

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8629 HOUSE JUDICIARY

180

HB

474

CS FOR HOUSE BILL NO. 474(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES TOOHEY, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to violations of municipal ordinances and regulations, and to
2 civil penalties for violation of municipal ordinances by juveniles."

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

4 * Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

5 (54) AS 29.25.070(e) (notice of ordinance enforcement against a
6 minor).

7 * Sec. 2. AS 29.25.070(b) is amended to read:

8 (b) The municipality or an aggrieved person may institute a civil action against
9 a person who violates an ordinance, including a minor as provided in AS 47.10.145.
10 In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000
11 may be imposed for each violation. An action to enjoin a violation may be brought
12 notwithstanding the availability of any other remedy. On application for injunctive
13 relief and a finding of a violation or a threatened violation, the superior court shall
14 grant the injunction. Each day that a violation of an ordinance continues constitutes

1 a separate violation.

2 * Sec. 3. AS 29.25.070 is amended by adding new subsections to read:

3 (e) The municipality shall provide written notice to the commissioner of health
4 and social services or to the commissioner's designee of the commencement of a civil
5 enforcement action for the violation of an ordinance under (b) of this section against
6 a minor. Unless the commissioner and the municipality negotiate an agreement
7 making other arrangements to satisfy the obligation imposed on the municipality by
8 this subsection, the municipality may provide notice by mailing a copy of the citation
9 or other document setting out the notice of the commencement of the civil enforcement
10 action. This subsection applies to home rule and general law municipalities.

11 (f) In this section, "minor" means a person under 18 years of age.

12 * Sec. 4. AS 47.10 is amended by adding a new section to read:

13 Sec. 47.10.145. CIVIL PENALTIES FOR VIOLATION OF MUNICIPAL
14 ORDINANCES. (a) Except as otherwise provided in this section, the enforcement of
15 a civil penalty under AS 29.25.070(b) against a minor for violation of a municipal
16 ordinance shall be heard in the district court in the same manner as for similar
17 allegations brought against an adult, except that the minor's parent, guardian, or legal
18 custodian shall be present at all proceedings.

19 (b) Allegations against a minor for a civil penalty under a municipal ordinance
20 may be assigned to a hearing officer for resolution, if provided for by municipal
21 ordinance.

22 (c) An action for a civil penalty filed against a minor under this section does
23 not give rise to the right to a trial by jury or to counsel appointed at public expense.

Date of Committee Action: 3/25/96

The JUDICIARY Committee considered:

HB 474

HOUSE BILL NO. 474

VIOLATIONS OF MUNICIPAL ORDINANCES & REGS

"An Act relating to violations of municipal ordinances and regulations; and amending the definition of the jurisdiction of the superior court and the Department of Health and Social Services over delinquent minors to add a further exclusion from that jurisdiction for a minor's violation of a municipal ordinance or regulation that is punishable as an infraction or violation, and making a related technical amendment to that jurisdictional definition."

recommends it be replaced with the following committee substitute CSHB 474 (JUDI) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) Courts zero fiscal note(s) DHSS, DCRA, DPS
(3/8/96)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Brian Porter</u>	<input checked="" type="checkbox"/>			
<u>David Abate</u>			<input checked="" type="checkbox"/>	
<u>Bump</u>	<input checked="" type="checkbox"/>			
<u>Scott</u>	<input checked="" type="checkbox"/>			
<u>Don Buege</u>	<input checked="" type="checkbox"/>			
<u>Joseph</u>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE Brian Porter

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 474

Revision Date: _____
Title: Juvenile Infractions

Dept. Affected: Alaska Court System
BRU: Trial Courts

Sponsor: Rep. Toohay
Requestor: House Judiciary

Component: _____
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	49.1	49.1	49.1	49.1	49.1	49.1
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.1	49.1	49.1	49.1	49.1	49.1

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

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	49.1	49.1	49.1	49.1	49.1	49.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	49.1	49.1	49.1	49.1	49.1	49.1

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time	2.0	2.0	2.0	2.0	2.0	2.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

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

Phone: 264-8228
Date: 03/21/96

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 03/21/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
HB 474

HB 474 amends AS 47.10.010(b), to provide that if a juvenile is cited for a noncriminal offense under a municipal ordinance for which a conviction cannot result in incarceration or the loss of a valuable license and for which a fine schedule has been established under AS 29.25.070(a), the juvenile will be charged, prosecuted and sentenced in district court in the same manner as an adult.

It is anticipated that the major municipalities will create infractions specific to juveniles, such as curfew infractions. It is also anticipated that municipalities will create juvenile infraction substitutes for many existing crimes such as vandalism and shoplifting. The citations which are contested will come before the court system. Based upon statistics generated during the first two months of Anchorage's complex civil curfew system, and the per capita rate at which adults are charged with misdemeanors, this note assumes that HB 474 will generate 6000 citations per year statewide. Noncontested citations may be paid directly to the municipalities; however, defendants may contest citations or enter guilty pleas at court. Thus, many persons subject to this section will come before a district judge and/or pay citations through the court's accounting system. This note assumes that one-third of juvenile citations will be run through the court system; this is the rate at which the courts deal with other municipal citations. It should be kept in mind that the rate at which juveniles contest citations will depend on the size of fines set by the municipalities in the fine schedule.

Alaska Court System

Fiscal Analysis

HB 474

Personal Services

Positions

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, range 10A, PPT, 8 months, Anchorage/statewide	\$16,008	\$6,800	\$22,808
Committing Magistrate, range 22B, PPT, Anchorage/statewide, 3 months	13,815	3,667	17,482
Overtime for In-Court Clerks at range 12A for additional trials			8,800
			<hr/>
Estimated Total Cost			<u>\$49,089</u>

9-LS1555K
Chenoweth
3/22/96

CS FOR HOUSE BILL NO. 474()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES TOOHEY, Kelly

A BILL

FOR AN ACT ENTITLED

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12 notwithstanding the availability of any other remedy. On application for injunctive
13 relief and a finding of a violation or a threatened violation, the superior court shall
14 grant the injunction. Each day that a violation of an ordinance continues constitutes

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17 allegations brought against an adult, except that the minor's parent, guardian, or legal
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23 not give rise to the right to a trial by jury or to counsel appointed at public expense.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY

State Capitol
Juneau, AK 99801-1182

DISTRICT 13

MEMORANDUM

TO: Representative Brian Porter
Judiciary Committee

FROM: Representative Cynthia Toohey *CT*

DATE: March 12, 1996

RE: Request for hearing House Bill 474, "An Act relating to violations of municipal ordinances and regulations; and amending the definition of the jurisdiction of the superior court and the Department of Health and Social Services over delinquent minors to add a further exclusion from that jurisdiction for a minor's violation of a municipal ordinance or regulation that is punishable as an infraction or violation, and making a related technical amendment to that jurisdictional definition"

I respectfully request that, at your earliest convenience, the above-referenced bill be scheduled for hearing in your committee

Attached herewith are:

Sponsor statement
Zero fiscal notes
Sectional Analysis
Letters of support

It is anticipated that the Administration will oppose this bill. The Department of Law and the Division of Family and Youth Services testified against it.

A teleconference to the Anchorage LIO and one off-site in Anchorage is requested.

Please contact Marveen at extension 6820 if you have any questions. Your consideration of this request is appreciated. Thank you.

Thank you for your consideration of this request. Please contact Marveen Coggins at extension 6820 if you have any questions.

INTERIM ADDRESS: 716 West 4th Avenue, Suite 330, Anchorage, 99501-2133



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY
DISTRICT 13

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

HOUSE BILL 474

"An Act relating to violations of municipal ordinances and regulations; and amending the definition of the jurisdiction of the superior court and the Department of Health and Social Services over delinquent minors to add a further exclusion from that jurisdiction for a minor's violation of a municipal ordinance or regulation that is punishable as an infraction or violation, and making a related technical amendment to that jurisdictional definition"

We hear more and more frequently about the need to improve the juvenile justice system in Alaska. Due to the increased number of serious offenses by juveniles, some of the less serious violations and infractions, in reality, offer no consequences. That is the wrong message to send to a juvenile offender.

According to the Anchorage Police Department, juvenile offenders have become increasingly dangerous and increasingly blatant regarding their offenses with the knowledge that the system can do very little to them.

House Bill 474 would expand the jurisdiction of a municipality to allow the municipality to respond to a violation or infraction of an ordinance or regulation. For violations of ordinances or infractions which are punishable by only a fine, juveniles would be treated as adults.

The expansion of jurisdiction would enable juveniles to realize there are consequences to all wrongful acts. This realization may help to prevent juveniles from progressing to more serious offenses.

Your support would be appreciated.

INTERIM ADDRESS: 716 West 4th Avenue, Suite 330, Anchorage, 99501-2133

LEGAL SERVICES

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

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

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


MEMORANDUM

February 10, 1996

SUBJECT: House Bill 474, relating to violations of municipal ordinance and regulations -- sectional analysis (Work Order No. 9-LS1555C)

TO: Representative Cynthia Toohey
ATTN: Marveen Coggins

FROM: Jack Chenoweth
Legislative Counsel



1996

House Bill 474 was prepared in response to a request from the Municipality of Anchorage to amend state law relating to disposition of offenses involving minors. The premises for the changes--prosecution of minors for certain offenses in the same manner as adults--necessitates a broader treatment than what may have originally been intended.

The bill is best explained back-to-front.

Bill section 3: Usually under state law, when a minor is charged with violation of a criminal offense under state or municipal law, the minor is not prosecuted but the matter is addressed and disposed of under statutes applicable to juvenile offenders. AS 47.10.010(b) lists a set of exceptions to this treatment, declaring that for the offenses there listed, the minor will be charged, prosecuted, and sentenced in the same manner as an adult. This bill section expands that list to include violations of ordinances and regulations of municipalities for which the punishment for the violation is only payment of a fine and imposition of no other penalty. The insertion, in the bill section, on lines 18 and 19 of page 2 is a conforming change.

Bill section 2: This section amends the provision of the Municipal Code, AS 29, in which is set out the authority of municipalities to regulate conduct and enforce its enactments. This section attempts to differentiate circumstances under which one may be charged with violation of an ordinance without imposing a corresponding obligation on the municipality to provide for a jury trial or, in proper circumstances, court-appointed legal counsel. The distinction is drawn on the basis of whether the municipality's enactment qualifies or does not qualify as a "minor offense"; if a minor offense, then trial on the violation need not involve a jury nor is there an obligation for the court to appoint legal counsel. The characteristics of a "minor offense" are identified in a District Court Criminal Rule, Rule 8. The amendment made by this bill section thus identifies the characteristics of a minor offense; if the municipality's enactment meets those characteristics, the matter may be

Representative Cynthia Toohey

February 10, 1996

Page 2

disposed of as a minor offense under the applicable court rule; if it does not, then arguably the defendant is entitled to trial by jury and, if applicable, court appointed counsel.

Bill section 1: Under the state's Code of Criminal Procedure, AS 12, generally the criminal laws of the state applicable to misdemeanors are applicable also to violations and infractions. See AS 12.80.040. However, there are exceptions, identified by cross-reference appearing in AS 12.80.040. This bill section adds the additional provisions of bill section 2 to the cross-referenced exceptions. The intent is to make the point that, as an exception to the state laws otherwise applicable to violations and infractions, when a municipality punishes an ordinance as a violation or infraction and the punishment qualifies the conduct's treatment as a minor offense, the exceptions from required jury trial and court appointed counsel apply.

JBC:lmb

96-038.lmb

Municipality
of
Anchorage



P.O. Box 190650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4433

Rick Mjstrom, Mayor

OFFICE OF THE MUNICIPAL MANAGER

February 9, 1996

Representative Cynthia Toohey
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: H. B. 474

Dear Representative Toohey:

Thank you for sponsoring H. B. 474, regarding the jurisdiction of municipalities over certain juvenile infractions.

This bill offers an important reform to the way in which juvenile criminal activity is addressed.

Attached is an issue summary supporting the need for the proposed change.

Thank you again for sponsoring this legislation. If we can offer further information, please let me know.

Sincerely,

Tim Rogers
Legislative Program Coordinator

**MUNICIPALITY OF ANCHORAGE
PUBLIC SAFETY PARTNERSHIP PROGRAM
LEGISLATIVE ISSUES**

Allow municipalities to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation

Early intervention has been proven an effective means of changing young people's attitudes and behaviors. Because the current juvenile justice system is overwhelmed with serious offenses and offenders, many offenders who begin with lower level or less dangerous conduct receive no meaningful consequences until they graduate to the higher level.

According to the 1994 Anchorage Police Department Annual Report, juvenile arrests have increased 66% since 1990. Juvenile offenders have become increasingly dangerous and increasingly blatant regarding their offenses in the knowledge that the system can do very little to them.

Recognizing this situation, the Municipality of Anchorage would like the ability to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation. This will allow the juvenile justice system to focus on the more serious criminal activity while assuring that juvenile offenders of less serious offenses receive more immediate consequences for their actions.



Anchorage Star of the North
Chamber of Commerce

February 28, 1996

Members: House Community & Regional Affairs Committee
Al Austerman & Ivan Ivan - Co-Chairs
Fax: 1-907-465-4589

Dear Committee Members:

The Anchorage Chamber of Commerce Crime Prevention Committee has worked with the Municipality of Anchorage on a criminal justice package. The chamber has passed Resolution 95/96-5 supporting the Municipality's efforts on criminal justice reform.

It is our understanding that HB 474 and HB 475 address part of the criminal justice reform package. We would like to encourage passage of both bills.

We appreciate the spirit of cooperation between the Legislature and the Municipality. The chamber applauds your work on reducing crime. Please let us know if the chamber can be of any assistance.

Again, we encourage the passage of HB 474 and HB 475. Thank you for your consideration.

Sincerely,

Carol Heyman
President

cc: Representative Cynthia Toohey
Bob Bailey, chair, Anchorage Chamber Crime Prevention Committee

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 1
Bill Version: HB 474
(H) Publish Date: 3/8/96

Revision Date: 03/01/96
Title: Violations of Municipal Ordinances
Sponsor: Representative Toobey
Requestor: House (CRA)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: DFYS Central Office
COMPONENT SERIAL NO. 259
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary.)

Recent information provided by federal staff indicates that there will be no loss of funds due to the detention of minors on contempt of court orders resulting from a minor's failure to pay a fine.

There is already some impact on overcrowded youth facilities because of the waiver of smoking and alcohol consumption by minors because district judges are issuing bench warrants when minors fail to appear for court on those charges. However, we are not able to gauge the financial impact of increasing the numbers and kinds of offenses for which arrests and detention on such bench warrants will result in part because we don't know what municipal ordinances already exist or may result from this legislation.

In addition, this 0 fiscal note is based on the assumption that minors who have been ordered to serve time in detention on contempt charges will wait until a bed is available rather than adding to the overcrowding.

Prepared by: L. Diane Worley, Director
Division: Family and Youth Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 03/01/96
Date: 3/5/96

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FISCAL NOTE

No. 2

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO:
Bill Version: HB 474
(H) Publish Date: 3/8/96

Revision Date: 2/29/96 Dept. Affected: Community & Regional Affairs
Title: An Act relating to violations of municipal ordinances and regulations; and amending... BRU: none
Sponsor: Rep. Toohy Component: none
Requestor: House C&RA Committee COMPONENT SERIAL NO.

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact \$ none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson *Remond Henderson* Phone: 465-4708
 Division: Director, Div. of Administrative Services Date: 2/29/96
 Approved by Commissioner: *[Signature]* Date: 2/29/96
 Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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FISCAL NOTE

No. 3

Bill Version: HB 474

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL N (H) Publistr Date: 3/8/96

Revision Date: _____ Dept. Affected: Public Safety
 Title: Municipal ordinances and regulations BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Toohy
 Requestor: H. CRA COMPONENT SERIAL NO. 0799

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone: 465-5505
 Division: Alaska State Troopers Date: March 5, 1996
 Approved by Commissioner: *[Signature]* Date: 3/5/96
 Agency: Ronald L. Otte, Department of Public Safety

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CORRECTION

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



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

FISCAL NOTE

No. 3

Bill Version: HB 474

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL N

(H) Publish Date: 3/8/96

Revision Date: _____ Dept. Affected: Public Safety
 Title: Municipal ordinances and regulations BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Toohey
 Requestor: H. CRA COMPONENT SERIAL NO. 0799

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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Prepared By: Lt. Dan Lowden Phone: 465-5505
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PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
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(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 8, 1996

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3/12/96

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 474

HOUSE BILL NO. 474

VIOLATIONS OF MUNICIPAL ORDINANCES & REGS

"An Act relating to violations of municipal ordinances and regulations; and amending the definition of the jurisdiction of the superior court and the Department of Health and Social Services over delinquent minors to add a further exclusion from that jurisdiction for a minor's violation of a municipal ordinance or regulation that is punishable as an infraction or violation, and making a related technical amendment to that jurisdictional definition."

recommends it be replaced with the following committee substitute [] the same title [] a new title

[] additional referral to _____ Committee

[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____ [] fiscal note(s) _____

[] zero fiscal note(s) _____ (3) [] zero fiscal note(s) H+SS, C+RA, DPS

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Contains handwritten signatures and checkmarks.

CHAIR'S SIGNATURE CarBeude

HB

479

CS FOR HOUSE BILL NO. 479(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE G.DAVIS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for injuries or death resulting from equine
2 activities."

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

4 * Section 1. AS 09.65 is amended by adding a new section to read:

5 Sec. 09.65.145. IMMUNITY FOR INJURIES RESULTING FROM EQUINE
6 ACTIVITIES. (a) Except as provided in (b) of this section, a person, and the personal
7 representative of a person, who suffers an injury or death resulting from an inherent
8 risk of an equine activity may not recover civil damages from an equine activity
9 sponsor, an equine professional, or an equine owner.

10 (b) This section does not affect a civil action for damages resulting from

11 (1) gross negligence or reckless or intentional misconduct of the equine
12 activity sponsor, equine professional, or equine owner, or agents or employees of the
13 equine activity sponsor, equine professional, or equine owner;

14 (2) a dangerous latent condition that is known or should have been

1 known to the equine activity sponsor, equine professional, or equine owner and for
2 which warning signs have not been conspicuously posted if the equine activity sponsor,
3 equine professional, or equine owner owns, leases, rents, or is otherwise in lawful
4 possession and control of the land or facilities where the injury or injuries resulting in
5 death occurred;

6 (3) faulty or defective equipment, tack, or a product provided by the
7 equine activity sponsor, equine professional, or equine owner;

8 (4) the failure of the equine activity sponsor, equine professional, or
9 equine owner who provided the equine to make reasonable efforts to determine the
10 ability of the injured person to participate safely in the equine activity and to safely
11 manage the equine involved in the equine activity;

12 (5) injury or death of a spectator.

13 (c) In this section,

14 (1) "equine" means a horse, pony, mule, donkey, or hinny;

15 (2) "equine activity" means a show, fair, competition, performance, or
16 parade involving an equine, equine riding, inspecting, evaluating, boarding, training,
17 or teaching;

18 (3) "equine activity sponsor" means a person who provides an equine,
19 land, or facilities for an equine activity;

20 (4) "equine professional" means a person who receives compensation
21 for instructing during an equine activity, for sponsoring an equine activity, or for the
22 use of an equine;

23 (5) "inherent risk of an equine activity" means a danger or condition
24 that is an integral part of an equine activity, including

25 (A) the propensity of an equine to behave in a way that may
26 result in injury, harm, or death to a person on or around the equine;

27 (B) the unpredictability of an equine's reaction to a sound,
28 sudden movement, or unfamiliar object, person, or other animal;

29 (C) collisions with other equines, objects, or a person; or

30 (D) the potential of a person to act in a negligent manner that
31 may contribute to injury to the person or others.

1 * **Sec. 2.** This Act applies to a civil action that accrues on or after the effective date of this
2 Act.

Date of Committee Action: 3/18/96

The JUDICIARY Committee considered:

HB 479

HOUSE BILL NO. 479

IMMUNITY FOR EQUINE ACTIVITIES

"An Act relating to civil liability for injuries or death resulting from equine activities."

recommends it be replaced with the following committee substitute CS HB 479 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) CE-D (3.18.96)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>David Hobbs</i>		<input checked="" type="checkbox"/>		
<i>Betty Davis</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>Van Brunt</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *Boyd Porter*

STATE EQUINE LAWS

STATE	LAW PASSED	SIGNS POSTED	RELEASE W/WARNING	SPECIAL REQUIREMENTS
Alabama	Yes	Yes	Yes	
Alaska	No			
Arizona	Yes	No	Yes	
Arkansas	Yes	Yes	No	
California	Pending			
Colorado	Yes	Yes	Yes	
Connecticut	Yes	No	No	
Delaware	Yes			
Florida	Yes	Yes	Yes	
Georgia	Yes	Yes	Yes	
Hawaii	Yes	No	No	
Idaho	Yes	No	No	
Illinois	Yes	Yes	Yes	
Indiana	Yes	Yes	Yes	
Iowa	No			
Kansas	Yes	Yes	Yes	
Kentucky	Pending			
Louisiana	Yes	Yes	Yes	
Maine	Yes	No	Yes	
Maryland	No			
Massachusetts	Yes	Yes	Yes	
Michigan	Yes	Yes	Yes	
Minnesota	Yes	Yes	No	Non-Profit entities only
Mississippi	Yes	Yes	Yes	Also creates volunteer immunities
Missouri	Yes	Yes	Yes	
Montana	Yes	No	No	
Nebraska	Pending			
Nevada	No			
New Hampshire	No			
New Jersey	Pending			
New Mexico	Yes	Yes	No	
New York	Pending			
North Carolina	Pending			

STATE EQUINE LAWS

STATE	LAW PASSED	SIGNS POSTED	RELEASE W/WARNING	SPECIAL REQUIREMENTS
North Dakota	Yes	No	No	
Ohio	No			
Oklahoma	Pending			
Oregon	Yes	No	Yes	Immunities apply to adult participants
Pennsylvania	Pending			
Rhode Island	Yes	Yes	Yes	
South Carolina	Yes	Yes	Yes	
South Dakota	Yes	Yes	No	
Tennessee	Yes	Yes	Yes	
Texas	Yes	Yes	Yes	
Utah	Yes	No	No	
Vermont	Pending			
Virginia	Yes	No	Yes	
Washington	Yes	No	No	
West Virginia	Yes	No	*No	Participants must sign statement.
Wisconsin	Yes	No	No	
Wyoming	Yes	No	No	
TOTALS	PASSED: 35	PENDING: 9	NO: 6	

Alaska State Legislature

Interim:

145 Main Street Loop #223

Kenai, Alaska 99611

(907) 283-7095

(907) 283-3075 (fax)

(907) 262-7574 (h)



Session:

State Capitol

Juneau, Alaska 99801

(907) 465-2693

(fax) (907) 465-3835

Representative Gary L. Davis

SPONSOR STATEMENT

HB 479

"An Act relating to civil liability for injuries or death resulting from equine activities."

HB 479 is intended to provide owners and handlers in the equine profession extra protection from civil liability lawsuits. The reasoning behind this proposition is that horses and related animals can be unpredictable in their behavior. This unpredictability is an inherent characteristic of some domestic animals, especially equines because of their size and specific utilization for human activities.

A horse that is carrying a rider can be easily spooked by a number of events. If the rider is subsequently thrown from the horse, the owner or trainer may not be directly responsible for the accident. This would be true as long as the owner or trainer has cared for and trained the equine in the best possible manner.

Obviously, there are a number of exceptions to this piece of legislation. If the owner or trainer is negligent in properly caring for the horse or uses faulty equipment (such as the saddle), they would not be immune to civil liability. This bill also recognizes other exceptions, such as placing an obviously inexperienced rider on a high-spirited horse known for demonstrating unpredictable behavior.

People who participate in equine activities are aware beforehand of the risks involved. Many of the resulting unfortunate accidents are intrinsic in nature. Therefore, innocent parties should not be held accountable simply for compensation.

Representing House District 8

Soldotna, Sterling, Funny River, Cooper Landing, Homer, Moose Pass, Seward

Alaska State Legislature

Interim:

145 Main Street Loop #223

Kenai, Alaska 99611

(907) 283-7095

(907) 283-3075 (fax)

(907) 262-7574 (h)



Session:

State Capitol

Juneau, Alaska 99801

(907) 465-2693

(fax) (907) 465-3835

Representative Gary L. Davis

SECTIONAL ANALYSIS OF HB 479 A BILL FOR AN ACT ENTITLED

"An Act relating to civil liability for injuries or death resulting from equine activities."

Section 1 is an addition to AS 09.65 stating that a sponsor or professional of equine activity is not liable for civil damages that arise from the injury or death resulting from equine activities.

This section also outlines the exceptions to this act. If an equine activity sponsor or professional is guilty of reckless or intentional misconduct, he/she can still be held liable for damages. Other exceptions are the failure to provide adequate warning signs for a dangerous condition, faulty equipment, allowing an unskilled participant to become engaged in a risky activity and the injury or death of a spectator.

In the latter part of section 1, the key terms are defined in order to provide clarity.

Section 2 states that this act would apply to all civil actions that occur on or after the effective date, which is 90 days after the bill becomes law.

Alaska State Legislature

Interim:
145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)



Session:
State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

MEMORANDUM

To: Labor and Commerce Committee
From: Rep. Gary Davis
Re: proposed amendments for CS for HB 479
Date: March 5, 1996

	<u>page</u>	<u>line</u>	<u>amendment</u>
1).	2	12&13	delete [or of a person who engages in an equine activity but does not ride, train, or drive an equine;]
2).	2	6	a)change to read, " <u>faulty</u> or <u>defective</u> equipment, tack or <u>product</u> provided by the equine activity sponsor..."
3).	2	14	delete entire line
4).	2	23	change to read, "for instructing during an equine activity, <u>for sponsoring an equine activity</u> , or for the use of an equine."
5).	2	30	change to read, "collisions with other equines, objects <u>or persons</u> :"

Representing House District 8
Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

- 6). 2 20 change to read, "a person who provides an equine, land or facilities for an equine activity;"
- 7). 1 9 change to read, "equine activity sponsor, an equine professional, or an equine owner"

"Equine owner" is being included to cover those people who own equines for personal use but do not provide them for an equine activity as defined under "equine activity sponsor."

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 479

Revision Date: _____
 Title: Immunity for Equine Activities

Department: Commerce and Economic Development
 BRU: Insurance
 Component: Operations

Sponsor: Representative G. Davis
 Requestor: Representative G. Davis

COMPONENT SERIAL NO. #354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
 Division: Insurance
 Approved by Commissioner: William L. Pansley
 Agency: Commerce and Economic Development

Phone: 465-2597
 Date: 2/13/96
 Date: 2-13-96

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 For further distribution information, call the Governor's Legislative Office

To House Labor & Commerce

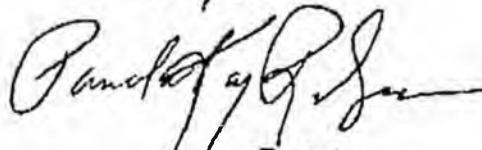
PETE KOTT Chair

HB 479

I, as a voting Alaskan and part of the Equestrian Community would like to Advocate the passage of H.B. 479. There are at present few in our state who are willing to take on the liability involved with the giving of lessons or guided rides even with waivers and signs posted as the financial risk is too great, HB 479 would help eliminate this problem. The Equestrian Community though not large are still a substantial economic part of our state.

By supplying services (Guiding, Stables, Rides & Lessons) and supporting many local business and individuals (Feed & Tack stores, Vets, Farriers, Hay & Barley Farmers). So with the passage of HB 479 liability should be easier and less expensive to obtain. Opening the way for the Equestrian Community to expand. Bills of this sort have already been ratified in many other states.

Thank you



Pamela Khy Rodriguez
P.O. Box 717
Anchor Pt AK 99556

FROM : KAY JAY INC BUTCH SCHOLLENBERG PHONE NO. : 907 567 3467

P01

February 28, 1988

To: House Labor and Commerce Committee

Dear Sirs:

I regret that I am unable to attend the scheduled teleconference hearing on proposed House Bill #479. I strongly support this bill.

We own a riding facility/farm on the Kenai Peninsula. A good portion of our farm income comes from giving riding lessons or renting our horses. Our farm is often visited by local school children who always want to top off their visit with a horse ride. I also have been a 4-H Horse Leader for 14 years.

In addition to the economic value of our business, through my continued work with 4-H and other kids, I constantly see the benefits they receive by having something constructive to do, caring for and learning about horses. I have helped kids successfully compete at a State level in equine events.

Although we run a very professional business and I am constantly upgrading my education to stay abreast of new training methods and products, the fear of a 'trivolous' lawsuit creates incredible mental stress. I often find myself realizing how much risk I am putting myself and my family in due to the 'sue happy' public.

We also sell hay from the farm and all of our hay sales for the last several years has gone to people that raise horses. I don't know if there are any accurate numbers on how many horses are in the State but they play an important part in the diversity of the economy. This is an important bill because it will make it easier for others to get into the horse business.

As stated in HB #479, even the most docile horse can be unpredictable. I feel that if the instructor or horse owner has done their best to educate the potential rider of the possible accidents, and the rider chooses to ride anyway, they should shoulder the responsibility for what might happen after that.

Sincerely,



Shirley Schollenberg
HC 67 Box 250
Anchor Point, Alaska 90556

(907)567-3467

Alaska Legislative Information Office
600 East Railroad Ave
Wasilla, AK 99654

Re: House Bill No. 479

To Whom it may concern:

I respectfully request that you support House Bill No. 479 "Immunity for injuries resulting from Equine Activities." This is a much needed addition to Alaska Law to protect an industry that has a propensity for the unpredictability of an animal.

However, I should like to suggest that a few amendments be considered:

Line 6 page 2 and line 14 page 2 appear to be able to be combined to something like
the failure of equipment or tack that is in poor repair or known to be defective provided by the equine activity sponsor or equine professional.

Line 13 add at the end
unless the injury or death is caused by that persons own negligence

Line 23 change wording to include
or sponsoring after the word during

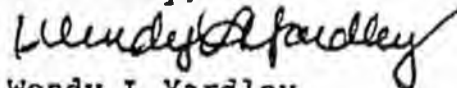
Line 30 add at the end of line
persons

Also somewhere in this bill should be something about Farriers and Veterinarians.

Someone may wish to examine the similar laws of the states of Washington and Colorado and I believe Idaho and Oregon and California have them also.

Thank you for taking the time to read my concerns and I hope to be able to follow this bill through the process.

Sincerely,



Wendy L. Yardley
PO Box 874581
Wasilla, AK 99687



**Farm & Ranch Supplies
Health Foods**

281 Aspen Avenue
Soldotna, AK 99669
(907) 262-4698 FAX 262-6095

*"More than just
a feed store"*

FEBRUARY 23, 1996

TO Rep. Gary Davis
Re: HB 479

I support HB 479 which limits civil liability in equine activities.

When one deals with animals anything can happen, even when every precaution is taken.

People have to take responsibility for their own participation if they want horse owners to share their talents and their horses.

I, and others, have specifically curtailed horse riding lessons, boarding, and general neighborly horse activity because of fear of lawsuits. Therefore, the possibility of frivolous suits definitely affects direct equine business and related markets like feed and tack.

Support HB 479.

Yours,

Dianna Toplin
Dianna Toplin

President



BOARDING, LESSONS
TACK SHOP, FEED STORE
STABLE SUPPLIES

8791 CAMERON ST.
ANCHORAGE, ALASKA 99507
(907) 349-3031

February 26, 1996

Rep. Gary Davis,
Fax # 1(907) 465-3835

Dear Sir:

We at M-Bar & Support H. 8479
Concerning equine liabilities.

This bill will be good for
business, families, young people as it
will encourage more equine related
activities.

Thanks for your consideration,
Marge Seidler,
(owner M-Bar)

HB

481



Alaska State Legislature
HOUSE OF REPRESENTATIVES
Beverly Masek

Official Business

State Capitol
Juneau, AK 99801-118
465-2679

MEMORANDUM OF REQUEST

TO: REP. BRIAN PORTER / CHAIR HOUSE JUDICIARY
FROM: REP. BEVERLY MASEK *2/5 to BM*
DATE: MARCH 5, 1996
RE: HB-481

Please find attached a memo from Legal Services which clearly indicates HB-481 is not particularly vulnerable to an equal protection challenge.

The narrowness of the bill and the fact that it requires court rule changes alleviates many of the criticisms brought up in other broad based approaches to capital punishment.

I hope this relieves some of the concerns you may have had and that you will schedule HB-481 ASAP.

Thank you.

LEGAL SERVICES

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

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

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

MEMORANDUM

March 4, 1996

SUBJECT: Classification of Child Murderers as Only Murderers Eligible for Death Penalty - HB 481 (Work Order No. 9LS1615\A)

TO: Representative Beverly Masek
Attn: Dave Stancliff

FROM: Gerald P. Luckhaupt *JEL*
Legislative Counsel

You have asked if HB 481's classification of child murderers as the only murderers eligible to receive the death penalty makes the death penalty scheme more open to attack than another death penalty scheme, such as SSSB 52, that subjects a broader range of murderers to the death penalty? While it is often difficult to gauge how much litigation will result from, and what issues will be raised concerning, a particular piece of legislation, suffice it to say that a death penalty scheme will result in litigation concerning every aspect of the legislation and every conceivable issue will probably be raised. In this regard, I do not believe that HB 481 will cause or otherwise result in any more litigation than another death penalty bill. Nor do I believe that HB 481's identification of child murderers as subject to the death penalty (through the use of aggravating factors) will make it any more susceptible to a legal challenge than SSSB 52.

While it is true that HB 481 does create a class of murderers who are eligible for a punishment that other murderers are not this classification does not appear arbitrary or unreasonable so as to result in its being struck down as cruel and unusual punishment or on equal protection grounds. Indeed creating classifications of offenders that are subject to the death penalty is essentially what is required to have a death penalty system that meets the requisites set forth by the United States Supreme Court. In order to pass constitutional muster a death penalty system and a sentence of death must impose the death penalty only when the nature of the crime merits the death penalty and the system must enable the jury (or other sentencer) to narrow the death eligible class and reasonably justify death for the selected offender compared to others by the use of a narrow definition of capital offenses or by the use of aggravating factors that allow the jury to narrow the class. By narrowing the class the risk of arbitrary and capricious imposition of the death penalty is thereby narrowed so as to make a death penalty system constitutional. Here, I believe HB 481 sufficiently meets these requirements and is not somehow more subject to a successful constitutional challenge than SSSB 52 because of its classification of those eligible for the death penalty.

GPL:pl
96-066.plm



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Beverly Masek

Official Business

State Capitol
Juneau, AK 99801-118
465-2679

MEMORANDUM OF REQUEST

TO: REP. BRIAN PORTER / CHAIR HOUSE JUDICIARY

FROM: REP. BEVERLY MASEK *BVM*

DATE: MARCH 5, 1996

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Thank you.

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(907) 465-3867 or 465-2450
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130 Seward Street, Suite 409
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MEMORANDUM

March 4, 1996

SUBJECT: Classification of Child Murderers as Only Murderers Eligible for Death Penalty - HB 481 (Work Order No. 9LS1615\A)

TO: Representative Beverly Masek
Attn: Dave Stancliff

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

No more susceptible to legal challenge

You have asked if HB 481's classification of child murderers as the only murderers eligible to receive the death penalty makes the death penalty scheme more open to attack than another death penalty scheme, such as SSSB 52, that subjects a broader range of murderers to the death penalty? While it is often difficult to gauge how much litigation will result from, and what issues will be raised concerning, a particular piece of legislation, suffice it to say that a death penalty scheme will result in litigation concerning every aspect of the legislation and every conceivable issue will probably be raised. In this regard, I do not believe that HB 481 will cause or otherwise result in any more litigation than another death penalty bill. Nor do I believe that HB 481's identification of child murderers as subject to the death penalty (through the use of aggravating factors) will make it any more susceptible to a legal challenge than SSSB 52.

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GPL:pl
96-066.plm

KAWERAK INCORPORATED

Resolution 94-19

OPPOSITION TO REINSTATEMENT OF THE DEATH PENALTY IN ALASKA

WHEREAS, the Kawerak, Inc. is concerned with equitable treatment of Alaska Natives within the criminal justice system; and

WHEREAS, Alaska Natives account for only 13.5% of the state's prison-age population, yet 32% of the jail population is comprised of Alaska Natives; and

WHEREAS, there is significant evidence of racial bias toward economically disadvantaged members of ethnic minorities in administration of the death penalty in other jurisdictions; and

WHEREAS, there is substantial concern among the Native community, and no evidence to the contrary, that in all likelihood the Alaska system of criminal jurisprudence is not capable of avoiding racial bias in the trial process; and

WHEREAS, the majority of Alaska Natives and people residing in rural areas of the state do not have the means to acquire adequate legal defense counsel when charged with serious crimes; and

WHEREAS, establishing a death penalty law and implementing it will cost millions of dollars and thereby deprive Alaska Natives and their communities of critical resources for service programs that focus on crime prevention; and

WHEREAS, Alaska Native tribes and organizations have historically opposed the death penalty as demonstrated by past actions to defeat federal death penalty legislation;

NOW THEREFORE BE IT RESOLVED, that Kawerak, Inc. is opposed to reinstatement of the death penalty in Alaska; and

BE IT FURTHER RESOLVED, that Kawerak, Inc. urges rural and urban legislators alike to oppose any effort to reinstate a death penalty in Alaska.

James O'Leary
Chairman of the Board

Luci [unclear]
Board Secretary

4/2/94
Date

4-2-94
Date

The foregoing resolution was adopted at a duly convened meeting of the Kawerak Board of Directors, a quorum being present this 3rd day of April, 1994.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...authorizing capital punishment...allowing...the BRU: Criminal Division
death penalty...murders committed against children... Component: Criminal Division
 Sponsor: Representative Masek
 Requester: Representative Masek COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	176.6	347.9	517.4	694.0	694.0	694.0
TRAVEL	65.5	181.0	196.5	202.5	202.5	202.5
CONTRACTUAL	118.1	438.4	501.7	575.0	545.0	545.0
SUPPLIES	11.7	18.9	26.1	33.3	28.8	28.8
EQUIPMENT	21.5	21.5	21.5	21.5	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	393.4	1,007.7	1,263.2	1,526.3	1,470.3	1,470.3

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	393.4	1,007.7	1,263.2	1,526.3	1,470.3	1,470.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	393.4	1,007.7	1,263.2	1,526.3	1,470.3	1,470.3

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	3.0	6.0	9.0	12.0	12.0	12.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would authorize capital punishment, classify murder in the first degree as a capital felony when certain murders are committed against children, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. In order to be considered a capital offense the defendant's conduct must have caused the death of a child under 18 years of age, the defendant at the time of the offense, must have been at least two years older than the child and the defendant was: (1) kidnapping, assaulting, or sexually assaulting, or attempting to kidnap, assault or sexually assault the child; or (2) had kidnapped, assaulted or sexually assaulted the child. Child deaths resulting from this conduct are usually associated with sexual assaults, but they also include egregious cases of physical assault against younger children.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 4/12/96
 Approved by Commissioner: Eruce M. Botelho, Attorney General Date: 4/12/96
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS CONTINUATION:

Overview

Capital felony trials would be bifurcated, or held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty; whether mitigating factors exist that outweigh the aggravating factors; and whether the defendant should be sentenced to a term of imprisonment or to death. Based on current data, where death penalty aggravators occur, the department would probably seek the death penalty in three cases, annually. The department expects that two capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed once each year.

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

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

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

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counter part in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the

FISCAL NOTE

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BILL NO. HB 481

ANALYSIS CONTINUATION:

date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for many of the capital murder trials. For example, a five-fold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases.

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out. Current information indicates that nationally an average of 9.5 years elapses from the time a death penalty sentence is imposed and the time the sentence is carried out.

Implementation

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

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

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

FISCAL NOTE

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BILL NO. HB 481

ANALYSIS CONTINUATION:

felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals in Anchorage.

During the second year, three or more additional capital felonies are expected to go to trial and three new capital felony offenses will occur. At this point, it will be necessary to add one attorney, one paraprofessional, and one legal secretary to help handle the increasing capital felony trial caseload and to help with the first capital felony appeal.

During the third year, the number of bifurcated trials (3) should equal the number of new capital offenses, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. Post-conviction capital felony appeals will have reached two or three by year three, and they will continue to increase at the rate of one new case each year thereafter. During the fourth year it will also be necessary to establish a capital felony appeals staff when the number of appeals reaches six. One attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

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

- 1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting three first degree murder offenses, at a minimum.
- 2) The time required for a bifurcated trial will probably vary between two months and six months although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- 3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- 4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- 5) Witness travel and subsistence will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.
- 6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.
- 7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate

FISCAL NOTE

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ANALYSIS CONTINUATION:

considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs of a bifurcated capital felony case has been projected to be about \$360,000 or substantially less than of the \$597,000 cost for the *first Peel* trial.

8) The cost for appeals is shown only through the fourth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of 10 or more capital felony defendants annually, within 10 years.

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

Capital Felony Trials

- Witness travel and subsistence, \$50,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees, \$60,000 per case.
- Witness fees paid to others, \$6,000 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney, \$2,500 per paraprofessional, per annum.
- Expert witness fees, legal scholars for years two and three only, \$30,000, each year.
- Socio-psychiatric experts, \$25,000 each year.
- Transcription/court reporter costs, \$30,000 per case.

FISCAL NOTE

STATE OF ALASKA
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BILL NO. HB 481

ANALYSIS CONTINUATION:

Fiscal Analysis HB 481
Cost Summary (First Year - FY 97 - Capital Trials)

<u>OBJECT</u>	<u>Atty V</u>	<u>Assoc Atty I</u>	<u>Sec I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u>	<u>52.9</u>	<u>36.4</u>	<u>176.6</u>
	87.3	52.9	36.4	176.6
200- Travel				
Staff Travel & Per Diem	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	7.5	5.0	3.0	15.5
300 - Contractual				
Communications, Copy	3.6	2.4	2.4	8.4
Office Space Leases	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5
Westlaw	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	11.9	10.7	9.5	32.1
400 - Supplies				
Office Consumables	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	2.7	11.7
500 - Equipment				
New Position Equipment	2.5	2.5	2.0	5.0
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5
TOTAL	117.7	79.6	60.1	257.4

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ANALYSIS CONTINUATION:

Fiscal Analysis HB 481
Cost Summary (Second and Third Years Additions -
FY 98 and 99 - Capital Trials)

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	<u>Atty IV</u>	<u>Assoc Atty I</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>	<u>Atty IV</u>	<u>P/A II</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>82.0</u>	<u>52.9</u>	<u>36.4</u>	<u>171.3</u>	<u>82.0</u>	<u>51.1</u>	<u>36.4</u>	<u>169.5</u>
	82.0	52.9	36.4	171.3	82.0	51.1	36.4	169.5
200- Travel								
Staff Travel & Per Diem	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
300 - Contractual								
Communications, Copy	<u>3.6</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>	<u>3.6</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</u>
Office Space Leases	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>16.8</u>	<u>5.6</u>	<u>5.6</u>	<u>5.6</u>	<u>16.8</u>
PC Network Maintenance	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
Westlaw	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	11.9	11.9	9.5	33.3	11.9	11.9	9.5	33.3
400 - Supplies								
Office Consumables	<u>1.8</u>	<u>1.8</u>	<u>1.2</u>	<u>4.8</u>	<u>1.8</u>	<u>1.8</u>	<u>1.2</u>	<u>4.8</u>
Law Library	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
500 - Equipment								
New Position Equipment	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>	<u>7.0</u>	<u>2.5</u>	<u>2.5</u>	<u>2.0</u>	<u>7.0</u>
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5	6.5	6.5	8.5	21.5
TOTAL	112.4	80.8	60.1	253.3	112.4	79.0	60.1	251.5

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ANALYSIS CONTINUATION:

Fiscal Analysis HB 481
Cost Summary (Fourth Year Additions -
FY 00+ - Appellate Review Process)

Fourth Year

<u>OBJECT</u>	<u>Atty V</u>	<u>Assoc Atty I</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u> 87.3	<u>52.9</u> 52.9	<u>36.4</u> 36.4	<u>176.6</u> 176.6
200- Travel				
Staff Travel & Per Diem	<u>3.5</u> 3.5	<u>2.5</u> 2.5	<u>0.0</u> 0.0	<u>6.0</u> 6.0
300 - Contractual				
Communications, Copy	22.4	22.4	2.4	47.2
Office Space Leases	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5
Westlaw	<u>2.4</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>
	31.9	31.9	9.5	73.3
400 - Supplies				
Office Consumables	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	2.7	11.7
500 - Equipment				
New Position Equipment	2.5	2.5	2.0	7.0
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	8.5	21.5
TOTAL	133.7	98.8	57.1	289.1

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BILL NO. HB 481

ANALYSIS CONTINUATION:

Fiscal Analysis HB 481
Cumulative Implementation Cost by Year

<u>OBJECT</u>	<u>Criminal Felony Trial</u>				<u>Appellate Review</u>				
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4+</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5+</u>
100 - Personal Services	176.6	347.9	517.4	517.4	0.0	0.0	0.0	176.6	176.6
200- Travel - Staff	15.5	31.0	46.5	46.5	0.0	0.0	0.0	6.0	6.0
Travel - Witness	50.0	150.0	150.0	150.0	0.0	0.0	0.0	0.0	0.0
300 - Contractual	32.1	65.4	98.7	98.7	0.0	0.0	0.0	73.3	73.3
Contractual - Outside Svc	86.0	258.0	258.0	258.0	0.0	85.0	145.0	145.0	115.0
400 - Supplies	11.7	18.9	26.1	21.6	0.0	0.0	0.0	11.7	7.2
500 - Equipment	<u>21.5</u>	<u>21.5</u>	<u>21.5</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>21.5</u>	<u>0.0</u>
TOTAL	393.4	892.7	1,118.2	1,092.2	0.0	85.0	145.0	434.1	378.1

FISCAL NOTE

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ANALYSIS CONTINUATION:

Out-of-Pocket Costs - Capital Felony Trials

Year One (1 cases underway) (FY 97)

Witness travel and subsistence \$50,000 per case Xs 1 case =	\$50,000
Expert witness fees \$60,000 per case Xs 1 case =	\$60,000
Witness fees (witnesses of fact) \$6,000 per case Xs 1 case =	\$6,000
Deposition/court reporter charges \$20,000 per case Xs 1 case =	\$20,000

Year Two (3 cases underway) (FY 98)

Witness travel and subsistence \$50,000 per case Xs 3 cases =	\$150,000
Expert witness fees \$60,000 per case Xs 3 cases =	\$180,000
Witness fees (witnesses of fact) \$6,000 per case Xs 3 cases =	\$18,000
Deposition/court reporter charges \$20,000 per case Xs 3 cases =	\$60,000

Third Year (3 cases underway) (FY 99)

Witness travel and subsistence \$50,000 per case Xs 3 cases =	\$150,000
Expert witness fees \$60,000 per case Xs 3 cases =	\$180,000
Witness fees (witness of fact) \$6,000 per case Xs 3 cases =	\$18,000
Deposition/court reporter charges \$20,000 per case Xs 3 cases =	\$60,000

FISCAL NOTE

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ANALYSIS CONTINUATION:

Capital Felony Appeals

Year Two (1 case underway) (FY 98)

Expert witness/legal scholars to uphold death penalty law (year two and three only) \$30,000 per year Xs 1 =	\$30,000
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Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 1 case =	\$30,000
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Year Three (3 cases underway) (FY 99)

Expert witness/legal scholars to uphold death penalty law (year two and three only) \$30,000 per year Xs 1 =	\$30,000
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Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 3 cases =	\$90,000
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Year Four (6 cases underway) (FY 00)

Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 3 cases =	\$90,000
---	----------

Year Five (9 cases underway) (FY 01)

Expert witness Socio-psychiatric experts \$25,000 per year Xs 1 =	\$25,000
---	----------

Deposition/court report charges \$30,000 per case Xs 3 cases =	\$90,000
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04/12/96

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 0501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
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03#011		ATTORNEY V	F	ANCHORAGE	A XE AA	25A 12	66266	0	20921	87188.49	
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**** JUSTIFICATION:

This senior level Attorney V position will be needed to oversee and head capital felony prosecutions, during the first year that capital felony law goes into effect. The substantial due process protections accorded to defendants by the U.S. Supreme Court, will require a three-fold increase in prosecution effort in order to obtain death penalty convictions. Legal expertise at the highest level will be required to handle these prosecutions, allocations to the Attorney V level is therefore recommended. This position will be required in FY 1997.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	117588.49	87188.49

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87188.49
TOTAL FUNDING	87188.49

03#016		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA	17A 12	38402	0	14403	52805.85	
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**** JUSTIFICATION:

This advanced paraprofessional position will be required, during the first year that the capital felony law goes into effect, to handle evidence preparation and assist in legal research that is necessary to try capital cases. The heightened due process protection accorded defendants, in these cases, causes a far more severe burden of proof standard for prosecution. Allocation to the Associate Attorney I paraprofessional level is therefore recommended. This position will be required in FY 1997.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	79505.85	52805.85

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52805.85
TOTAL FUNDING	52805.85

03#016		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A	10A 12	25102	0	11278	36381.04	
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**** JUSTIFICATION:

This is one legal secretaries needed to provide office services support for three attorneys and three paraprofessionals who will be required to handle capital felony trials, during the first year the law goes into effect. The work of the attorneys is expected to generate considerable legal documentation, in the form of motions and briefs, requiring full-time secretarial support. This position will be required in FY 1997.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60081.04	36381.04

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36381.04
TOTAL FUNDING	36381.04

04/12/96

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

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DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R A	B X	S E	R&S AA	MOS 17A	SALARY 12	PREM 0	BENES 14403	PER.SERV. COSTS	G. F. AMOUNT
03#019		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE	AA	17A	12	38402	0	14403	52805.85	

**** JUSTIFICATION:

This advanced paraprofessional position will be required, during the second year the capital felony law is in effect, to handle the growing number of capital trials. Three new trials are expected to commence during the second year, and three new offenses will have been committed. This position will help organize and examine evidence, and assist attorneys with legal research. Allocation to the Associate Attorney I level is therefore recommended. This position is required in FY 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	80705.85	52805.85

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 52805.85

TOTAL FUNDING 52805.85

03#020		LEGAL SECRETARY I	F	ANCHORAGE	A	GG	2A	10A	12	25102	0	11278	36381.04	
--------	--	-------------------	---	-----------	---	----	----	-----	----	-------	---	-------	----------	--

**** JUSTIFICATION:

This Legal Secretary I position will be required, during the second year the capital felony law is in effect, to handle the growing caseload. Three new capital felony trials are expected to commence, and three new offenses will be committed during the year. Legal documentation for these trials will be intense. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1998.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	60081.04	36381.04

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 36381.04

TOTAL FUNDING 36381.04

03#021		ATTORNEY V	F	ANCHORAGE	A	XE	AA	25A	12	66266	0	20921	87188.49	
--------	--	------------	---	-----------	---	----	----	-----	----	-------	---	-------	----------	--

**** JUSTIFICATION:

This Attorney V position will be required, during the fourth year the capital felony law is in effect, to handle the post-conviction appellate review process. It is anticipated that six defendants' convictions will be on appeal during the fourth year. Up to ten years or more may pass before those appeals are finally resolved. Initially, legal attacks on the law itself will go to the Alaska Supreme Court. If upheld, appeals will go to the federal court system, including the U.S. District Court. The highest level of legal expertise will be required to handle those appeals. Allocation to the Attorney V level is therefore recommended. This position will be needed in FY 2000.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	133588.49	87188.49

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 87188.49

DEPARTMENT OF LAW

SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B \$ C U	R&S MOS BUDG	SALARY	PREM PAY	BENEF PAY	PER.SERV. COSTS	G. F. AMOUNT	
TOTAL FUNDING										87188.49		
03/022		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA 17A	12	38402	0	14403	52805.85		
**** JUSTIFICATION:												
This Associate Attorney paraprofessional position will be required, during the fourth year the capital felony law is in effect, to assist handling legal research for post-conviction appellate review process. It is anticipated that six defendants' convictions will be on appeal during the fourth year. Legal attacks on the law itself will be before the Alaska Supreme Court, as will appeals of convictions. Further appeals to the federal court system will commence, if the law is upheld. An enormous amount of research will be required. Allocation to the Associate Attorney I level is therefore recommended.										TRAVEL COSTS	2500.00	
										CONTRACTUAL COSTS	31900.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	98205.85	52805.85
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	52805.85	
TOTAL FUNDING										52805.85		
03/023		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A 10A	12	25102	0	11278	36381.04		
**** JUSTIFICATION:												
This Legal Secretary I position will be required, during the fourth year the capital felony law is in effect, to handle the post-conviction appellant review process. This process is expected to begin during the fourth year, when the first six convictions should be on appeal. This process is document intensive and full-spectrum secretarial services will be required. Allocation to the Legal Secretary I level is therefore recommended. This position is needed in FY 2000.										TRAVEL COSTS	0.00	
										CONTRACTUAL COSTS	9500.00	
										SUPPLIES COSTS	2700.00	
										EQUIPMENT COSTS	8500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	57081.04	36381.04
*** FUNDING DETAIL:												
										1004 GENERAL FUND RECEIPTS	36381.04	
TOTAL FUNDING										36381.04		
03/025		ATTORNEY IV	F	ANCHORAGE	A XE AA 24A	12	61862	0	20085	81947.73		
**** JUSTIFICATION:												
This Attorney IV position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that three of these trials will be underway in the third year, and three new offenses will have been committed. An enormous amount of attorney time is required to handle these because of the heightened due process standards that are mandated for capital prosecutions. These trials require highly skilled prosecutors. Allocation to the full-working level of Attorney IV, is therefore										TRAVEL COSTS	7500.00	
										CONTRACTUAL COSTS	11900.00	
										SUPPLIES COSTS	4500.00	
										EQUIPMENT COSTS	6500.00	
										OTHER COSTS	0.00	
										TOTAL COSTS	112347.73	81947.73

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
recommneded. This position will be needed in FY 1999.											
*** FUNDING DETAIL:											
100% GENERAL FUND RECEIPTS										81947.73	
TOTAL FUNDING										81947.73	
03#026		PARALEGAL ASST II	F	ANCHORAGE	A	CG 2A 16A 12	36954	0	14148	51103.16	
**** JUSTIFICATION:											
This Paralegal Assistant position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felony trials. It is anticipated that three trials will be underway at this point, and three new offenses will have been committed. This position will assist witnesses and coordinate witness schedules and trial logistics. Allocation to the Paralegal Assistant II level is therefore recommended. This position will be required in FY 1999.											
TRAVEL COSTS										5000.00	
CONTRACTUAL COSTS										11900.00	
SUPPLIES COSTS										4500.00	
EQUIPMENT COSTS										6500.00	
OTHER COSTS										0.00	
TOTAL COSTS										79000.00	51103.16
*** FUNDING DETAIL:											
100% GENERAL FUND RECEIPTS										51103.16	
TOTAL FUNDING										51103.16	
03#027		LEGAL SECRETARY I	F	ANCHORAGE	A	CG 2A 10A 12	25102	0	11278	36381.04	
**** JUSTIFICATION:											
This Legal Secretary position will be required, during the third year the capital felony law is in effect, to handle the growing number of capital felonies. It is anticipated that three capital trials will be underway at this point, and three new offenses will have been committed. The work generated by attorneys will require substantial secretarial assistance. Allocation to the Legal Secretary I level is therefore recommended. This position will be needed in FY 1999.											
TRAVEL COSTS										3000.00	
CONTRACTUAL COSTS										9500.00	
SUPPLIES COSTS										2700.00	
EQUIPMENT COSTS										8500.00	
OTHER COSTS										0.00	
TOTAL COSTS										60081.04	36381.04
*** FUNDING DETAIL:											
100% GENERAL FUND RECEIPTS										36381.04	
TOTAL FUNDING										36381.04	
03#035		ATTORNEY IV	F	ANCHORAGE	A	XE AA 24A 12	61862	0	20045	81947.73	
**** JUSTIFICATION:											
This Attorney IV position will be needed during the second year the capital felony law goes into effect, to handle the growing number of capital trials. During the second year three additional trials should be underway and three additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases necessitate the full working level of legal expertise. Allocation to the Attorney IV level is therefore recommended. This											
TRAVEL COSTS										7500.00	
CONTRACTUAL COSTS										11900.00	
SUPPLIES COSTS										4500.00	
EQUIPMENT COSTS										6500.00	
OTHER COSTS										0.00	
TOTAL COSTS										112347.73	81947.73

04/12/96

15:19:07.3

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 7

DEPARTMENT OF LAW SCENARIO: 1

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS URU NAME: CRIMINAL DIVISION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B C U	\$	R&S MOS BUDG	SALARY	PREM PAY	BERES	PER.SERV. COSTS	G. F. AMOUNT
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position will be required in FY 1990.

*** FUNDING DETAIL:		
1004 GENERAL FUND RECEIPTS		81947.73
		=====
TOTAL FUNDING		81947.73

**** COMPONENT TOTALS:			
FULL TIME NEW POSITIONS	12	TOTAL PERSONAL SERVICES	693317.31
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	1050617.31
OTHER.....	0		
	====		

NUMBER OF NEW POSITIONS IN COMPONENT: 12

FUNDING DATA: G.F. & G.F. MATCH:	693317.31
OTHER FUNDS:	0.00
	=====
TOTAL FUNDING:	693317.31

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: _____
 Title: "An Act authorizing capital punishment..."
 Sponsor: Representatives Masek, Kohring, Ogan
 Requestor: House Judiciary

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	270.7	354.3	590.3	590.3	763.0	846.6
TRAVEL	35.0	35.0	70.0	70.0	105.0	105.0
CONTRACTUAL	72.9	76.3	89.3	89.3	98.8	102.2
SUPPLIES	4.0	5.0	9.0	9.0	12.0	13.0
EQUIPMENT	15.7	3.6	15.8	0.0	12.1	3.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	398.3	474.2	774.4	758.6	990.9	1,070.4

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	398.3	474.2	774.4	758.6	990.9	1070.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	398.3	474.2	774.4	758.6	990.9	1,070.4

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME	4.0	1.0	4.0	0.0	3.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

The Department of Law has estimated it would seek the death penalty in approximately three cases annually. Therefore, OPA anticipates it would be responsible for one capital case in FY97 and one more in each of the following years.

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

Phone: 274-1684
 Date: _____

Approved by Commissioner: Mark Boyer *M. Boyer*
 Agency: Administration

Date: 4/18/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS: (continued)

Because almost no one in Alaska could afford the cost of defending a capital case, it is assumed the Public Defender Agency and OPA would represent all capital defendants.

The agency would assign at least two experienced attorneys to each capital case in accordance with the policy --and legal requirements--of most states in which the death penalty has become law. Each case will necessitate an exhaustive pre-trial investigation, contracts with numerous expert witnesses, and extensive litigation of legal issues during pre-trial proceedings, trial, and appellate stages. The New York Defender Association has estimated expert witness fees at \$60,000.00 per case. Further, travel costs would be extraordinarily high because this Anchorage based death penalty team must provide statewide representation.

It is anticipated that OPA would have to contract for at least some death penalty cases. It is not possible to predict how many such cases might arise in FY97 or in ensuing years. Therefore, this fiscal note assumes that all cases that are made an OPA responsibility will have staff representation and none will be forced out of the agency through a conflict of interest. None of the contractual costs associated with this representation are therefore devoted to the cost of attorney compensation in conflict of interest cases.

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

In FY98, the first year in which an actual death penalty trial will probably occur, OPA costs will rise because of the addition of an appellate attorney. In FY99, an additional trial attorney position would be needed to support the initial two trial attorney positions created in FY97. Further, an additional associate attorney (non-lawyer position) a paralegal and a legal secretary would be necessary to support the four lawyer staff.

In FY00, the death penalty defense staff would remain static. In FY01, that staff would need to be enlarged by at least one attorney to supplement the efforts of the appellate attorney added in FY98, together with an additional paralegal and legal secretary. In FY02, the defense would be enlarged by an additional trial attorney position whose workload hopefully would be absorbed by the existing support staff.

FISCAL ANALYSIS -- FY 97

Personal Services

Anchorage

Attorney V	
Salary and Benefits	\$ 88.9
Attorney IV	
Salary and Benefits	83.6
Associate Attorney II	
Salary and Benefits	61.2

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Legal Secretary I Salary and Benefits	<u>37.0</u>
Subtotal Personal Services	270.7
Travel	
Necessary travel for court hearings, investigation, expert witnesses, etc.	35.0
Contractual	
Additional office space for four positions in Anchorage. 12.9	
Expert witness fees based on two cases per year at \$60,000 per case.	60.0
Subtotal Contractual	72.9
Supplies	
Stationary, library and office supplies for four new positions at \$1,000 per position.	4.0
Equipment	
Office furniture and equipment for three professional positions at \$3,635 each and one legal secretary at \$4,869.	<u>15.7</u>
TOTAL FY 97	\$398.3

FISCAL ANALYSIS -- FY 98

Personal Services

Anchorage

Salary and Benefits for 4 current positions \$ 270.7

Attorney IV
Salary and Benefits 83.6

Subtotal Personal Services 354.3

Travel

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

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Contractual

Office space for four current positions and one new position. 16.3

Expert witness fees based on one case per year. 60.0

Subtotal Contractual Services 76.3

Supplies

Stationary, library and office supplies for five positions. 5.0

Equipment

Office furniture and equipment for one professional position. 3.6

TOTAL FY 98 \$474.2

FISCAL ANALYSIS -- FY 99

Personal Services

Anchorage

Salary and Benefits for 5 current positions \$ 440.6

Attorney IV
Salary and Benefits 83.6

Associate Attorney II
Salary and Benefits 61.2

Paralegal Assistant II
Salary and Benefits 52.1

Legal Secretary II
Salary and Benefits 39.1

Subtotal Personal Services 590.3

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 70.0

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Contractual

Office space for five current positions and four new positions.	29.3
Expert witness fees based on one new case per year.	<u>60.0</u>
Subtotal Contractual Services	89.3

Supplies

Stationary, library and office supplies for nine positions.	9.0
---	-----

Equipment

Office furniture and equipment for three new professional positions and one new legal secretary position.	<u>15.8</u>
---	-------------

TOTAL FY 99	\$774.4
--------------------	----------------

FISCAL ANALYSIS -- FY 00

Personal Services

Anchorage

Salary and Benefits for 9 current positions	\$ 590.3
---	----------

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc.	70.0
--	------

Contractual

Office space for nine current positions.	29.3
Expert witness fees based on one new case per year.	<u>60.0</u>

Subtotal Contractual Services	89.3
--------------------------------------	-------------

FISCAL NOTE

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

BILL NO. HB 481

Supplies

Stationary, library and office supplies for nine positions. 9.0

TOTAL FY 00 \$758.6

FISCAL ANALYSIS -- FY 01

Personal Services

Anchorage

Salary and Benefits for 9 current positions \$ 590.3

Attorney IV
Salary and Benefits 83.6

Paralegal Assistant II
Salary and Benefits 52.1

Legal Secretary I
Salary and Benefits 37.0

Subtotal Personal Services 763.0

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 105.0

Contractual

Office space for nine current positions and three new positions. 38.8

Expert witness fees based on one case per year. 60.0

Subtotal Contractual Services \$98.8

Supplies

Stationary, library and office supplies for twelve positions. 12.0

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Equipment

Office furniture and equipment for two new professional positions
and one new legal secretary position. 12.1

TOTAL FY 01 \$990.9

FISCAL ANALYSIS -- FY 02

Personal Services

Anchorage

Salary and Benefits for 12 current positions \$ 763.0

Attorney IV
Salary and Benefits 83.6

Subtotal Personal Services 846.6

Travel

Necessary travel for court hearings, investigation, expert witnesses, etc. 105.0

Contractual

Office space for twelve current positions and one new position. 42.2

Expert witness fees based on one case per year. 60.0

Subtotal Contractual Services \$102.2

Supplies

Stationary, library and office supplies for thirteen positions. 13.0

Equipment

Office furniture and equipment for one new professional position. 3.6

TOTAL FY 02 \$1,070.4

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: _____
 Title: "An Act authorizing capital punishment..."
 Sponsor: Representative Masek
 Requestor: (H) JUD

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	367.5	1032.0	1293.9	1525.4	1525.4	1525.4
TRAVEL	50.0	150.0	250.0	300.0	350.0	400.0
CONTRACTUAL	94.5	282.5	462.5	628.5	787.5	946.5
SUPPLIES	15.0	28.0	38.0	47.5	60.0	75.0
EQUIPMENT	27.0	36.0	18.0	15.0	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	554.0	1528.5	2062.1	2516.4	2722.9	2946.9

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

CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	554.0	1528.5	2062.1	2516.4	2722.9	2946.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	554.0	1528.5	2062.1	2516.4	2722.9	2946.9

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME	6	16	20	24	24	24
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: 264-4412
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 4/13/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

ANALYSIS: (continued)

This legislative proposal permits the state to execute individuals as punishment for committing certain types of Murder in the First Degree. Capital punishment would be an available sanction for Murder in the First Degree if certain aggravating factors were found to exist.

Under this bill capital punishment would be limited to homicides where the victim was a child (under 18 years of age). The provisions of the statute target child homicides involving kidnap, assault and sexual assault, or attempts to commit these crimes where death results.

Fiscal Impact

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

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

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

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Breakdown of Fiscal Impact

1. Personal Services. Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, many states require by statute that a minimum of two defense attorneys take up representation of the accused in death penalty matters. Both the state District Attorney and the Office of Public Advocacy contemplate such a policy for their respective agencies. The Public Defender will follow this prudent course, whether established by statute or internal policy. It should also be noted that trial attorneys doing death penalty cases typically carry a caseload of only two active cases.

Based on Department of Law projections, it is anticipated that the Public Defender Agency will handle two to three capital cases per year if this bill becomes law. A death penalty unit will be established in Anchorage during the first year following enactment of the death penalty. According to the Department of Law fiscal analysis, during the second year "three or more additional capital cases are expected to go to trial, and three new capital felony offenses will occur." (Page 4 of DOL fiscal analysis) The Public Defender Agency expects to be involved in two of the three cases which go to trial during the second year, and will additionally absorb two or three of the new capital cases which are filed by the state. As such a second death penalty team will be created during the second year to absorb this additional workload.

During the second year an Anchorage appellate team will also be created so that it can begin interacting with the death penalty trial teams to establish defense strategies, to assist in the developments of petitions for review to the Supreme Court on an interlocutory basis, and to receive training prior to the filing of the first appeal following a death penalty conviction. (It should be noted that the Public Defender Agency does not have the appellate resources currently available to the Department of Law in that there is no defense equivalent of the Department of Law's Office of Special Prosecutions and Appeals). It is anticipated that the Public Defender Agency staff will continue to grow from year to year as capital cases accumulate. This assumption is consistent with the experiences of other states which have the death penalty, and in accord with the Department of Law's assumptions and projections.

Consistent with the Department of Law's analysis and projected resource needs, the Alaska Public Defender Agency will take on additional cases and increase its staff accordingly during the third year that the death penalty is in effect. This accumulation of cases and placement of resources for the years relevant to this fiscal note follow below. The rising costs from year to year are a consequence of the need to carry over existing staff and add lawyers and support staff to absorb the cumulative death penalty caseload.

Fiscal Impact--FY 97

Personal Services (100 Line) *

Anchorage - Trial Team

Attorney V	
Salary & Benefits	\$ 88.9
Attorney IV	
Salary & Benefits	\$ 83.6
Associate Attorney I	
Salary & Benefits	\$ 53.8
Paralegal Assistant II	
Salary & Benefits	\$ 52.1

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Investigator II Salary & Benefits	\$ 52.1	
Legal Secretary I Salary & Benefits	\$ 37.0	
	SUBTOTAL	\$367.5

* Using FY 96 salary schedule with no increases factored in.

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL \$ 50.0

Contractual (300 Line)

Expert witness fees	\$ 60.0	
Additional office space for death penalty staff in Anchorage and Fairbanks P.D. offices	\$ 15.0	
Communications	\$ 7.5	
Printing	\$ 2.0	
Depositions	\$ 5.0	
Westlaw	<u>\$ 5.0</u>	
	SUBTOTAL	\$ 94.5

Supplies (400 Line)

Office consumables	\$ 5.0	
Law library	\$ 5.0	
New position supplies (one time)	<u>\$ 5.0</u>	
	SUBTOTAL	\$ 15.0

Equipment (500 Line)

Office furniture and equipment, pc/word processing, etc. (one time)		<u>\$ 27.0</u>
	TOTAL FY 97	\$ 554.0

FISCAL NOTE

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BILL NO. HB 481

Fiscal Impact--FY 98

(These costs are in addition to FY 97 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage - Appellate Team

Attorney V Salary & Benefits	\$ 88.9
Attorney IV Salary & Benefits	\$ 83.6
Paralegal Assistant II Salary & Benefits	\$ 52.1
Legal Secretary I Salary & Benefits	<u>\$ 37.0</u>

Fairbanks - Trial Team

Attorney V Salary & Benefits	\$100.9	
Attorney IV Salary & Benefits	\$ 94.7	
Associate Attorney I Salary & Benefits	\$ 61.2	
Paralegal Assistant II Salary & Benefits	\$ 53.9	
Investigator II Salary & Benefits	\$ 53.9	
Legal Secretary I Salary & Benefits	\$ 38.3	
	SUBTOTAL	\$664.5

Travel (200 Line)

Staff travel, expert travel and per diem.	\$100.0
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Contractual (300 Line)

Expert witness fees (based on accrual of FY 97 and 98 cases)	\$120.0
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FISCAL NOTE

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Office space for Anchorage appellate team/Fairbanks trial team	\$ 30.0	
Training for Death Penalty Teams	\$ 10.0	
Communications	\$ 10.0	
Depositions	\$ 5.0	
Document production	\$ 5.0	
Westlaw	<u>\$ 8.0</u>	
	SUBTOTAL	\$ 188.0

Supplies (400 Line)

Office consumables	\$ 6.0	
Law library	\$ 4.0	
New position supplies (one time)	<u>\$ 8.0</u>	
	SUBTOTAL	\$ 18.0

Equipment (500 Line)

New position equipment (one time)		\$ 36.0
	SUBTOTAL FY 98	\$1006.5

FY 97 CONTINUING COSTS \$ 522.0

TOTAL FY 98 EXPENDITURES \$1528.5

Fiscal Impact--FY 99

(These costs are in addition to FY 97-98 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage - Appellate Team

Attorney V Salary & Benefits	\$ 88.9	
Attorney IV Salary & Benefits	\$ 83.6	
Paralegal Assistant II Salary & Benefits	\$ 52.1	

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1996 LEGISLATIVE SESSION

BILL NO. HB 481

Legal Secretary I Salary & Benefits	<u>\$ 37.0</u>	
	SUBTOTAL	\$261.6
 <u>Travel (200 Line)</u>		
Staff travel, expert travel and per diem.		\$100.0
 <u>Contractual (300 Line)</u>		
Expert witness fees (based on accrual of FY 97 and 98 cases)	\$120.0	
Office space for Anchorage appellate team	\$ 15.0	
Training for Death Penalty Teams	\$ 10.0	
Communications	\$ 10.0	
Depositions	\$ 10.0	
Document production	\$ 5.0	
Westlaw	<u>\$ 10.0</u>	
	SUBTOTAL	\$ 180.0
 <u>Supplies (400 Line)</u>		
Office consumables	\$ 6.0	
Law library	\$ 4.0	
New position supplies (one time)	<u>\$ 8.0</u>	
	SUBTOTAL	\$ 18.0
 <u>Equipment (500 Line)</u>		
New position equipment (one time)		\$ 18.0
	SUBTOTAL FY 99	\$ 577.6
 FY 98 CONTINUING COSTS		 <u>\$1484.5</u>
TOTAL FY 99 EXPENDITURES		\$2062.1
 <u>Fiscal Impact--FY 00</u>		

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

(These costs are in addition to FY 97-98-99 costs which will be carried over from year to year.)

Personal Services (100 Line)

Anchorage

Attorney V Salary & Benefits	\$ 88.9	
Associate Attorney I Salary & Benefits	\$ 53.8	
Investigator II Salary & Benefits	\$ 52.1	
Legal Secretary I Salary & Benefits	\$ 37.0	
	SUBTOTAL	\$231.8

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL \$ 50.0

Contractual (300 Line)

Expert witness fees	\$120.0	
Additional office space for death penalty staff in Anchorage	\$ 7.0	
Communications	\$ 15.0	
Printing	\$ 4.0	
Depositions	\$ 10.0	
Westlaw	\$ <u>10.0</u>	
	SUBTOTAL	\$ 166.0

Supplies (400 Line)

Office consumables	\$ 5.0
Law library	\$ 10.0

FISCAL NOTE

**STATE OF ALASKA
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New position supplies (one time)	<u>\$ 2.5</u>	
	SUBTOTAL	\$ 17.5

Equipment (500 Line)

Office furniture and equipment, pc/word processing, etc. (one time)		<u>\$ 15.0</u>
	SUBTOTAL FY 00	\$ 480.3

FY 99 CONTINUING COSTS	<u>\$2036.1</u>
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TOTAL FY 00 EXPENDITURES	\$2516.4
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Fiscal Impact--FY 01

(These costs are in addition to FY 97-98-99-00 costs which will be carried over from year to year.)

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

	SUBTOTAL	\$ 50.0
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Contractual (300 Line)

Expert witness fees	\$120.0	
Communications	\$ 15.0	
Printing	\$ 4.0	
Depositions	\$ 10.0	
Westlaw	<u>\$ 10.0</u>	
	SUBTOTAL	\$ 159.0

Supplies (400 Line)

Office consum. .bles	\$ 5.0	
Law library	<u>\$ 10.0</u>	
	SUBTOTAL	\$ 15.0
	SUBTOTAL FY 01	\$ 224.0

FISCAL NOTE

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BILL NO. HB 481

FY 00 CONTINUING COSTS	<u>\$2498.9</u>
TOTAL FY 01 EXPENDITURES	\$2722.9

Fiscal Impact--FY 02

(These costs are in addition to FY 97-98-99-00-01 costs which will be carried over from year to year.)

Travel (200 Line)

Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc. This includes both in-state and out-of-state travel.

SUBTOTAL	\$ 50.0
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Contractual (300 Line)

Expert witness fees	\$120.0
Communications	\$ 15.0
Printing	\$ 4.0
Depositions	\$ 10.0
Westlaw	<u>\$ 10.0</u>
SUBTOTAL	\$ 159.0

Supplies (400 Line)

Office consumables	\$ 5.0
Law library	<u>\$ 10.0</u>
SUBTOTAL	\$ 15.0

SUBTOTAL FY 02 \$ 224.0

FY 01 CONTINUING COSTS	<u>\$2722.9</u>
TOTAL FY 02 EXPENDITURES	\$2946.9

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act authorizing capital punishment....allowing.. BRU: Statewide Operations
the death penalty....murders committed against children..... Component: Spring Creek Correctional Center
 Sponsor: Representative Masek
 Requester: House Judiciary COMPONENT SERIAL NO. #0722

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	67.1	69.4	568.0	586.0	586.0	586.0
TRAVEL	3.0					
CONTRACTUAL	315.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS		97.6	8.6	17.2	25.8	34.4
TOTAL OPERATING	385.1	167.0	576.6	603.2	611.8	620.4

CAPITAL EXPENDITURES		1,785.0				
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	385.1	1,952.0	576.6	603.2	611.8	620.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	385.1	1,952.0	576.6	603.2	611.8	620.4

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	1	10				
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Law (DOL) estimates that based on current data, where death penalty aggravators occur, the DOL would probably seek the death penalty in three (3) cases, annually. The DOL expects that two (2) capital offense convictions will occur each year. Of this latter number, the DOL believe that the death penalty will be imposed once each year. Experience in states with a death penalty statute indicate that an individual remains on death row an average of 9.6 years from the time a death penalty sentence is imposed and the time the sentence is carried out. Using these estimates, the Department of Corrections must plan for a "Death Row" structure within an existing facility capable of holding at least ten (10) prisoners. Additionally, the facility would need to contain suitable structures for the execution itself.

The average age of Alaskan male inmates sentenced for murder in the first degree is 31 years old. It is assumed that each inmate sentenced to death will live until the day of execution or until age 73 years old; whichever comes first. Thus, it is assumed that each person sentenced to death will remain in the (Continued on page 2)

Prepared by: Joseph Reeves Phone: 465-4652
 Division: Office of the Commissioner Date: 4/15/96
 Approved by Commissioner: Margaret U. Pugh Margaret Pugh Date: 4/15/96
 Agency: Department of Corrections

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Fiscal Note

HB 481

"An Act authorizing capital punishment...allowing...the death penalty.."

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death row structure for the rest of their life and no allowances are made for appeals; commutations, sentence modifications, or other means of sentence reductions.

The "Death Row" structure would have to be built to the highest security standards. The cost of construction of a maximum security bed is \$180,000 to \$200,000 per bed. The lower figure is based on the assumption that the structure stated on this fiscal note would be built adjacent to the Spring Creek Correctional Center and some infrastructure construction cost savings could be realized. Construction would begin immediately and engineering (E) and design (D) funds have been included in the contractual line item for FY97 with construction to begin in FY98. It is expected that these funds would be transferred by Reimbursable Services Agreement to the Department of Transportation and Public Facilities. E&D costs are estimated at 15% of the total construction costs.

The Department would be required to construct special facilities in which to administer the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility would be in excess of \$300,000 assuming that it would be built in conjunction with the death row structure.

CONSTRUCTION COSTS

$(10 \text{ Bed Structure} \times \$180,000 \text{ per bed}) + \$300,00 = \$2,100,000$

$.15 \text{ E\&D} \times \$2,100,000 = \$315,000 \text{ in FY97}$

$\$1,800,000 + \$300,000 - \$315,000 = \$1,785,000 \text{ in FY98}$

The Department of Corrections does not expect to be required to house prisoners sentenced to the death penalty until FY99. The only staff necessary in FY98 would be a facilities manager to deal with DOC's responsibilities in the planning and design phase. The position will be carried on until completion of the project which is expected to be at least until the end of FY98. Actual operations of the structure would come on line in FY99, with staff hiring and training to begin in Mid FY98. The first year cost is estimated to be \$97.6.

Staffing of the structure would require nine correctional officers and one administrative support position. The estimated cost of these staff members would be \$568,000. Also, no inflation factor has been used. The structure will need to be fully staffed from the date of opening even though it will not be filled with inmates sentenced to death. If overcrowding exists at that time, other high security inmates could be housed there to mitigate the costs.

In addition, to staffing there are miscellaneous costs such as food service, and medical. The average cost of these services per inmate is \$23.62 a day. It is assumed that one inmate will be sentenced to death in FY99, and one additional inmate will be sentenced to death each following year. This figure has been used and is shown in the miscellaneous line simply because final design will determine the line item cost break down.

Fiscal Note

HB 481

"An Act authorizing capital punishment...allowing...the death penalty.."

4/15/96

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OPERATING COSTS

2 CO III X \$75,000 = \$150,000

7 CO II X \$54,000 = \$378,000

1 Admin Clerk III X \$40,000 = \$40,000

\$8621.30 per inmate, per year for miscellaneous costs

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 481

Revision Date: _____	Dept. Affected: <u>Alaska Court System</u>
Title: <u>Capital punishment... murders committed against children...</u>	BRU: <u>Trial Courts</u>
Sponsor: <u>Representative Masek</u>	Component: _____
Requestor: <u>Representative Masek</u>	COMPONENT SERIAL NO. <u>768</u>

Expnditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	169.2	169.2	169.2	169.2	169.2	169.2
TRAVEL	43.0	43.0	43.0	43.0	43.0	43.0
CONTRACTUAL	143.7	143.7	143.7	143.7	143.7	143.7
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	10.9					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	369.2	358.4	358.4	358.4	358.4	358.4

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

Fund Source	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	369.2	358.4	358.4	358.4	358.4	358.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	369.2	358.4	358.4	358.4	358.4	358.4

Estimate of any current year (FY 96) cost: \$ None

Positions	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Full-Time	2.0	2.0	2.0	2.0	2.0	2.0
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary	1.0	1.0	1.0	1.0	1.0	1.0

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by:	<u>C. S. Christensen III, Staff Counsel</u>	Phone:	<u>264-8228</u>
Agency:	<u>Alaska Court System</u>	Date:	<u>04/18/96</u>
Approved by:	<u>Arthur H. Snowden, II, Administrative Director</u>	Date:	<u>04/18/96</u>
Agency:	<u>Alaska Court System</u>		

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Alaska Court System

Fiscal Analysis

HB 481

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	\$48,300	\$29,779	\$78,079
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	36,672	14,935	51,507
Bailiff, Statewide, range 6A, NPP, 12 months	19,092	1,823	20,915
			<u>195,875</u>

Offset cost of existing caseload -

Currently, first degree murder cases experience a 50% trial rate and last approximately one month. Using this experience, the court could expect one to two trials and to incur approximately 1 to 2 months of trial. The proposed legislation will result in approximately 11 months of trial activity (see jury fees in the contractual section below). Therefore, the cost offset is computed at 1.5 months / 11 months of the expected personnel costs.

	<u>(26,700)</u>
Net personal services	<u>169,175</u>

Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use a 50% vested pro tem judge, which is among the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for a non-permanent bailiff, which will serve in the designated trial site.

Travel

Jury sequestration costs - transportation, meals and lodging	37,800
3 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day	

Offset cost of existing caseload -

See offset note in personal services.

	<u>(5,200)</u>
Net travel	<u>43,000</u>

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

Contractual

Jury fees - 3 innocence/guilt trial @ 66 days each (3 months), 18 jurors @ \$25 a day	108,900
and 2 sentencing trials @ 22 days each (1 month), 18 jurors @ \$25 a day	

Contractual security guard to staff metal detectors	1,000
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Transcription fees - 5 transcripts, 5,000 pages each at \$2.25 a page	56,250
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Freight for high security equipment kit	250
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Total contractual service	<u>166,400</u>
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Offset cost of existing caseload -

See offset note in personal services.

	<u>(22,700)</u>
Net contractual services	<u>143,700</u>

See additional note on contractual costs on the next page.

Alaska Court System
Fiscal Analysis (continued)
HB 481

The Department of Law expects to prosecute 3 capital offences related to children each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.

Supplies

Office and courtroom supplies for new positions and trials. 2,500

Equipment (one-time cost)

Standard office equipment and reference materials for law clerks 3,360

Portable high security equipment kit, consisting of a walk-through metal detector and other security system items. The security kit will be shipped to trial site. 7,500

10,860

Total estimated costs \$369,235

WRITTEN TESTIMONY OF AVERIL LERMAN

**Should there be an advisory vote on the death penalty in Alaska?
Should the Legislature pass a bill authorizing a death penalty for certain crimes?**

**RESPECTFULLY SUBMITTED to the members of the House Judiciary Committee:
Chairman Brian Porter, Vice Chair Joe Green, Con Bundle, Cynthia Tohey, Al
Vezey, Bettye Davis, Dave Finkelstein, on April 15, 1996**

My name is Averil Lerman. I ask you today to reject the advisory vote bill, and to reject any bill authorizing the death penalty in Alaska.

I come before you today as a legal historian, who has spent two years studying the history of the death penalty in Territorial Alaska between 1900 and 1957. My research was funded by the Alaska Humanities Forum and the National Endowment of the Humanities and the Alaska Native Justice Center. It has included extensive documentary review, in archives, libraries, and private collections. It also included collecting an oral history from more than 50 interviews of persons who were involved with or affected by the hangings in the territory.

My research suggests that communities who use the death penalty at first come to reject it. In Fairbanks, there were three hangings in the 1920's. After that decade, not one more person was hanged, although homicide in Fairbanks continued. The same thing happened in Juneau, where there were three hangings between 1939 and 1950, and then no further hangings, although homicide in Juneau also continued.

**Why did the Territorial Legislature abolish the death penalty in Alaska in 1957?
Why did the hangings stop? Why did juries no longer sentence murderers to death?**

My answer is that, with the death penalty, familiarity breeds contempt. People unfamiliar with the problems of capital punishment often think that maybe it is a good thing; maybe it will help us reduce violent crime; maybe it is fair to take a life for a life; maybe it is plain justice. People who have no experience with the death penalty, and no basis to evaluate it, may often think these things. I used to be such a person, and I used to think the death penalty might be a good idea.

But people who live with a death system in their state start to change their minds after watching it work for awhile. What people think about the death penalty changes once they get to know it. What they want is not what they get. Humans wield the sword of God in all too-human ways.

Some people change their minds when they see that execution is often based on race. In Alaska, after 1903, not one white person was hanged, although more than 75% of all homicides in the Territory were committed by white people. ¹

Some people change their minds about the death penalty when they see that execution is based on poverty: Rich men don't hang from that rope. In Alaska, rich men who committed murder, like Guy Prince and Harry de Groot in Juneau, never got a death sentence. O.J. Simpson and Claus von Bulow were never in danger of execution either.

Some people change their minds when they see that the death penalty is not just reserved for the people committing the worst crimes, and avoided with more common murders. In Juneau, the three men who were hanged in 1939, 1948, and 1950 had not committed murders showing them to be depraved psychopaths. One of them called the Marshal's office within 3 hours after the crime, to confess, but he was an Indian, and had no money, and no appeal, and he was hanged in 1939.

An advisory vote is a bad idea because Alaskans have no accessible experience with what a death penalty means. Should the legislature seek advice from an uninformed electorate? There is no reason at all that any Alaska voter would be informed about the reality of the death penalty, because the Alaska legislature banished government execution 40 years ago.

History has shown us that what people believe in the abstract about the death penalty is not the opinion that they hold once they have dealt with it at close quarters. The best example of this came from the mouths of two United States Supreme Court Justices, Justice Blackmun and Justice Powell. Both of these men were political conservatives. Both of them upheld the death penalty over decades of litigation. But in the past two years, each of them has publicly stated that he would change his vote on every death case that had ever come before him, if he could, if the men weren't already dead. Each of them stated that, after years of trying to create a fair death system, he had concluded that fairness in application was impossible.

Justice Blackmun and Justice Powell changed their minds about the death penalty only after decades of exposure to it. The juries in Juneau and in Fairbanks changed their minds about the death penalty ten years of exposure to it.

A responsible legislature, knowing that the electorate is uninformed, must, in light of these facts, take on the responsibility to first inform itself in making this decision. The legislature, not the people, has the ability to summon those most informed about this issue, and to question them. Call up the heads of corrections in California and Texas and Florida. Seek expert guidance from leading criminologists, like John Angel at the UAA Justice Center, and ask him to summarize the literature on whether homicide will be deterred by a death penalty. Quiz the treasurers of counties and cities in death states about whether or not the death system has caused them to fire police officers to pay for the death process.

¹ K.S.Kynell *A Different Frontier: Alaska Criminal Justice 1935-1965*, University Press of America, Inc., Lanham, MD, 1991.

You have been entrusted with the power of making difficult and complex decisions about public policy, We, your constituents, know that you must learn a great deal to make these hard decisions. Do not abandon us by failing to inform yourselves, and then passing the political hot potato to us, so that a bad decision can be justified by our bad advice.

Thank you for the opportunity to be heard on this most critical question.