

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

6297

SENATE JUDICIARY

8672

70



RECORDS



CERTIFICATION

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Ann. Butlex
Signature of Camera Operator

11/3/93
Date

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S B

17

FILE 1

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H



State Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

RECEIVED

JAN 10 1988

JAN FAIKS
SENATE OFFICE

MEMORANDUM

TO: Senator Jan Faiks, Chairman
Senate Judiciary Committee

FROM: Senator Paul Fischer *PF*

SUBJECT: Senate Bill 17
(relating to capital punishment)

DATE: January 10, 1988

I would appreciate your scheduling the above referenced bill before the Senate Judiciary Committee at your earliest possible convenience.

As you are aware, this legislation is similar to Senate Bill 7 introduced during the Fifteenth Alaska Legislature.

Your consideration would be greatly appreciated.

PAF/sgn

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act authorizing capital punishment."
 Sponsor: Sen. Fisher, Kelly and Pearce
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: Statewide Operations
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES			1009.5	1060.0	1113.0	1168.6
TRAVEL			8.0	8.0	8.0	8.0
CONTRACTUAL						
SUPPLIES			8.0	8.0	8.0	8.0
EQUIPMENT			6.0	6.0	6.0	6.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	1031.5	1082.0	1135.0	1190.6
CAPITAL	0	2683.5	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2683.5	1031.5	1082.0	1135.0	1190.6
FEDERAL FUNDS						
OTHER						
TOTAL	0	2683.5	1031.5	1082.0	1135.0	1190.6

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Phone: 465-3376
 Date: 1-23-89

Approved by: *Susan Humphrey-Bainett*
 Agency: Department of Corrections

Date: 1-23-89

Distribution (by preparer):

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

ANALYSIS

A. Assumptions:

Enactment of Senate Bill 17 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. Details follow in B-2.
4. Inflation is estimated at 5% per year.
5. The unit will be available for occupancy August 1991.

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.

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

<u>Area Identification</u>	<u>Square Footage</u>
Core Area (44' x 44')	1936
-Control Room, Sallyport	
-Visitation (Attorney, Secure)	
-General Movement	
-Storage	
-Mechanical Room	
Housing Wings	3678
(2 @ 37' x 47' + 200 sq. ft.)	
-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.
	\$1,984,200
Cost of Structure	
Secure Outdoor Recreation	
(2 @ 16' x 20')	
-640 sq. foot @ \$125/sq. ft.	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 below. It is estimated that Operating Costs would not begin until July of 1991.
 - a. 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 Officers II. Three additional posts will require a minimum of 15 Correctional Officers II.

The cost for FY91 for each CO II is as follows:

\$33,293	Salaries (13A)
<u>14,756</u>	Benefits
\$48,049	
\$ 400	Travel (training)
400	Standard Supplies (\$400 per year)
<u>300</u>	Equipment
\$ 1,100	
<u>\$ 49,149</u>	Total yearly cost/CO II
<u>\$737,235</u>	Total yearly cost for 15 CO IIs
\$720,735	Total Salaries & Benefits
6,000	Total Travel
6,000	Total Supplies
<u>4,500</u>	Total Equipment
\$737,235	Total FY91 Cost for CO IIs

- b. Five supervisory Correctional Officers III will be required to fill the complement for the three added posts in addition to the fifteen CO IIs.

The cost for FY91 for each CO III is as follows:

\$ 40,867	Salaries (15B)
<u>16,890</u>	Benefits
\$ 57,757	
\$ 400	Travel (training)
400	Standard Supplies (\$400 per year)
<u>300</u>	Equipment
\$ 1,100	
<u>\$ 58,857</u>	Total yearly cost/CO III
<u>\$294,285</u>	Total yearly cost for 5 CO IIIs
\$288,785	Total Salaries & Benefits
2,000	Total Travel
2,000	Total Supplies
<u>1,500</u>	Total Equipment
\$294,285	Total FY91 Cost for CO IIIs

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: SB 17
Publish Date:
Revision Date: 2/16/89 Agency Affected: Alaska Court System
Title: An act related capital BRU: Trial Courts
punishment
Sponsor: Fischer Components:
Requestor:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services				87.6	87.6	87.6
Travel				112.5	112.5	112.5
Contractual				166.0	166.0	166.0
Supplies						
Equipment				18.7		
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	381.8	366.1	366.1

REVENUE

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

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

ANALYSIS: (Attach a separate page if necessary)

See attached information

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

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

ALASKA COURT SYSTEMSB 17 - CAPITAL PUNISHMENTFISCAL IMPACT

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

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

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

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

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

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

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

ALASKA COURT SYSTEMSB 17 - Capital Punishment
Fiscal Impact

<u>Personal Services:</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Law Clerk I, Range 13D, Anchorage, PFT - 12 Months	\$29,340	\$11,730	\$41,070
Law Clerk I, Range 13D, Fairbanks, PFT - 12 Months	33,816	12,710	46,526

			Total Personal Services
			87,596

 <u>Travel:</u>			
Jury sequestration - meals and lodging			112,500
 <u>Contractual:</u>			
Security guard services for courts outside Anchorage			10,000
Jury fees			96,000
Bailiff costs			10,000
Transcription			50,000

			Total Contractual
			166,000

 <u>Equipment: (one-time items)</u>			
Standard office equipment and reference materials for law clerks			3,249
Walk-through metal detectors for Anchorage, Fairbanks, Juneau, and Ketchikan and hand-held metal detectors for other superior courts			12,450

			Total Equipment
			15,699

Total First Year Cost			\$381,795
			=====

FISCAL NOTE

REQUEST:

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

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

Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

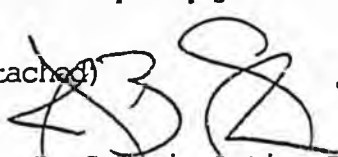
GENERAL FUND	-0-	1502.8	1500.5	1560.5	1622.9	687.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	1502.8	1500.5	1560.5	1622.9	1687.7

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

(See attached)



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

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

Approved by Commissioner: John Andrews
 Agency: Department of Administration

Date: 1/20/89

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

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

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

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

1. Personal Services

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

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

2. Travel and Contractual Fees.

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

3. Equipment and Supplies.

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

BUDGET SUMMARY

Personal Services:

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

Travel:

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

Contractual:

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

Supplies:

Office, law library	27.0
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Equipment:

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

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	
Type of Expenditure		Justification			
		<p>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.</p>			
Amount					
1	2				3
Salary \$5021/mo.	60,252				
Benefits	19,331				
Premium Pay					
Other					
Total Personal Services					79,583
Travel					50,000
Contractual					110,000
Commodities					3,000
Equipment					2,500
Other					
Total Cost		245,083			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	245,083			
GF Program Receipts	1005				
Other					

**Request For
New Position**

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

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 Revised Date

FY 90

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		18,601		
Premium Pay				
Other				
Total Personal Services		74,845		
Travel		50,000		
Contractual		110,000		
Commodities		3,000		
Equipment		2,500		
Other				
Total Cost		240,345		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	240,345		
GF Program Receipts	1005			
Other				

**Request For
New Position**

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

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FY 90

Position Title Investigator III		No. of Positions 1	Range/Step 18A	Barg. Unit GG	
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District 92	
Type of Expenditure		Justification			
		<p>This Investigator III will serve as a death penalty team member in the guilt and penalty phases of capital cases in Anchorage and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities. The travel and contractual are included in the requests for attorneys.</p>			
	Amount				
1	2				3
Salary \$3113/mo.	37,356				
Benefits	14,589				
Premium Pay					
Other					
Total Personal Services					51,945
Travel					-0-
Contractual					-0-
Commodities					-0-
Equipment					2,500
Other					
Total Cost		54,445			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	54,445			
GF Program Receipts	1005				
Other					

**Request For
New Position**

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

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FY 90

Position Title Legal Secretary I			No. of Positions 1	Range/Step 10A	Barg. Unit GG	
Time Status PFT	Staff Months 12.0		Location Anchorage		Election District 92	
			Justification This Legal Secretary I will provide support services to a death penalty team in Anchorage and other parts of the state. Necessary travel is included in the requests for attorneys. The equipment request includes 10.0 for a word processor.			
Type of Expenditure		Amount				
1	2	3				
Salary \$1835/mo.	22,020					
Benefits	10,802					
Premium Pay						
Other						
Total Personal Services		32,822				
Travel		-0-				
Contractual		-0-				
Commodities		3,000				
Equipment		12,500				
Other						
Total Cost		48,322				
Funding Source for Total Cost						
Federal Receipts	1002					
G. F. Match	1003					
General Fund	1004	48,322				
GF Program Receipts	1005					
Other						

**Request For
New Position**

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

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Revised Date _____

FY 90

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	
Type of Expenditure		Justification			
		<p>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.</p>			
Amount					
1	2				3
Salary \$5021/mo.	60,252				
Benefits	19,331				
Premium Pay					
Other					
Total Personal Services					79,583
Travel					10,000
Contractual					5,000
Commodities					3,000
Equipment					2,500
Other					
Total Cost					100,083
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	100,083			
GF Program Receipts	1005				
Other					

**Request For
New Position**

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

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FY 90

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		
		<p>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.</p>		
Amount				
1	2			
Salary \$4687.mo.	56,244			
Benefits	18,601			
Premium Pay				
Other				
Total Personal Services	74,845			
Travel	10,000			
Contractual	5,000			
Commodities	3,000			
Equipment	2,500			
Other				
Total Cost	95,345			
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	95,345		
GF Program Receipts	1005			
Other				

**Request For
New Position**

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

Page 10 of 16
 Revised Date

FY 90

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 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.				
Type of Expenditure		Amount		
1	2	3		
Salary \$3113/mo.	37,356			
Benefits	14,589			
Premium Pay				
Other				
Total Personal Services		51,945		
Travel		5,000		
Contractual		-0-		
Commodities		-0-		
Equipment		2,500		
Other				
Total Cost		59,445		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	59,445		
GF Program Receipts	1005			
Other				

**Request For
New Position**

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

Page 11 of 16
 Revised Date

FY 90

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	10,802			
Premium Pay				
Other				
Total Personal Services		32,822		
Travel		-0-		
Contractual		-0-		
Commodities		3,000		
Equipment		12,500		
Other				
Total Cost		48,322		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	48,322		
GF Program Receipts	1005			
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

Page 12 of 16
 Revised Date

FY 90

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	
Type of Expenditure		Justification			
		<p>This Attorney v will serve as a death penalty team leader in the guilt and penalty phases of capital cases in Fairbanks and other parts of the state. Such a team will consist of an Attorney V, an Attorney IV, an Investigator III, and a Legal Secretary I. Five capital cases per year are projected for each team and each case will require 20.0 for travel and 40.0 contractual for experts, etc. for a total 300.0 per team. Pro rating these amounts for each team attorney allows 50.0 for travel and 100.0 contractual plus office space and other necessities.</p>			
1	2				3
Salary \$5773/mo.	69,726				
Benefits	20,977				
Premium Pay					
Other					
Total Personal Services					90,253
Travel					50,000
Contractual					110,000
Commodities					3,000
Equipment					2,500
Other					
Total Cost					255,753
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	255,753			
GF Program Receipts	1005				
Other					

**Request For
New Position**

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

Page 13 of 16
 Revised Date _____

FY 90

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		20,128		
Premium Pay				
Other				
Total Personal Services				84,748
Travel				50,000
Contractual				110,000
Commodities				3,000
Equipment				2,500
Other				
Total Cost				250,248
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			250,248
GF Program Receipts	1005			
Other				

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

**Request For
New Position**

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

FY 90

Page 14 of 16
 Revised Date

Position Title Investigator III		No. of Positions 1	Range/Step 18A	Barg. Unit GG	
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94	
Type of Expenditure		Justification			
		<p>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.</p>			
Amount					
1	2				3
Salary \$3238/mo.	38,856				
Benefits	14,960				
Premium Pay					
Other					
Total Personal Services					53,816
Travel					-0-
Contractual					-0-
Commodities					-0-
Equipment					2,500
Other					
Total Cost					56,316
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	56,316			
GF Program Receipts	1005				
Other					

**Request For
New Position**

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

Page 15 of 16
 Revised Date

FY 90

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10A	Barg. Unit GG	
Time Status PFT	Staff Months 12.0	Location Fairbanks		Election District 94	
Type of Expenditure		Justification			
		<p>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.</p>			
1	2				3
Salary \$1908/mo.	22,896				
Benefits	11,018				
Premium Pay					
Other					
Total Personal Services					33,914
Travel					-0-
Contractual					-0-
Commodities					3,000
Equipment					12,500
Other					
Total Cost					49,414
Funding Source for Total Cost					
Federal Receipts 1002					
G. F. Match 1003					
General Fund 1004		49,414			
GF Program Receipts 1005					
Other					

**Request For
New Position**

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

Page 16 of 16
 Revised Date

FY 90

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

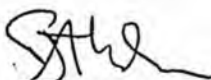
GENERAL FUND	-0-	842.7	857.4	891.8	927.5	963.8
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	842.7	857.4	891.8	927.5	963.8

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached



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

Phone: 274-1684
Date: 1/18/89

Approved by Commissioner: John Andrews
Agency: Administration

Date: 1/20/89

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

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

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

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 17

SBI7 continued:

Personal Services

Anchorage

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

Travel

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

Contractual

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

Supplies

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

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

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				
Type of Expenditure		Amount		
1	2	3		
Salary	60,252			
Benefits	19,342			
Premium Pay				
Other				
Total Personal Services		79,594		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		79,594		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	79,594		
GF Program Receipts	1005			
Other				
<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>				

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 4 of 7
 Revised Date _____

FY 89

Position Title Attorney IV		No. of Positions 1	Range/Step 24/A	Barg. Unit X
Time Status PFT	Staff Months 12	Location EBA-Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	56,244			
Benefits	18,612			
Premium Pay				
Other				
Total Personal Services		74,856		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost		74,856		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	74,856		
GF Program Receipts	1005			
Other				
Justification				
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 _____

FY 89

Page 5 of 7
 Revised Date _____

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					
Type of Expenditure				Amount					
1		2		3					
Salary		37,356							
Benefits		14,601							
Premium Pay									
Other									
Total Personal Services				51,957					
Travel									
Contractual									
Commodities									
Equipment									
Other									
Total Cost				51,957					
Funding Source for Total Cost									
Federal Receipts		1002							
G. F. Match		1003							
General Fund		1004		51,957					
GF Program Receipts		1005							
Other									
				<p>This position will perform all investigative duties in death penalty cases. Extensive experience in all areas of criminal investigation 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, followup and review the prosecution investigation and coordinate witness testimony.</p> <p>The OPA currently has no investigator positions. It is anticipated that the position will work full time on death penalty cases.</p>					

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 6 of 7
 Revised Date _____

FY 89

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		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>			
Amount					
1	2				3
Salary	22,020				
Benefits	10,813				
Premium Pay					
Other					
Total Personal Services					32,833
Travel					
Contractual					
Commodities					
Equipment					
Other					
Total Cost		32,833			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	32,833			
GF Program Receipts	1005				
Other					

**Request For
New Position**

Agency Administration
 BRU Office of Public Advocacy
 Component _____

Page 7 of 7
 Revised Date _____

FY 90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act authorizing capital punishment."
Sponsor: Sen. Fischer, Kelly and
Requestor: Pearce

Agency Affected: Department of Corrections
BRU: Statewide Operations

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	300.0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	300.0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Capital Construction Cost for execution area and attendee waiting area.
Total of 1000 square feet at \$300 per square foot. This fiscal note

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
Division: Administrative Services Date: 2-15-89

Susan Humphrey-Barnett

Approved by Commissioner: Susan Humphrey-Barnett Date: 2-15-89
Agency: Department of Corrections

Distribution (by preparer) :

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

FISCAL NOTE
Senate Bill 17
Page 2

reflects the housing of persons condemned to death at the Spring Creek Correctional Center. The previous fiscal note was written prior to its construction and subsequent opening.

Original sponsors: Fischer, Kelly,
Pearce, et al.

IN THE SENATE

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CS FOR SENATE BILL NO. 17 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing capital punishment, amending th
definition of the crime of murder in the first
degree, classifying murder in the first degree as a
capital felony, and establishing sentencing proce-
dures for capital felonies; amending Rules 32, 32.1,
and 32.3, Alaska Rules of Criminal Procedure, and
Rules 204, 210, and 212, Alaska Rules of Appellate
Procedure; and providing for an effective date."

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

* Section 1. AS 11.31.100(d) is amended to read:

(d) An attempt is

(1) an unclassified felony if the crime attempted is a
capital felony [MURDER IN THE FIRST DEGREE];

(2) a class A felony if the crime attempted is an unclas-
sified felony other than a capital felony [MURDER IN THE FIRST DE-
GREE];

(3) a class B feiomy if the crime attempted is a class A
felony;

(4) a class C felony if the crime attempted is a class B
felony;

(5) a class A misdemeanor if the crime attempted is a class
C felony;

(6) a class B misdemeanor if the crime attempted is a class
A or class B misdemeanor.

* Sec. 2. AS 11.31.110(c) is amended to read:

(c) Solicitation is a

(1) class A felony if the crime solicited is an unclassified or capital felony;

(2) class B felony if the crime solicited is a class A felony;

(3) class C felony if the crime solicited is a class B felony;

(4) class A misdemeanor if the crime solicited is a class C felony;

(5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

* Sec. 3. AS 11.41.100 is amended to read:

Sec. 11.41.100. MURDER IN THE FIRST DEGREE. (a) A person commits the crime of murder in the first degree if

(1) with intent to cause the death of another person, the person

(A) causes the death of any person; or

(B) compels or induces any person to commit suicide through duress or deception; [OR]

(2) the person knowingly engages, under circumstances manifesting extreme indifference to the value of human life, in a pattern or practice of assault or torture of a child under the age of 16, and one of the acts of assault or torture results in the death of the child; for purposes of this paragraph, a person "engages in a pattern or practice of assault or torture" if the person inflicts serious physical injury to the child by at least two separate acts, and one of the acts results in the death of the child; or

(3) delivers any amount of a schedule IA or IIA controlled

1 substance to another person and, as a direct result of the other
2 person's use of the schedule IA or schedule IIA controlled substance,
3 that person dies.

4 (b) Murder in the first degree is a capital [AN UNCLASSIFIED]
5 felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

6 * Sec. 4. AS 11.41.100 is amended by adding a new subsection to read:

7 (c) In this section, "schedule IA controlled substance" and
8 "schedule IIA controlled substance" have the meanings given in AS 11.-
9 71.900.

10 * Sec. 5. AS 12.30.02J(a) is amended to read:

11 (a) A person charged with an offense shall, at that person's
12 first appearance before a judicial officer, be ordered released pend-
13 ing trial on the person's personal recognizance or upon the execution
14 of an unsecured appearance bond in an amount specified by the judicial
15 officer unless the offense is a capital felony, an unclassified felo-
16 ny, or a class A felony or unless the officer determines that the
17 release of the person will not reasonably assure the appearance of the
18 person as required, or will pose a danger to other persons and the
19 community. If the offense with which a person is charged is a felony,
20 on motion of the prosecuting attorney, the judicial officer may allow
21 the prosecuting attorney up to 48 hours to demonstrate that release of
22 the person on the person's personal recognizance or upon the execution
23 of an unsecured appearance bond will not reasonably assure the appear-
24 ance of the person, or will pose a danger to other persons and the
25 community.

26 * Sec. 6. AS 12.30.040(b) is amended to read:

27 (b) Notwithstanding the provisions of (a) of this section, if a
28 person has been convicted of an offense that [WHICH] is a capital
29 felony, an unclassified felony, or a class A felony, the person may

not be released on bail either before sentencing or pending appeal.

* Sec. 7. AS 12.47.110(b) is amended to read:

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony, [OR] unclassified felony, or capital felony.

* Sec. 8. AS 12.55 is amended by adding a new section to read:

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Sec. 12.55.117. REVIEW OF JUDGMENT OF CONVICTION OF A CAPITAL FELONY. (a) A judgment of conviction of a capital felony for which a sentence of death is imposed shall automatically be reviewed by the supreme court within 60 days after imposition of the sentence. This time limit may be extended by the supreme court for good cause.

(b) A review under this section has priority over all other cases and the case shall be heard in accordance with rules adopted by the supreme court. On review, the court shall determine whether

(1) the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor;

(2) the evidence supports the finding of an aggravating factor under AS 12.55.179 and whether the court has properly considered mitigating factors under AS 12.55.180;

(3) the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant; and

(4) any other issue that the defendant may raise as a point on appeal.

(c) In its consideration of an automatic appeal under (a) and (b) of this section, the supreme court

(1) may not require the defendant to file a notice of appeal, unless the defendant raises an issue as a point on appeal under (b)(4) of this section;

(2) may not require the defendant to pay a fee;

(3) shall designate the entire record of the proceedings before the sentencing court as the record on appeal;

(4) shall prepare the transcript of the proceedings for the record on appeal at public expense; and

(5) may not require the defendant to submit and file a

1 brief, unless the defendant raises an issue as a point on appeal under
2 (b) (4) of this section.

3 (d) If the supreme court upholds a judgment of conviction and
4 sentence of death, the court shall issue a death warrant that spec-
5 ifies a date of execution. The specified date of execution must be
6 not less than 30 days nor more than 60 days after the date of the
7 warrant. The death warrant shall be delivered to the commissioner of
8 corrections.

9 * Sec. 9. AS 12.55.125(a) is amended to read:

10 (a) A defendant convicted of a capital felony [MURDER IN THE
11 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
12 at least 20 years but not more than 99 years, or shall be sentenced to
13 death.

14 * Sec. 10. AS 12.55 is amended by adding new sections to read:

15 Sec. 12.55.177. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a)
16 If, after trial by jury, the defendant is convicted of a capital
17 felony, the court shall conduct a separate sentencing proceeding
18 before the trial jury as soon as practicable. If a jury trial has
19 been waived or if the defendant pleads guilty, the sentencing proceed-
20 ing shall be held before a jury impaneled for the purpose.

21 (b) During the sentencing proceeding, evidence may be presented
22 as to any matter relevant to the nature of the crime, the character of
23 the defendant, or any aggravating or mitigating factor that the court
24 considers to have probative value, regardless of the admissibility of
25 the evidence under the rules of evidence. The defendant shall have an
26 opportunity to rebut hearsay evidence that is admitted. The state and
27 the defendant or the defendant's counsel shall be permitted to present
28 oral statements. This subsection does not authorize the introduction
29 of evidence secured in violation of the Constitution of the State of

Alaska or the Constitution of the United States.

1
2 (c) After hearing the evidence, the jury shall deliberate and
3 recommend a sentence to the court. The recommended sentence must
4 include written findings of whether

5 (1) aggravating factors exist to justify the death sen-
6 tence;

7 (2) mitigating factors exist that outweigh the aggravating
8 factors; and

9 (3) the defendant should be sentenced to death.

10 Sec. 12.55.178. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
11 After considering the evidence and the recommended sentence, the court
12 shall enter a sentence of death or a term of imprisonment in accor-
13 dance with AS 12.55.12F(a).

14 (b) The court may not impose the death sentence unless the jury

15 (1) finds at least one aggravating factor that is not
16 outweighed by the mitigating factors; and

17 (2) recommends that the defendant be sentenced to death.

18 (c) The court may not impose the death sentence if the jury

19 (1) findings do not include an aggravating factor, or
20 include an aggravating factor that is not outweighed by the mitigating
21 factors; or

22 (2) does not recommend a sentence of death.

23 (d) If the court enters a sentence of death, it shall make
24 written findings of

25 (1) aggravating factors that exist to justify the sentence;

26 and

27 (2) mitigating factors considered by the court.

28 (e) A judgment of conviction for which a sentence of death is
29 imposed is subject to automatic review under AS 12.55.117.

1 Sec. 12.55.179. AGGRAVATING FACTORS. In determining whether to
2 impose a sentence of death, the following aggravating factors may be
3 considered:

4 (1) the defendant's conduct during the commission of the
5 offense manifested deliberate cruelty to another person in that it
6 involved sexual assault in the first degree, kidnapping, assault in
7 the first degree, torture, or an aggravated battery;

8 (2) the defendant's conduct caused the death of two or more
9 persons, other than accomplices;

10 (3) the defendant's conduct created a risk of imminent
11 physical injury to three or more persons, other than accomplices;

12 (4) the defendant has a prior conviction for a felony that
13 involved the use of violence against a person or for murder under
14 AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law
15 of another jurisdiction with substantially similar elements;

16 (5) the defendant knowingly directed the conduct constitut-
17 ing the offense at the President of the United States or the governor
18 of this state;

19 (6) the defendant knowingly directed the conduct constitut-
20 ing the offense at an active or former law enforcement officer, pros-
21 ecuting attorney, fireman, judicial officer, or correctional officer
22 during or because of the exercise of official duties;

23 (7) the defendant committed the offense under an agreement
24 that the defendant either pay or be paid for the commission of the
25 offense, or for other pecuniary gain;

26 (8) the defendant was on release under AS 12.30.020 -
27 12.30.040 for another felony charge or conviction having assault as a
28 necessary element.

29 Sec. 12.55.180. MITIGATING FACTORS. In determining whether to

1 impose the death sentence, all mitigating factors shall be considered,
2 including, but not limited to, the following:

3 (1) the defendant committed the offense under a degree of
4 duress, coercion, threat, or compulsion that was insufficient to
5 constitute a defense but that significantly affected the defendant's
6 conduct;

7 (2) the conduct of a youthful defendant was substantially
8 influenced by a person more mature than the defendant;

9 (3) the defendant acted with serious provocation from the
10 victim;

11 (4) the defendant assisted authorities to detect or appre-
12 hend other persons who committed the offense with the defendant.

13 * Sec. 11. AS 12 is amended by adding a new chapter to read:

14 CHAPTER 58. IMPOSITION OF DEATH PENALTY.

15 ARTICLE 1. EXECUTION.

16 Sec. 12.58.010. EXECUTION UNDER SUPREME COURT DEATH WARRANT.
17 The commissioner shall specify the time and place of execution.

18 Sec. 12.58.020. EXECUTION BY LETHAL INJECTION. After consulting
19 a licensed physician, the commissioner shall select a method of in-
20 jection and a drug or combination of drugs to be used for an execution
21 by lethal injection.

22 Sec. 12.58.030. WITNESSES. The commissioner and a licensed
23 physician chosen by the commissioner shall be present at an execution
24 under this chapter.

25 Sec. 12.58.040. INVITEES. The commissioner may invite not more
26 than nine citizens, who are 19 years of age or older, to be present at
27 an execution, including the prosecuting attorney, the defense attor-
28 ney, relatives and friends of the defendant, or religious representa-
29 tives designated by the defendant. A person who is invited by the

commissioner may not attend an execution as a matter of right.

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Sec. 12.58.050. COVERAGE BY NEWS MEDIA. (a) The commissioner shall permit at an execution the attendance of not more than six members of the print and broadcast news media selected by the commissioner in accordance with regulations adopted by the department. The selected news media members shall serve as a pool for other members of the news media as a condition of attendance.

(b) The use of photographic or recording equipment may not be permitted at the execution site until the execution is completed, the body is removed and the site has been restored to an orderly condition. The physical arrangements for the execution may not be disturbed.

(c) A person who violates (b) of this section is guilty of a class B misdemeanor.

Sec. 12.58.060. PROVISIONS GOVERNING ATTENDANCE AT EXECUTION.

(a) Persons attending an execution are subject to a reasonable search as a condition of attendance.

(b) Persons other than the necessary staff designated by the commissioner and others permitted under AS 12.58.040 - 12.58.050 may not be permitted to attend an execution, nor may any person under the age of 19 attend.

(c) The department shall adopt regulations governing the attendance of persons at an execution.

Sec. 12.58.070. RETURN OF DEATH WARRANT. After the execution the commissioner shall make a return upon the death warrant, showing the time, place, and manner in which the defendant was executed.

ARTICLE 2. STAY OF EXECUTION.

Sec. 12.58.200. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO DEATH. If, after a sentence of death is imposed, the commissioner has

1 reason to believe that the defendant has become incompetent to proceed
2 with the execution or that the defendant is pregnant, the commissioner
3 shall immediately give written notice to the court in which the sen-
4 tence of death was imposed, the prosecuting attorney, and counsel for
5 the defendant. The execution of sentence shall be stayed pending
6 further order of the court.

7 Sec. 12.58.210. EXAMINATION INTO COMPETENCY. (a) On receipt of
8 notice under AS 12.58.200 that the defendant is believed to be incom-
9 petent, the sentencing court shall examine the mental condition of the
10 defendant in the same manner as provided for examining persons for
11 competency to stand trial under AS 12.47.070.

12 (b) If the sentencing court finds that the defendant is incompe-
13 tent, the court shall immediately certify that finding to the supreme
14 court and the commissioner, and shall enter an order for commitment in
15 the same manner as provided for commitment under AS 12.47.110.

16 (c) If the sentencing court finds that the defendant is compe-
17 tent, the court shall immediately certify the finding to the supreme
18 court and the commissioner. The supreme court shall issue and deliver
19 another warrant to the commissioner under AS 12.55.117, together with
20 a copy of the certified finding. Unless the sentencing court's find-
21 ing is appealed in accordance with applicable court rule, the warrant
22 shall specify a date of execution that is not less than 30 days nor
23 more than 60 days after the date of the warrant.

24 Sec. 12.58.220. DISPOSITION PENDING PREGNANCY. (a) If the
25 defendant is pregnant, the sentencing court shall immediately certify
26 that finding to the supreme court and the commissioner. The supreme
27 court shall issue an order staying the execution of the sentence of
28 death during the pregnancy.

29 (b) When the defendant is no longer pregnant, the sentencing

1 court shall immediately certify the finding to the supreme court and
 2 the commissioner. The supreme court shall issue and deliver another
 3 warrant under AS 12.55.117, together with a copy of the certified
 4 finding. Unless the sentencing court's finding is appealed under
 5 applicable court rule, the warrant shall specify a date of execution
 6 not less than 30 days nor more than 60 days after the date of the
 7 warrant.

8 ARTICLE 3. GENERAL PROVISIONS.

9 Sec. 12.58.900. DEFINITIONS. In this chapter,

- 10 (1) "commissioner" means the commissioner of corrections;
- 11 (2) "department" means the Department of Corrections.

12 * Sec. 12. AS 22.07.020(a) is amended to read:

13 (a) The court of appeals has appellate jurisdiction in actions
 14 and proceedings commenced in the superior court involving:

- 15 (1) criminal prosecution, except prosecution for a capital
felony for which a death sentence is imposed;
- 16 (2) post-conviction relief;
- 17 (3) children's court matters under AS 47.10.010(a)(1),
 18 including waiver of children's court jurisdiction over a minor under
 19 AS 47.10;
- 20 (4) extradition;
- 21 (5) habeas corpus;
- 22 (6) probation and parole; and
- 23 (7) bail.

24 * Sec. 13. AS 22.07.020(b) is amended to read:

25 (b) Except for appeals of a death sentence, the [THE] court of
 26 appeals has jurisdiction to hear appeals of sentences of imprisonment
 27 imposed by the superior court on the grounds that the sentence is
 28 excessive or too lenient and, in the exercise of this jurisdiction,

may modify the sentence as provided by law and the state constitution.

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2 * Sec. 14. APPLICABILITY TO CRIMINAL RULES. The amendments to AS 12.55
3 made by secs. 8 and 10 of this Act, and AS 12.58, added by sec. 11 of this
4 Act, have the effect of modifying the sentencing provisions of Rules 32,
5 32.1, and 32.3, Alaska Rules of Criminal Procedure, by establishing exclu-
6 sive procedures for imposition of death sentence by trial court and by
7 authorizing automatic appeal of those sentences to the Alaska Supreme
8 Court.

9 * Sec. 15. APPLICABILITY TO APPELLATE RULES. AS 12.55.117(c), added by
10 sec. 8 of this Act, has the effect of amending Rules 204, 210, and 212,
11 Alaska Rules of Appellate Procedure, by establishing procedures and limita-
12 tions on procedures relating to the filing and disposition of appeals of
13 sentences in cases in which the death penalty is imposed.

14 * Sec. 16. This Act applies to crimes committed after the effective
15 date of this Act.

16 * Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

1 IN THE SENATE

BY FISCHER, KELLY AND
PEARCE

2

SENATE BILL NO. 17

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing capital punishment, classifying
7 murder in the first degree as a capital felony, and
8 establishing sentencing procedures for capital felo-
9 nies; directing an advisory vote on whether the
10 capital punishment law should take effect; amending
11 Rules 32, 32.1, and 32.3, Alaska Rules of Criminal
12 Procedure, and Rules 204, 210, and 212, Alaska Rules
13 of Appellate Procedure; and providing for an effec-
14 tive date."

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

16 * Section 1. AS 11.31.100(d) is amended to read:

17 (d) An attempt is

18 (1) an unclassified felony if the crime attempted is a
19 capital felony [MURDER IN THE FIRST DEGREE];

20 (2) a class A felony if the crime attempted is an unclas-
21 sified felony other than a capital felony [MURDER IN THE FIRST DE-
22 GREE];

23 (3) a class B felony if the crime attempted is a class A
24 felony;

25 (4) a class C felony if the crime attempted is a class B
26 felony;

27 (5) a class A misdemeanor if the crime attempted is a class
28 C felony;

29 (6) a class B misdemeanor if the crime attempted is a class

1 A or class B misdemeanor.

2 * Sec. 2. AS 11.31.110(c) is amended to read:

3 (c) Solicitation is a

4 (1) class A felony if the crime solicited is an unclas-
5 sified or capital felony;

6 (2) class B felony if the crime solicited is a class A
7 felony;

8 (3) class C felony if the crime solicited is a class B
9 felony;

10 (4) class A misdemeanor if the crime solicited is a class C
11 felony;

12 (5) class B misdemeanor if the crime solicited is a class A
13 or class B misdemeanor.

14 * Sec. 3. AS 11.41.100(b) is amended to read:

15 (b) Murder in the first degree is a capital [AN UNCLASSIFIED]
16 felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

17 * Sec. 4. AS 12.30.020(a) is amended to read:

18 (a) A person charged with an offense shall, at that person's
19 first appearance before a judicial officer, be ordered released pend-
20 ing trial on the person's personal recognizance or upon the execution
21 of an unsecured appearance bond in an amount specified by the judicial
22 officer unless the offense is a capital felony, an unclassified
23 felony, or a class A felony or unless the officer determines that the
24 release of the person will not reasonably assure the appearance of the
25 person as required, or will pose a danger to other persons and the
26 community. If the offense with which a person is charged is a felony,
27 on motion of the prosecuting attorney, the judicial officer may allow
28 the prosecuting attorney up to 48 hours to demonstrate that release of
29 the person on the person's personal recognizance or upon the execution

1 of an unsecured appearance bond will not reasonably assure the appear-
2 ance of the person, or will pose a danger to other persons and the
3 community.

4 * Sec. 5. AS 12.30.040(b) is amended to read:

5 (b) Notwithstanding the provisions of (a) of this section, if a
6 person has been convicted of an offense that [WHICH] is a capital
7 felony, an unclassified felony, or a class A felony, the person may
8 not be released on bail either before sentencing or pending appeal.

9 * Sec. 6. AS 12.47.110(b) is amended to read:

10 (b) On or before the expiration of the initial 90-day period of
11 commitment the court shall conduct a hearing to determine whether or
12 not the defendant remains incompetent. If the court finds by a pre-
13 ponderance of the evidence that the defendant remains incompetent, the
14 court may recommit the defendant for a second period of 90 days. The
15 court shall determine at the expiration of the second 90-day period
16 whether the defendant has become competent. If at the expiration of
17 the second 90-day period the court determines that the defendant
18 continues to be incompetent to stand trial, the charges against the
19 defendant shall be dismissed without prejudice and continued commit-
20 ment of the defendant shall be governed by the provisions relating to
21 civil commitments under AS 47.30.700 - 47.30.915 unless the defendant
22 is charged with a crime involving force against a person and the court
23 finds that the defendant presents a substantial danger of physical
24 injury to other persons and that there is a substantial probability
25 that the defendant will regain competency within a reasonable period
26 of time, in which case the court may extend the period of commitment
27 for an additional six months. If the defendant remains incompetent at
28 the expiration of the additional six-month period, the charges shall
29 be dismissed without prejudice and either civil commitment proceedings

1 shall be instituted or the court shall order the release of the defen-
2 dant. If the defendant remains incompetent for five years after the
3 charges have been dismissed under this subsection, the defendant may
4 not be charged again for an offense arising out of the facts alleged
5 in the original charges, except if the original charge is a class A
6 felony, [OR] unclassified felony, or capital felony.

7 * Sec. 7. AS 12.55 is amended by adding a new section to read:

8 Sec. 12.55.117. REVIEW OF JUDGMENT OF CONVICTION OF A CAPITAL
9 FELONY. (a) A judgment of conviction of a capital felony for which a
10 sentence of death is imposed shall automatically be reviewed by the
11 supreme court within 60 days after imposition of the sentence. This
12 time limit may be extended by the supreme court for good cause.

13 (b) A review under this section has priority over all other
14 cases and the case shall be heard in accordance with rules adopted by
15 the supreme court. On review, the court shall determine whether

16 (1) the sentence was imposed under the influence of pas-
17 sion, prejudice, or other arbitrary factor;

18 (2) the evidence supports the finding of an aggravating
19 factor under AS 12.55.179 and whether the court has properly consider-
20 ed mitigating factors under AS 12.55.180;

21 (3) the sentence is excessive or disproportionate to the
22 penalty imposed in similar cases, considering both the crime and the
23 defendant; and

24 (4) any other issue that the defendant may raise as a point
25 on appeal.

26 (c) In its consideration of an automatic appeal under (a) and
27 (b) of this section, the supreme court

28 (1) may not require the defendant to file a notice of
29 appeal, unless the defendant raises an issue as a point on appeal

1 under (b)(4) of this section;

2 (2) may not require the defendant to pay a fee;

3 (3) shall designate the entire record of the proceedings
4 before the sentencing court as the record on appeal;

5 (4) shall prepare the transcript of the proceedings for the
6 record on appeal at public expense; and

7 (5) may not require the defendant to submit and file a
8 brief, unless the defendant raises an issue as a point on appeal under
9 (b)(4) of this section.

10 (d) If the supreme court upholds a judgment of conviction and
11 sentence of death, the court shall issue a death warrant that spec-
12 ifies a date of execution. The specified date of execution must be
13 not less than 30 days nor more than 60 days after the date of the
14 warrant. The death warrant shall be delivered to the commissioner of
15 corrections.

16 * Sec. 8. AS 12.55.125(a) is amended to read:

17 (a) A defendant convicted of a capital felony [MURDER IN THE
18 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
19 at least 20 years but not more than 99 years, or shall be sentenced to
20 death.

21 * Sec. 9. AS 12.55 is amended by adding new sections to read:

22 Sec. 12.55.177. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a)
23 If, after trial by jury, the defendant is convicted of a capital
24 felony, the court shall conduct a separate sentencing proceeding
25 before the trial jury as soon as practicable. If a jury trial has
26 been waived or if the defendant pleads guilty, the sentencing proceed-
27 ing shall be held before a jury impaneled for the purpose.

28 (b) During the sentencing proceeding, evidence may be presented
29 as to any matter relevant to the nature of the crime, the character of

1 the defendant, or any aggravating or mitigating factor that the court
2 considers to have probative value, regardless of the admissibility of
3 the evidence under the rules of evidence. The defendant shall have an
4 opportunity to rebut hearsay evidence that is admitted. The state and
5 the defendant or the defendant's counsel shall be permitted to present
6 oral statements. This subsection does not authorize the introduction
7 of evidence secured in violation of the Constitution of the State of
8 Alaska or the Constitution of the United States.

9 (c) After hearing the evidence, the jury shall deliberate and
10 recommend a sentence to the court. The recommended sentence must
11 include written findings of whether

12 (1) aggravating factors exist to justify the death sen-
13 tence;

14 (2) mitigating factors exist that outweigh the aggravating
15 factors; and

16 (3) the defendant should be sentenced to death.

17 Sec. 12.55.178. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
18 After considering the evidence and the recommended sentence, the court
19 shall enter a sentence of death or a term of imprisonment in accor-
20 dance with AS 12.55.125(a).

21 (b) The court may not impose the death sentence unless the jury

22 (1) finds at least one aggravating factor that is not
23 outweighed by the mitigating factors; and

24 (2) recommends that the defendant be sentenced to death.

25 (c) The court may not impose the death sentence if the jury

26 (1) findings do not include an aggravating factor, or
27 include an aggravating factor that is not outweighed by the mitigating
28 factors; or

29 (2) does not recommend a sentence of death.

1 (d) If the court enters a sentence of death, it shall make
2 written findings of

3 (1) aggravating factors that exist to justify the sentence;
4 and

5 (2) mitigating factors considered by the court.

6 (e) A judgment of conviction for which a sentence of death is
7 imposed is subject to automatic review under AS 12.55.117.

8 Sec. 12.55.179. AGGRAVATING FACTORS. In determining whether to
9 impose a sentence of death, the following aggravating factors may be
10 considered:

11 (1) the defendant's conduct during the commission of the
12 offense manifested deliberate cruelty to another person in that it
13 involved sexual assault in the first degree, kidnapping, assault in
14 the first degree, torture, or an aggravated battery;

15 (2) the defendant's conduct caused the death of two or more
16 persons, other than accomplices;

17 (3) the defendant's conduct created a risk of imminent
18 physical injury to three or more persons, other than accomplices;

19 (4) the defendant has a prior conviction for a felony that
20 involved the use of violence against a person or for murder under
21 AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law
22 of another jurisdiction with substantially similar elements;

23 (5) the defendant knowingly directed the conduct constitut-
24 ing the offense at the President of the United States or the governor
25 of this state;

26 (6) the defendant knowingly directed the conduct constitut-
27 ing the offense at an active or former law enforcement officer, pros-
28 ecuting attorney, fireman, judicial officer, or correctional officer
29 during or because of the exercise of official duties;

1 (7) the defendant committed the offense under an agreement
2 that the defendant either pay or be paid for the commission of the
3 offense, or for other pecuniary gain;

4 (8) the defendant was on release under AS 12.30.020 -
5 12.30.040 for another felony charge or conviction having assault as a
6 necessary element.

7 Sec. 12.55.180. MITIGATING FACTORS. In determining whether to
8 impose the death sentence, all mitigating factors shall be considered,
9 including, but not limited to, the following:

10 (1) the defendant committed the offense under a degree of
11 duress, coercion, threat, or compulsion that was insufficient to
12 constitute a defense but that significantly affected the defendant's
13 conduct;

14 (2) the conduct of a youthful defendant was substantially
15 influenced by a person more mature than the defendant;

16 (3) the defendant acted with serious provocation from the
17 victim;

18 (4) the defendant assisted authorities to detect or appre-
19 hend other persons who committed the offense with the defendant.

20 * Sec. 10. AS 12 is amended by adding a new chapter to read:

21 CHAPTER 58. IMPOSITION OF DEATH PENALTY.

22 ARTICLE 1. EXECUTION.

23 Sec. 12.58.010. EXECUTION UNDER SUPREME COURT DEATH WARRANT.
24 After providing a person who has been sentenced to death by a supreme
25 court warrant issued under AS 12.55.117 an opportunity to choose to be
26 executed by lethal injection ~~or by firing squad~~, the commissioner
27 shall specify the time, place, ^{or} ~~and manner~~ of execution. ~~If the person~~
28 ~~fails or refuses to make a choice~~, the commissioner shall determine
29 the ~~manner of execution~~.

1 Sec. 12.58.020. EXECUTION BY FIRING SQUAD. An execution by
2 firing squad shall be carried out at a state prison designated by the
3 commissioner. The commissioner shall select a firing squad of six
4 peace officers. They shall be compensated in an amount determined by
5 the commissioner.

6 Sec. 12.58.030. EXECUTION BY LETHAL INJECTION. After consulting
7 a licensed physician, the commissioner shall select a method of in-
8 jection and a drug or combination of drugs to be used for an execution
9 by lethal injection.

10 Sec. 12.58.040. WITNESSES. The commissioner and a licensed
11 physician chosen by the commissioner shall be present at an execution
12 under this chapter.

13 Sec. 12.58.050. INVITEES. The commissioner may invite not more
14 than nine citizens, who are 19 years of age or older, to be present at
15 an execution, including the prosecuting attorney, the defense attor-
16 ney, relatives and friends of the defendant, or religious representa-
17 tives designated by the defendant. A person who is invited by the
18 commissioner may not attend an execution as a matter of right.

19 Sec. 12.58.060. COVERAGE BY NEWS MEDIA. (a) The commissioner
20 shall permit at an execution the attendance of not more than six
21 members of the print and broadcast news media selected by the commis-
22 sioner in accordance with regulations adopted by the department. The
23 selected news media members shall serve as a pool for other members of
24 the news media as a condition of attendance.

25 (b) The use of photographic or recording equipment may not be
26 permitted at the execution site until the execution is completed, the
27 body is removed and the site has been restored to an orderly condi-
28 tion. The physical arrangements for the execution may not be dis-
29 turbed.

1 (c) A person who violates (b) of this section is guilty of a
2 class B misdemeanor.

3 Sec. 12.58.070. PROVISIONS GOVERNING ATTENDANCE AT EXECUTION.

4 (a) Persons attending an execution are subject to a reasonable search
5 as a condition of attendance.

6 (b) Persons other than the necessary staff designated by the
7 commissioner and others permitted under AS 12.58.050 - 12.58.060 may
8 not be permitted to attend an execution, nor may an, person under the
9 age of 19 attend.

10 (c) The department shall adopt regulations governing the atten-
11 dance of persons at an execution.

12 Sec. 12.58.080. RETURN OF DEATH WARRANT. After the execution
13 the commissioner shall make a return upon the death warrant, showing
14 the time, place, and manner in which the defendant was executed.

15 ARTICLE 2. STAY OF EXECUTION.

16 Sec. 12.58.200. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
17 DEATH. If, after a sentence of death is imposed, the commissioner has
18 reason to believe that the defendant has become incompetent to proceed
19 with the execution or that the defendant is pregnant, the commissioner
20 shall immediately give written notice to the court in which the sen-
21 tence of death was imposed, the prosecuting attorney, and counsel for
22 the defendant. The execution of sentence shall be stayed pending
23 further order of the court.

24 Sec. 12.58.210. EXAMINATION INTO COMPETENCY. (a) On receipt of
25 notice under AS 12.58.200 that the defendant is believed to be incom-
26 petent, the sentencing court shall examine the mental condition of the
27 defendant in the same manner as provided for examining persons for
28 competency to stand trial under AS 12.47.070.

29 (b) If the sentencing court finds that the defendant is

1 incompetent, the court shall immediately certify that finding to the
2 supreme court and the commissioner, and shall enter an order for
3 commitment in the same manner as provided for commitment under AS
4 12.47.110.

5 (c) If the sentencing court finds that the defendant is compe-
6 tent, the court shall immediately certify the finding to the supreme
7 court and the commissioner. The supreme court shall issue and deliver
8 another warrant to the commissioner under AS 12.55.117, together with
9 a copy of the certified finding. Unless the sentencing court's find-
10 ing is appealed in accordance with applicable court rule, the warrant
11 shall specify a date of execution that is not less than 30 days nor
12 more than 60 days after the date of the warrant.

13 Sec. 12.58.220. DISPOSITION PENDING PREGNANCY. (a) If the
14 defendant is pregnant, the sentencing court shall immediately certify
15 that finding to the supreme court and the commissioner. The supreme
16 court shall issue an order staying the execution of the sentence of
17 death during the pregnancy.

18 (b) When the defendant is no longer pregnant, the sentencing
19 court shall immediately certify the finding to the supreme court and
20 the commissioner. The supreme court shall issue and deliver another
21 warrant under AS 12.55.117, together with a copy of the certified
22 finding. Unless the sentencing court's finding is appealed under
23 applicable court rule, the warrant shall specify a date of execution
24 not less than 30 days nor more than 60 days after the date of the
25 warrant.

26 ARTICLE 3. GENERAL PROVISIONS.

27 Sec. 12.58.900. DEFINITIONS. In this chapter,

- 28 (1) "commissioner" means the commissioner of corrections;
29 (2) "department" means the Department of Corrections.

1 * Sec. 11. AS 22.07.020(a) is amended to read:

2 (a) The court of appeals has appellate jurisdiction in actions
3 and proceedings commenced in the superior court involving:

4 (1) criminal prosecution, except prosecution for a capital
5 felony for which a death sentence is imposed;

6 (2) post-conviction relief;

7 (3) children's court matters under AS 47.10.010(a)(1),
8 including waiver of children's court jurisdiction over a minor under
9 AS 47.10;

10 (4) extradition;

11 (5) habeas corpus;

12 (6) probation and parole; and

13 (7) bail.

14 * Sec. 12. AS 22.07.020(b) is amended to read:

15 (b) Except for appeals of a death sentence, the [THE] court of
16 appeals has jurisdiction to hear appeals of sentences of imprisonment
17 imposed by the superior court on the grounds that the sentence is
18 excessive or too lenient and, in the exercise of this jurisdiction,
19 may modify the sentence as provided by law and the state constitution.

20 * Sec. 13. ADVISORY VOTE AUTHORIZED. The lieutenant governor shall
21 place before the qualified voters of the state at the next statewide elec-
22 tion the question advisory to the legislature of whether capital punishment
23 for murder in the first degree as now authorized by law should go into
24 effect on August 15, 1991. The question shall appear on the ballot in
25 substantially the following form:

26 Q U E S T I O N

27 Shall capital punishment for murder in the first degree

28 as now authorized by law go into effect on August 15, 1991?

29 Yes []

No []

1 * Sec. 14. APPLICABILITY TO CRIMINAL RULES. The amendments to AS 12.55
2 made by secs. 7 and 9 of this Act, and AS 12.58, added by sec. 10 of this
3 Act, have the effect of modifying the sentencing provisions of Rules 32,
4 32.1, and 32.3, Alaska Rules of Criminal Procedure, by establishing exclu-
5 sive procedures for imposition of death sentence by trial court and by
6 authorizing automatic appeal of those sentences to the Alaska Supreme
7 Court.

8 * Sec. 15. APPLICABILITY TO APPELLATE RULES. AS 12.55.117(c), added by
9 sec. 7 of this Act, has the effect of amending Rules 204, 210, and 212,
10 Alaska Rules of Appellate Procedure, by establishing procedures and limita-
11 tions on procedures relating to the filing and disposition of appeals of
12 sentences in cases in which the death penalty is imposed.

13 * Sec. 16. Except for sec. 13 of this Act, this Act takes effect
14 August 15, 1991.

15 * Sec. 17. Section 13 of this Act takes effect immediately under
16 AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
207 465 1800

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

February 17, 1989

SUBJECT: Death penalty: provision for election
(CSSB 17)

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee
ATTN: Chris Christensen

FROM: Jack Chenoweth
Legislative Counsel



The operative change requested by the committee is to be found in AS 12.58.010, at page 5 of the enclosed draft. Within ten days of receiving a plea on arraignment, the prosecutor is to indicate whether he or she will seek the death penalty and so advise the court and the defendant and defendant's counsel. Some states apparently use a "waiver" approach in which the death penalty may be sought unless the prosecutor expressly waives it. The approach in this draft reverses that presumption and places a burden on the prosecutor to indicate an intention to seek the death penalty. I used this approach as more nearly approximating what the committee indicated it wanted.

The addition of this provision did not easily "fit" anywhere into the existing body of criminal procedure. I spoke with Assistant Attorney General Laurie Otto who suggested that it did relate to other provisions in the bill specific to trial and sentencing aspects of capital punishment cases. Accordingly, as a partial response to that suggestion, all provisions applicable to trial of a capital offense have been pulled together, into one bill section, section 9. Section numbers and cross-reference provisions have been altered but, except for the material added in AS 12.58.010, the substance of the bill is not altered from the last draft.

JBC:kb
wkk2/020

Enclosure

Original sponsors: Fischer, Kelly,
Pearce, et al.

IN THE SENATE

BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 17 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies; directing an advisory vote on whether the capital punishment law should take effect; amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 210, and 212, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that imposition of the death penalty for the crime of murder in the first degree

(1) is consistent with the criminal sentencing goal of deterrence in that, by the example of its imposition, a member of the community who calculates a murder would rationally consider the harsh consequences of that act;

(2) is consistent with the criminal sentencing goal of community condemnation in that, by its use, the state affirms society's norms and condemns most severely the premeditative taking of human life or the taking of life under circumstances manifesting extreme indifference to its value;

(3) does not violate state constitutional guarantees against the imposition of cruel and unusual punishment, but rather is fully consistent with those guarantees;

(4) conforms to contemporary standards of decency in that there

1 is no evidence that Alaska's tradition and history suggest a significantly
2 different attitude toward capital punishment in this state from those that
3 prevail nationwide, and there is a widely held belief in the society that
4 capital punishment is an appropriate penalty for murder in the first
5 degree;

6 (5) serves the state's interest in justice by punishing the
7 person who is guilty according to what is deserved for the most morally
8 offensive conduct with a sentence more stringent than an extended term of
9 life imprisonment;

10 (6) serves the state's interest in public protection by assuring
11 that the most serious offenders will never again pose a threat to the
12 public; and

13 (7) is consistent with due process requirements in that the
14 circumstances in which the death penalty may be imposed provide guidance to
15 the court and jury that safeguard against the elements of arbitrariness and
16 capriciousness condemned by the United States Supreme Court in cases con-
17 cerning the death penalty statutes of other states.

18 * Sec. 2. AS 11.31.100(d) is amended to read:

19 (d) An attempt is

20 (1) an unclassified felony if the crime attempted is a
21 capital felony [MURDER IN THE FIRST DEGREE];

22 (2) a class A felony if the crime attempted is an unclas-
23 sified felony other than a capital felony [MURDER IN THE FIRST DE-
24 GREE];

25 (3) a class B felony if the crime attempted is a class A
26 felony;

27 (4) a class C felony if the crime attempted is a class B
28 felony;

29 (5) a class A misdemeanor if the crime attempted is a class

C felony;

(6) a class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

* Sec. 3. AS 11.31.110(c) is amended to read:

(c) Solicitation is a

(1) class A felony if the crime solicited is an unclassified or capital felony;

(2) class B felony if the crime solicited is a class A felony;

(3) class C felony if the crime solicited is a class B felony;

(4) class A misdemeanor if the crime solicited is a class C felony;

(5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

* Sec. 4. AS 11.41.100(b) is amended to read:

(b) Murder in the first degree is a capital [AN UNCLASSIFIED] felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

* Sec. 5. AS 12.30.020(a) is amended to read:

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is a capital felony, an unclassified felony, or a class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow

1 the prosecuting attorney up to 48 hours to demonstrate that release of
2 the person on the person's personal recognizance or upon the execution
3 of an unsecured appearance bond will not reasonably assure the appear-
4 ance of the person, or will pose a danger to other persons and the
5 community.

6 * Sec. 6. AS 12.30.040(b) is amended to read:

7 (b) Notwithstanding the provisions of (a) of this section, if a
8 person has been convicted of an offense that [WHICH] is a capital
9 felony, an unclassified felony, or a class A felony, the person may
10 not be released on bail either before sentencing or pending appeal.

11 * Sec. 7. AS 12.47.110(b) is amended to read:

12 (b) On or before the expiration of the initial 90-day period of
13 commitment the court shall conduct a hearing to determine whether or
14 not the defendant remains incompetent. If the court finds by a pre-
15 ponderance of the evidence that the defendant remains incompetent, the
16 court may recommit the defendant for a second period of 90 days. The
17 court shall determine at the expiration of the second 90-day period
18 whether the defendant has become competent. If at the expiration of
19 the second 90-day period the court determines that the defendant
20 continues to be incompetent to stand trial, the charges against the
21 defendant shall be dismissed without prejudice and continued commit-
22 ment of the defendant shall be governed by the provisions relating to
23 civil commitments under AS 47.30.700 - 47.30.915 unless the defendant
24 is charged with a crime involving force against a person and the court
25 finds that the defendant presents a substantial danger of physical
26 injury to other persons and that there is a substantial probability
27 that the defendant will regain competency within a reasonable period
28 of time, in which case the court may extend the period of commitment
29 for an additional six months. If the defendant remains incompetent at

1 the expiration of the additional six-month period, the charges shall
2 be dismissed without prejudice and either civil commitment proceedings
3 shall be instituted or the court shall order the release of the defen-
4 dant. If the defendant remains incompetent for five years after the
5 charges have been dismissed under this subsection, the defendant may
6 not be charged again for an offense arising out of the facts alleged
7 in the original charges, except if the original charge is a class A
8 felony, [OR] unclassified felony, or capital felony.

9 * Sec. 8. AS 12.55.125(a) is amended to read:

10 (a) A defendant convicted of a capital felony [MURDER IN THE
11 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
12 at least 20 years but not more than 99 years, or shall be sentenced to
13 death.

14 * Sec. 9. AS 12 is amended by adding a new chapter to read:

15 CHAPTER 58. CAPITAL PUNISHMENT.

16 ARTICLE 1. ELECTION TO SEEK DEATH PENALTY.

17 Sec. 12.58.010. PROSECUTOR'S ELECTION TO SEEK DEATH PENALTY.

18 The district attorney assigned to the prosecution of a capital felony
19 shall determine whether to seek the death penalty against the defen-
20 dant. If the prosecutor elects to seek the death penalty, the pros-
21 ecutor shall give notice of election to the court, the defendant, and
22 the defendant's attorney within 10 days of arraignment of the defen-
23 dant on the capital felony indictment, or within 10 days of arraign-
24 ment of the defendant if indictment has been waived.

25 ARTICLE 2. IMPOSITION OF SENTENCE.

26 Sec. 12.58.100. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a)

27 If, after trial by jury, the defendant is convicted of a capital
28 felony in which the district attorney has elected under AS 12.58.010
29 to seek the death penalty, the court shall conduct a separate

1 sentencing proceeding before the trial jury as soon as practicable.
2 If a jury trial has been waived or if the defendant pleads guilty, the
3 sentencing proceeding shall be held before a jury impaneled for the
4 purpose.

5 (b) During the sentencing proceeding, evidence may be presented
6 as to any matter relevant to the nature of the crime, the character of
7 the defendant, or any aggravating or mitigating factor that the court
8 considers to have probative value, regardless of the admissibility of
9 the evidence under the rules of evidence. The defendant shall have an
10 opportunity to rebut hearsay evidence that is admitted. The state and
11 the defendant or the defendant's counsel shall be permitted to present
12 oral statements. This subsection does not authorize the introduction
13 of evidence secured in violation of the Constitution of the State of
14 Alaska or the Constitution of the United States.

15 (c) After hearing the evidence, the jury shall deliberate and
16 recommend a sentence to the court. The recommended sentence must
17 include written findings of whether

18 (1) aggravating factors exist to justify the death sen-
19 tence;

20 (2) mitigating factors exist that outweigh the aggravating
21 factors; and

22 (3) the defendant should be sentenced to death.

23 Sec. 12.58.110. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a) In
24 a case in which the district attorney has elected under AS 12.58.010
25 to seek the death penalty, after considering the evidence and the
26 recommended sentence, the court shall enter a sentence of death or a
27 term of imprisonment in accordance with AS 12.55.125(a).

28 (b) The court may not impose the death sentence unless the jury

29 (1) finds at least one aggravating factor that is not

1 outweighed by the mitigating factors; and

2 (2) recommends that the defendant be sentenced to death.

3 (c) The court may not impose the death sentence

4 (1) if the jury findings do not include an aggravating
5 factor;

6 (2) if the jury findings include an aggravating factor that
7 is outweighed by one or more of the mitigating factors; or

8 (3) if the jury does not recommend a sentence of death.

9 (d) If the court enters a sentence of death, it shall make
10 written findings of

11 (1) aggravating factors that exist to justify the sentence;

12 and

13 (2) mitigating factors considered by the court.

14 (e) A judgment of conviction for which a sentence of death is
15 imposed is subject to automatic review under AS 12.58.200.

16 Sec. 12.58.120. AGGRAVATING FACTORS. In determining whether to
17 impose a sentence of death, the following aggravating factors may be
18 considered:

19 (1) the defendant's conduct during the commission of the
20 offense manifested deliberate cruelty to another person in that it
21 involved sexual assault in the first degree, kidnapping, assault in
22 the first degree, torture, or an aggravated battery;

23 (2) the defendant's conduct caused the death of two or more
24 persons, other than accomplices;

25 (3) the defendant's conduct created a risk of imminent
26 physical injury to three or more persons, other than accomplices;

27 (4) the defendant has a prior conviction for a felony that
28 involved the use of violence against a person or for murder under
29 AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law

1 of another jurisdiction with substantially similar elements;

2 (5) the defendant knowingly directed the conduct constitut-
3 ing the offense at the President of the United States or the governor
4 of this state;

5 (6) the defendant knowingly directed the conduct constitut-
6 ing the offense at an active or former law enforcement officer, pros-
7 ecuting attorney, fireman, judicial officer, or correctional officer
8 during or because of the exercise of official duties;

9 (7) the defendant committed the offense under an agreement
10 that the defendant either pay or be paid for the commission of the
11 offense, or for other pecuniary gain;

12 (8) the defendant was on release under AS 12.30.020 -
13 12.30.040 for another felony charge or conviction having assault as a
14 necessary element.

15 Sec. 12.58.130. MITIGATING FACTORS. In determining whether to
16 impose the death sentence, all mitigating factors shall be considered,
17 including, but not limited to, the following:

18 (1) the defendant committed the offense under a degree of
19 duress, coercion, threat, or compulsion that was insufficient to
20 constitute a defense but that significantly affected the defendant's
21 conduct;

22 (2) the conduct of a youthful defendant was substantially
23 influenced by a person more mature than the defendant;

24 (3) the defendant acted with serious provocation from the
25 victim;

26 (4) the defendant assisted authorities to detect or appre-
27 hend other persons who committed the offense with the defendant.

28 ARTICLE 3. SENTENCE REVIEW.

29 Sec. 12.58.200. REVIEW OF JUDGMENT OF CONVICTION OF A CAPITAL

1 FELONY. (a) A judgment of conviction of a capital felony for which a
2 sentence of death is imposed shall automatically be reviewed by the
3 supreme court within 60 days after imposition of the sentence. This
4 time limit may be extended by the supreme court for good cause.

5 (b) A review under this section has priority over all other
6 cases and the case shall be heard in accordance with rules adopted by
7 the supreme court. On review, the court shall determine whether

8 (1) the sentence was imposed under the influence of pas-
9 sion, prejudice, or other arbitrary factor;

10 (2) the evidence supports the finding of an aggravating
11 factor under AS 12.58.120 and whether the court has properly consider-
12 ed mitigating factors under AS 12.58.130;

13 (3) the sentence is excessive or disproportionate to the
14 penalty imposed in similar cases, considering both the crime and the
15 defendant; and

16 (4) any other issue that the defendant may raise as a point
17 on appeal.

18 (c) In its consideration of an automatic appeal under (a) and
19 (b) of this section, the supreme court

20 (1) may not require the defendant to file a notice of
21 appeal, unless the defendant raises an issue as a point on appeal
22 under (b)(4) of this section;

23 (2) may not require the defendant to pay a fee;

24 (3) shall designate the entire record of the proceedings
25 before the sentencing court as the record on appeal;

26 (4) shall prepare the transcript of the proceedings for the
27 record on appeal at public expense; and

28 (5) may not require the defendant to submit and file a
29 brief, unless the defendant raises an issue as a point on appeal under

(b) (4) of this section.

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Sec. 12.58.210. ISSUANCE OF DEATH WARRANT. If the supreme court upholds a judgment of conviction and sentence of death, the court shall issue a death warrant that specifies a date of execution. The specified date of execution must be not less than 30 days nor more than 60 days after the date of the warrant. The death warrant shall be delivered to the commissioner of corrections.

ARTICLE 4. EXECUTION.

Sec. 12.58.300. EXECUTION UNDER SUPREME COURT DEATH WARRANT. After receiving a supreme court warrant issued under AS 12.58.210, the commissioner shall specify the time and place of execution.

Sec. 12.58.310. EXECUTION BY LETHAL INJECTION. After consulting a licensed physician, the commissioner shall select a method of injection and a drug or combination of drugs to be used for an execution by lethal injection.

Sec. 12.58.320. WITNESSES. The commissioner and a licensed physician chosen by the commissioner shall be present at an execution under this chapter.

Sec. 12.58.330. INVITEES. The commissioner may invite not more than nine citizens, who are 19 years of age or older, to be present at an execution, including the prosecuting attorney, the defense attorney, relatives and friends of the defendant, or religious representatives designated by the defendant. A person who is invited by the commissioner may not attend an execution as a matter of right.

Sec. 12.58.340. COVERAGE BY NEWS MEDIA. (a) The commissioner shall permit at an execution the attendance of not more than six members of the print and broadcast news media selected by the commissioner in accordance with regulations adopted by the department. The selected news media members shall serve as a pool for other members of

1 the news media as a condition of attendance.

2 (b) The use of photographic or recording equipment may not be
3 permitted at the execution site until the execution is completed, the
4 body is removed and the site has been restored to an orderly condi-
5 tion. The physical arrangements for the execution may not be dis-
6 turbed.

7 (c) A person who violates (b) of this section is guilty of a
8 class B misdemeanor.

9 Sec. 12.58.350. PROVISIONS GOVERNING ATTENDANCE AT EXECUTION.

10 (a) Persons attending an execution are subject to a reasonable search
11 as a condition of attendance.

12 (b) Persons other than the physician and necessary staff desig-
13 nated by the commissioner and others permitted under AS 12.58.330 -
14 12.58.340 may not be permitted to attend an execution, nor may any
15 person under the age of 19 attend.

16 (c) The department shall adopt regulations governing the atten-
17 dance of persons at an execution.

18 Sec. 12.58.360. RETURN OF DEATH WARRANT. After the execution
19 the commissioner shall make a return upon the death warrant, showing
20 the time and place in which the defendant was executed.

21 ARTICLE 5. STAY OF EXECUTION.

22 Sec. 12.58.400. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
23 DEATH. If, after a sentence of death is imposed, the commissioner has
24 reason to believe that the defendant has become incompetent to proceed
25 with the execution or that the defendant is pregnant, the commissioner
26 shall immediately give written notice to the court in which the sen-
27 tence of death was imposed, the prosecuting attorney, and counsel for
28 the defendant. The execution of sentence shall be stayed pending
29 further order of the court.

1 Sec. 12.58.410. EXAMINATION INTO COMPETENCY. (a) On receipt of
2 notice under AS 12.58.400 that the defendant is believed to be incom-
3 petent, the sentencing court shall examine the mental condition of the
4 defendant in the same manner as provided for examining persons for
5 competency to stand trial under AS 12.47.070.

6 (b) If the sentencing court finds that the defendant is incompe-
7 tent, the court shall immediately certify that finding to the supreme
8 court and the commissioner, and shall enter an order for commitment in
9 the same manner as provided for commitment under AS 12.47.110.

10 (c) If the sentencing court finds that the defendant is compe-
11 tent, the court shall immediately certify the finding to the supreme
12 court and the commissioner. The supreme court shall issue and deliver
13 another warrant to the commissioner under AS 12.58.210, together with
14 a copy of the certified finding. Unless the sentencing court's find-
15 ing is appealed in accordance with applicable court rule, the warrant
16 shall specify a date of execution that is not less than 30 days nor
17 more than 60 days after the date of the warrant.

18 Sec. 12.58.420. DISPOSITION PENDING PREGNANCY. (a) If the
19 defendant is pregnant, the sentencing court shall immediately certify
20 that finding to the supreme court and the commissioner. The supreme
21 court shall issue an order staying the execution of the sentence of
22 death during the pregnancy.

23 (b) When the defendant is no longer pregnant, the sentencing
24 court shall immediately certify the finding to the supreme court and
25 the commissioner. The supreme court shall issue and deliver another
26 warrant under AS 12.58.210, together with a copy of the certified
27 finding. Unless the sentencing court's finding is appealed under
28 applicable court rule, the warrant shall specify a date of execution
29 not less than 30 days nor more than 60 days after the date of the

warrant.

ARTICLE 6. GENERAL PROVISIONS.

Sec. 12.58.900. DEFINITIONS. In this chapter,

- (1) "commissioner" means the commissioner of corrections;
- (2) "department" means the Department of Corrections.

* Sec. 10. AS 22.07.020(a) is amended to read:

(a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the superior court involving:

(1) criminal prosecution, except prosecution for a capital felony for which a death sentence is imposed;

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(b) Except for appeals of a death sentence, the [THE] court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

* Sec. 12. ADVISORY VOTE AUTHORIZED. The lieutenant governor shall place before the qualified voters of the state at the next statewide general election the question advisory to the legislature of whether capital punishment for murder in the first degree as now authorized by law should go into effect on August 15, 1991. The question shall appear on the ballot

1 in substantially the following form:

2 Q U E S T I O N

3 Shall capital punishment for murder in the first degree
4 as now authorized by law go into effect on August 15, 1991?

5 Yes []

No []

6 * Sec. 13. APPLICABILITY TO CRIMINAL RULES. AS 12.58, added by sec. 9
7 of this Act, has the effect of modifying the sentencing provisions of Rules
8 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, by establishing
9 exclusive procedures for imposition of death sentence by a trial court and
10 by authorizing automatic appeal of those sentences to the Alaska Supreme
11 Court.

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13 sec. 9 of this Act, has the effect of amending Rules 204, 210, and 212,
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16 sentences in cases in which the death penalty is imposed.

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18 August 15, 1991.

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20 AS 01.10.070(c).

6-0343H ✓
Chenoweth
2/13/89

Original sponsors: Fischer, Kelly,
Pearce, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 17 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing capital punishment, classifying
7 murder in the first degree as a capital felony, and
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24 GREE];

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26 felony;

27 (4) a class C felony if the crime attempted is a class B
28 felony;

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1 C felony;

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3 A or class B misdemeanor.

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9 felony;

10 (3) class C felony if the crime solicited is a class B
11 felony;

12 (4) class A misdemeanor if the crime solicited is a class C
13 felony;

14 (5) class B misdemeanor if the crime solicited is a class A
15 or class B misdemeanor.

16 * Sec. 4. AS 11.41.100(b) is amended to read:

17 (b) Murder in the first degree is a capital [AN UNCLASSIFIED]
18 felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

19 * Sec. 5. AS 12.30.020(a) is amended to read:

20 (a) A person charged with an offense shall, at that person's
21 first appearance before a judicial officer, be ordered released pend-
22 ing trial on the person's personal recognizance or upon the execution
23 of an unsecured appearance bond in an amount specified by the judicial
24 officer unless the offense is a capital felony, an unclassified felo-
25 ny, or a class A felony or unless the officer determines that the
26 release of the person will not reasonably assure the appearance of the
27 person as required, or will pose a danger to other persons and the
28 community. If the offense with which a person is charged is a felony,
29 on motion of the prosecuting attorney, the judicial officer may allow