country Club, Inc. 573 F.Supp. 399 (D. Va. 1983); recreational facilities, Smith v. Young Men's Christian Ass'n of Montgomery, 316 F.Supp. 899 (M.D. Ala. 1970); and reducing salons, Browning v. Slenderella Systems of Seattle, 341 P.2d 859 (Wash. 1959).

Indeed, at least one reported case has directly held the phrase, "places of public accommodation, amusement, and recreation" to encompass health and exercise clubs. Vidrich v. Vic Tanny International, Inc. 301 N.W.2d (Mich. Ct. App. 1980). Coincidentally, that case also involved, as here, a blind person who had been denied access to the club in question:

"The issue is whether a legally blind person may validly be refused unre-

stricted membership in a health and exercise club on the ground that the physical limitations deriving from his blindness constitute a significant safety hazard effectively precluding his safe use of club facilities. We recognize no such 'safety exception' to the equal accommodations act and, consequently, reverse the trial court's determination that [the club's] exclusion of plaintiff was proper." 301 N.W.2d at 483.

In Vic Tanny, the court considered a Michigan equal accommodations law strikingly similar to Article 30, Section 33(d)(1):

"All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of inns, hotels, motels, government housing, restaurants, eating houses, barber shops, billiard parlors, stores, public conveyances on land and water, theatres, motion picture houses, public educational institutions, in elevators, on escalators, in all methods of air transportation and all other places of public accommodation, amusement, and recreation, subject only to the conditions and limitations established by law and applicable alike to all citizens and to all citizens alike, with uniform prices." 301 N.W.2d at 483 (quoting M.C.L. Section 750.146; M.S.A. Section 28.343 (footnote 4)).

The defendant argued that the law did not apply to health clubs given the absence of "specific language encompassing such facilities." 301 N.W.2d at 484. The court responded:

"This argument is without merit in light of the comprehensive wording of [the statute] providing for equal accommodations in 'all other places of public accommodations, amusement, and recreation.' We hold that defendant's business is within the purview of that language." Id.

In reaching this conclusion, the court also rejected the defendant's argument that a "safety exception" be judicially incorporated into the equal accommodations act:

"Where, as here, the language of the act is clear, unequivocal, and absolute on its face, judicial construction or interpretation of the statutory language in the manner argued for by defendant would be improper. Our function is to give full credence to 'the legislative will as we find it, without regard to our own views as to the wisdom or justice of the act.'" 301 N.W.2d at 485 (citations omitted).

Article 30, Section 33 is, if anything, even broader than the Michigan statute construed and applied in Vic Tanny: Section 33 applies not only to "all ... places of public accommodations, amusement, or resort" but, indeed, to "all ... other places to which the general public is invited." Like the court in Vic Tanny, then, we have no hesitation in concluding that Article 30, Section 33 applies fully to health clubs and similar facilities in which membership is generally open to the public. Those clubs, therefore, are required to provide blind persons, as well as persons with hearing impairments, "full and equal access to their

facilities, without discrimination in the scope, terms, or conditions of that access.

III. Conclusion

In summary, it is our opinion that a health club or similar facility which otherwise opens its membership to the general public is a "public facility" subject to the provisions of Article 30, Section 33. As such, it is prohibited from denying persons with visual or hearing impairments "full and equal" access to and use of its facilities.

Very truly yours,
Stephen H. Sachs
Attorney General

Avery Aisenstark, Chief Counsel
Opinions and Advice

FOOTNOTES

1. You have not asked, nor do we here address, whether a health club might also be considered a "place of public accommodation" subject to this State's Public Accommodations Law, Article 49B, Section 5 of the Maryland Code. Article 49B, Section 5 defines "place of public accommodation" to include, among other things, a "place of exhibition or entertainment." It might well be that a health club is a "place of exhibition or entertainment" within the scope of that definition. See, e.g., *Daniel v. Paul*, 395 U.S. 298 (1969) (term "place of entertainment" in Civil Rights Act of 1964 not confined to spectator entertainment and includes a recreational facility that offers swimming, boating, miniature golf, and dancing). But see

Draws v. State, 236 Md. 349, 354 (1964) ("there is no provision in the public accommodation law enacted by the State ... with respect to amusement parks.")

In any event, we believe that questions about the scope and applicability of the Public Accommodations Law are, in the first instance at least, best left to the expertise of the Human Relations Commission, the agency charged with enforcing and administering that law. See *Maryland Comm'n on Human Relations v. Bethlehem Steel Corp.*, 295 Md. 586 (1983); *Maryland Comm'n on Human Relations v. MTA*, 294 Md. 225 (1982).

2. Three years later, in 1974, the provisions of the Public Accommodations Law, Article 49B, Section 5 [then Section 11], were expanded to encompass discrimination on the basis of "physical...handicap." See Chapter 875, Laws of Maryland 1974. That the General Assembly did not intend or consider the broad protections afforded by Article 30, Section 33 to be supplanted by this newly expanded Public Accommodations Law is evidenced by the fact that, since 1974, Article 30, Section 33 has itself been reenacted and amended several times by the General Assembly—most notably, in 1978 and 1979, to extend its protections to the deaf and hearing impaired [Chapter 929, Laws of Maryland 1978; Chapter 565, Laws of Maryland 1979] and, in 1983, to increase the criminal penalty from \$50 to \$500 [Chapter 649, Laws of Maryland 1983].

3. A possible, narrow exception might exist for a health club facility that is, in the true sense of the term, a "private club"—e.g., one composed of a select group of members who themselves have a say in admitting or rejecting new

applicants, who themselves exercise control over club operations and facilities, and who themselves own equity in club property or share in club profits. See, e.g., *Daniel v. Paul*, 395 U.S. 298, 301 (1969) (respondent recreational facility not a private club but "simply a business operated for a profit with none of the attributes of self-government and member-ownership traditionally associated with private clubs.") Cf. *Roberts v. United States Jaycees*, U.S. (1984) [52 LW 5076 (June 26, 1984)] (national membership organization, having local chapters that are neither small nor selective, is a "place of public accommodation" under Minnesota Human Rights Act).

Most modern health clubs, we suspect, fail to exhibit these indicia of a private club. Certainly, the particular health club to which your inquiry

relates—the Grecian Health Spa and Fitness Center of Laurel, Maryland—is not a "private club." It is, rather, a commercial enterprise in which membership is open and nonselective, subject only to payment of a membership fee and adherence to the rules and regulations adopted by the facility's owner and operator, Grecian Health Spa, Inc.

4. An accompanying provision, not unlike Article 30, Section 33(g), imposed criminal sanctions upon "[a]ny...owner, lessee, proprietor, manager, superintendent, agent or employee of any such place who shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities and privileges thereof...on account of...blindness." 301 N.W.2d at 483 (quoting M.C.L. Section 750.147; M.S.A. Section 28.344).

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

REQUEST: _____

Bill Version: SB-1
Publish Date: 1-19-87

Revision Date: _____
Title: Rights of Physically and
Mentally Disabled Persons

Agency Affected: Office of the Governor
BRU: Commissions/Special Offices

Sponsor: Duncan and Szymanski
Requestor: Health, Education and Social
Services, Judiciary & Finance

Components: Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		46.9	46.9	46.9	46.5	
TRAVEL		10.5	10.5	10.5	10.5	
CONTRACTUAL SUPPLIES						
EQUIPMENT		.5	.5	.5	.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		57.9	57.9	57.9	57.9	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		57.9	57.9	57.9	57.9	
FEDERAL FUNDS						
OTHER						
TOTAL		57.9	57.9	57.9	57.9	

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Establish (1) PFT position HRFER III to handle the increased caseload (intake and processing) of complaints anticipated to be filed by disabled persons due to SB-1.

Prepared by: Michael A. Nizich, Director *MN*
Division: Administrative Services

Phone: 465-3616
Date: Feb. 2., 1987

Approved by Commissioner: Carol P. Kastelic *CPK*
Agency: Exec. Assistant, Office of the Governor

Date: Feb. 2, 1987

Distribution (by preparer):

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

SB

5

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 5

Publish Date: _____

Revision Date: _____

Agency Affected: Legislative Affairs Agency

Title: An Act establishing procedures to be ...
estimated state revenue...insufficient...

BRU: Legislative Council

Sponsor: Sen. Jack Coghill

Components: Session Expenses

Requestor: Senate State Affairs

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	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

No additional funds anticipated if a special session was called for a period of 2-3 days. Hopefully the Session Expenses component would have approximately \$40-50,000 to cover a 2-3 day session. If a special session was lengthy and costly, then a supplemental would need to be appropriated to cover those costs.

Prepared by: Pamela A. Stoops, Manager
Division: Administrative Services

Phone: 465-3850
Date: 01/26/87

Approved by: Warren W. Endicott
Agency: Legislative Affairs Agency

Date: 1/26/87

Distribution (by preparer):

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

SB

7

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

REQUEST: _____

Bill Version: CSSB 7
Publish Date:

Revision Date:
Title: An act authorizing capital punishment
Sponsor: Senate HESS
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	107.2	107.2	107.2	107.2	107.2
Travel	112.5	112.5	112.5	112.5	112.5
Contractual	166.0	166.0	166.0	166.0	166.0
Supplies
Equipment	18.9	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	404.6	385.7	385.7	385.7	385.7
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	404.6	385.7	385.7	385.7	385.7
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	404.6	385.7	385.7	385.7	385.7

POSITIONS:						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time	3.0	3.0	3.0	3.0	3.0
Part-time
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 5-15-87

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

Date: 5-15-87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

ALASKA COURT SYSTEM

CSSB 7 - CAPITAL PUNISHMENT

FISCAL IMPACT

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

1. Personnel Costs and Related Costs. Extensive legal research is required for capital offenses. Additional law clerks will be needed to research motions and other judicial questions. Courtroom security will have to be strengthened for these cases. Personnel funds for an additional security guard for Anchorage and contractual funds for security services in other courts will be needed.
2. Travel Costs. Since death penalty cases are often subject to intense media exposure, expenses associated with jury sequestration and with change of venue can be expected.
3. Juror Selection. Jurors must be questioned individually in capital cases and some courts have required questioning in private. More jurors must be called and the process takes longer, with more challenges for cause, all of which results in higher jury fee expenditures. Similarly, additional balliff costs can be expected.
4. Transcription Costs. Preparation of the voluminous record which accompanies a death penalty case will result in additional transcribing costs.
5. Equipment. Courtroom security requirements will necessitate the installation metal detectors in major court locations and the use of hand-held detectors in smaller courts to screen trial spectators.

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 7 (HESS)
PUBLISH DATE: _____

FISCAL NOTE

FEB 25 1988

REQUEST:

Revision Date: 2/22/88
Title: "An Act authorizing capital punishment..."
Sponsor: Sen. Abood, Kelly & Faiks
Requestor: Sendate Judiciary

Agency Affected: Public Safety
BRU: DPS Administration, Alaska
State Troopers
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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)

Prepared by: Diana Page, Administrative Assistant
Division: Commissioner's Office

Phone: 465-4322
Date: 2/22/88

Approved by Commissioner: [Signature]
Agency: Public Safety

Date: 2-24-88

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 7
PUBLISH DATE: 4/23/87

FISCAL NOTE

REQUEST:

Revision Date: 2/1/88
Title: An Act relating to capital punishment.
Sponsor: ABOOD
Requestor: Senate Judiciary

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: II - Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (cont.)

Prepared by: Linda Edgeworth Phone: 465-4611
Division: Elections Date: 2/1/88

Approved by Commissioner: [Signature] Date: _____
Agency: Office of the Governor, Division of Elections

Distribution (by preparer): 2/2/88
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 7

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

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

Bill Version: Senate Bill 7185
Publish Date: 4-23

REQUEST: _____

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-
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 :

Prepared by: Susie Riley, Program Budget Analyst
Division: Administrative Services
Approved by ^{Acting} Commissioner: William W. Lindsey
Agency: Department of Corrections

Phone: 465-3376
Date: Jan. 27, 1987
Date: 2/3/87

Distribution (by preparer):

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

CORRECTIONS

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 GCU
Time Status PFT	Staff Months 90	Location Seward		Election District
Type of Expenditure		Amount		
1	2	3		
Salary	249,885			
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				

5-2-88

Justification

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.

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.

The cost for one-half FY89 is as follows:

\$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>	

**Request For
New Position**

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

Page 4 of 5
 Revised Date

FY 88

Position Title Correctional Officer III		No. of Positions 5	Range/Step 15A	Barg. Unit CGU
Time Status PFT	Staff Months 90	Location Seward		Election District
Type of Expenditure		Justification		
		Five supervisory Correctional Officer III's will be required to fill the compliment for the three added posts in addition to the fifteen CO II's.		
		The cost for one-half of FY89 is as follows:		
Amount				
1	2	3		
Salary	92,230		\$18,446	Salaries
Benefits	34,680		6,936	Benefits
Premium Pay			\$25,382	
Other				
Total Personal Services		126,910		
Travel		1,000		
Contractual				
Commodities		1,000		
Equipment		750		
Other			200	Travel (training)
			200	Standard Supplies (\$400 per year)
			150	Equipment
Total Cost		129,660	\$25,932	
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	129,660		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

595

**Request For
New Position**

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

FY 88

Page 5 of 5
 Revised Date

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSB 7 HESS
Publish Date: 4-23

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

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	-0-	226.6	235.7	245.1	254.9	265.1
TRAVEL		35.0	36.4	37.9	39.4	40.1
CONTRACTUAL		546.2	568.0	590.7	614.3	638.9
SUPPLIES		4.0	4.2	4.4	4.6	4.8
EQUIPMENT		14.1	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	825.9	844.3	878.1	913.2	948.9

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	825.9	844.3	878.1	913.2	948.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	825.9	844.3	878.1	913.2	948.9

POSITIONS:

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

ANALYSIS:

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy
Approved by Commissioner: Garrey Peska
Agency: Department of Administration

Phone: 274-1684
Date: 2/24/87
Date: 3/4/87

Distribution (by preparer):

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

Public Advocacy - Admin

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB7

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

This office's estimate that it will be responsible for three capital cases in FY88 is dependent upon the following two assumptions: (1) a slight numerical increase in the number of first degree murder cases which fall within the OPA statutory mandate, and (2) the Department of Law will request the death penalty in only one-third of all First Degree Murder cases.

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 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 = 30.2

Subtotal Personal Services 226.6

Travel

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

Contractual

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

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

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

Subtotal Contractual 546.2

Supplies

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

Equipment

Office furniture & equipment for
three professional positions at 2,429
each and one legal secretary at 6,838 14.0

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
Type of Expenditure		Amount		
1	2	3		
Salary	22,020			
Benefits	8,164			
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				
Justification				
<p>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.</p>				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

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FY 88

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
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>				
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				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

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FY 88

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
		Justification		
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				

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.

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

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 Revised Date _____

FY 88

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
Justification				
<p>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.</p> <p>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.</p>				
Type of Expenditure		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				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 7 of 7
 Revised Date _____

FY 88

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

Bill Version: SB7 HB55
Publish Date: 4-23

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

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 :

Prepared by: Dana Faber, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: Feb. 25, 1987

Approved by Commissioner: Garrey Peska
Agency: Department of Administration

Date: 2/14/87

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

Admin: Public Defender

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 Habeus Corpus in the Federal District Court.
8. Appeal to the United States Court of Appeals.
9. Rehearing in the United States Court of Appeals.
10. Writ of certiorari to the United States Court of Appeals.
11. Commutation applications to executive branch.
12. Emergency stays to the United States Supreme Court.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 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

For Bill/Resolution No. SB 7

3. Equipment and Supplies.

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

BUDGET SUMMARY

Personal Services:

Guilt and Penalty Team-Anchorage			
Attorney V	79.7		
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	35.1	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	5.0	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				
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				

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.

**Request For
New Position**

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

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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				
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.				
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				

**Request For
New Position**

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

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FY 88

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				
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.				
Type of Expenditure		Amount		
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				

**Request For
New Position**

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

FY 88

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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 Anchorage		Election District 92
		Justification		
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				

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

**Request For
New Position**

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

FY 88

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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 Anchorage		Election District 92
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.				
Type of Expenditure		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				

**Request For
New Position**

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

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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
Type of Expenditure		Justification		
		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.		
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				

**Request For
New Position**

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

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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.

**Request For
New Position**

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

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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		
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				

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.

**Request For
New Position**

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

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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		
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				

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 I-I, 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.

**Request For
New Position**

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

FY 88

Page 13 of 16
 Revised Date 2/25/87

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				
<p>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.</p>				

**Request For
New Position**

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

FY 88

Page 14 of 16
 Revised Date 2/25/87

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
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.				
Type of Expenditure		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				

**Request For
New Position**

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

FY 88

Page 15 of 16
 Revised Date 2/25/87

Position Title Legal Secretary I		No. of Positions 1	Range/SGA 10A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Fairbanks.		Election District 94
		Justification		
Type of Expenditure		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				

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

**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

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

Bill Version: CS SB 7 HESS
Publish Date: 4-22

REQUEST: _____

Revision Date: _____
Title: "An Act authorizing capital
punishment..."
Sponsor: Sen. Abood and Kelly
Requestor: Sen. HESS

Agency Affected: Public Safety
BRI: 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	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS :

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

SAFETY

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 7 (HESS)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

FEB 26 1988

Revision Date: 2/22/88
Title: "An Act authorizing capital punishment..."
Sponsor: Sen. Abood, Kelly & Faiks
Requestor: Sendate Judiciary

Agency Affected: Public Safety
BRU: DPS Administration, Alaska State Troopers
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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)

Prepared by: Diana Page, Administrative Assistant
Division: Commissioner's Office

Phone: 465-4322
Date: 2/22/88

Approved by Commissioner: *Shirley A. Hartsler*
Agency: Public Safety

Date: 2-24-88

Distribution (by preparer):

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 4, 1987

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

TO: Senator Mitch Abood

FROM: Keith B. Levy^{KBL}
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 12.30.040(b) 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

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 about 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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 7
Publish Date: _____

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

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	-0-	226.6	235.7	245.1	254.9	265.1
TRAVEL		35.0	36.4	37.9	39.4	40.1
CONTRACTUAL		546.2	568.0	590.7	614.3	638.9
SUPPLIES		4.0	4.2	4.4	4.6	4.8
EQUIPMENT		14.1	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	825.9	844.3	878.1	913.2	948.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	825.9	844.3	878.1	913.2	948.9
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	825.9	844.3	878.1	913.2	948.9

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate Phone: 274-1684
Division: Office of Public Advocacy Date: 2/24/87
Approved by Commissioner: Garrey Peska Date: 3/4/87
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. SB7

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

This office's estimate that it will be responsible for three capital cases in FY88 is dependent upon the following two assumptions: (1) a slight numerical increase in the number of first degree murder cases which fall within the OPA statutory mandate, and (2) the Department of Law will request the death penalty in only one-third of all First Degree Murder cases.

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

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

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