

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8640 HOUSE JUDICIARY

§ 8.14 --When court order is desirable

Page 430, n. 106. In *State ex rel. Foley v. Landberg*, 131 A.D.2d 439, 542 N.Y.S.2d 610 (1989), the court found grandparent visitation appropriate when the father did not regularly exercise visitation with his son, in part because the father was incarcerated for drug possession. The court commented, "[I]n view of the finding that the grandparents had, and in the future might resume, an important loving role in [the child's] life, we believe that visitation rights, independent of the exercise of such rights by [the father] are appropriate." 542 N.Y.S.2d at 642.

Page 431, n. 108. *Accord* DEL. CODE ANN. § 10-950(7) (Supp. 1986) (prohibiting grandparent visitation if the natural or adoptive parents are alive, living together, and object to visitation) *But cf.* the statutes of Minnesota, New Mexico, Pennsylvania, and Texas, which specifically allow grandparent visitation if the grandchild has lived with the grandparent for a significant period of time (six to twelve months, depending on the state). For citation to these statutes, *see infra* § 8.19. *Cf. also* *Thompson v. Vanaman*, *supra* § 8.11, note 100 of this supplement.

White v. Jacobs, 198 Cal. App. 3d 122, 243 Cal. Rptr. 597 (1988) (holding that, in the absence of an express statutory provision, grandparents did not have a right to visitation with grandchildren of an intact marriage; the state's general provision regarding grandparent visitation contained in the dissolution statute was construed to apply only to cases in which a dissolution or nullity action was pending).

Page 431. *Add new section*

§ 8.14A —Constitutionality of grandparent visitation statutes (New)

The constitutionality of grandparent visitation statutes has been attacked by both grandparents and parents: grandparents claiming the statutes are too narrow and parents claiming the statutes are too broad, and thus intruding on family privacy. In recent cases, both arguments have been rejected and the statutes have been upheld.

In a case before the Delaware Family Court, grandparents challenged a statute which did not allow grandparents to seek visitation of grandchildren in an intact marriage.¹⁰⁸¹ The grandparents argued that not allowing them to seek visitation, while grandparents whose adult children were divorced, separated or deceased could seek visitation, violated due process and equal protection. The court ruled against the grandparents, finding that grandparents who had not had a custodial relationship with their grandchildren did not have a fundamen-

tal liberty interest in visitation which had been recognized at common law or elsewhere.

Furthermore, in response to the grandparent's equal protection argument, the Delaware court held it was reasonable for the legislature to create different standards for grandparent visitation depending on whether or not the parents cohabitated as husband and wife. The court said, "Stated simply, parents, natural or adoptive, living together as husband and wife are more likely to make decisions regarding with whom their children associate in a manner that protects the children's best interests. Personal animosity towards the other parent and his or her family is less likely to color this visitation decision."¹⁰⁸²

Another constitutional argument was raised by a custodial parent in a Florida case.¹⁰⁸³ The mother challenged the constitutionality of the state's grandparent visitation statute, which allowed the paternal grandparents to seek visitation following the death of the mother's husband. The mother argued that the statute which allowed grandparents to seek court ordered visitation was an invasion of her right of privacy and right to raise her children "as she sees fit." The appellate court rejected the argument, saying "The state has a sufficiently compelling interest in the welfare of children that it can provide for the continuation of relations between children and their grandparents under reasonable terms and conditions so long as that is in the children's interest."¹⁰⁸⁴

¹⁰⁸¹ *Ward v. Ward*, 537 A.2d 1063 (Fam. Ct. 1987).

Compare In re D.S., 806 P.2d 1143, 1145 (Okla. Ct. App. 1991), in which the court held, "Grandparents have no constitutional right to visitation with their grandchildren. These rights come from statutory authority." Nonetheless, the court found that the grandparents had standing in juvenile court to contest reduction of visitation which earlier had been granted by a divorce court.

¹⁰⁸² *Ward v. Ward*, 537 A.2d at 1070. The court also found that the statute in question did not violate principles of separation of powers between the legislature and the judiciary—particularly since no fundamental rights are involved. In closing, the court commented, "This opinion is not to be taken as the Court's endorsement of the position taken by the natural parents in this matter; indeed, the Court would remind them of what other courts have stressed: that it is the moral duty of parents to promote and strengthen association between grandchildren and grandparents."

¹⁰⁸³ *Benjamin v. Giroud*, 559 So. 2d 380 (Fla. Dist. Ct. App. 1990).

Id. at 382. Although finding the statute to be constitutional, the court held that the amount of visitation granted was excessive. The trial court gave the paternal grandparents visitation: one full day every other weekend, every other Wednesday evening for two hours, certain holidays, plus one week in the summer. The court held the record did not support such "extensive visitation rights." *Id.* at 383. The case was remanded for a new visitation schedule and findings in support.

§ 8.15 —When stepparent adopts child

Page 431, n. 109. Other states that have statutes allowing grandparent visitation following adoption by a stepparent include: North Carolina, Ohio, Pennsylvania, Virginia, and many others. For citation to these statutes, see *infra* § 8.19.

Id. *v. Smith*, 590 So. 2d 323 (Ala. Civ. App. 1991) (following Louisiana's statute and allowing visitation by paternal grandparents after adoption of children by stepfather).

Cf. Bosh v. Squellati, 154 Ill. App. 3d 727, 506 N.E.2d 972, 974-75 (1987) (holding that a grandparent visitation statute that allows grandparents to visit a child after adoption by a stepparent would not be construed to allow grandparent visitation after adoption of a child by an aunt and uncle (even though the aunt and uncle were related to the grandparents seeking visitation)).

Page 431, n. 111. In *Echols v. Smith*, 427 S.E.2d 820 (Ga. Ct. App. 1993), the court held that the paternal grandparents could not obtain visitation with their grandchildren after the father voluntarily terminated his parental rights and the children were adopted by their stepfather. The state's grandparent visitation statute allowed grandparent visitation after adoption only if the adoption was by a "blood" relative. A concurring judge said the legislature's limitation on grandparent visitation was "unfortunate" and did not allow full consideration of what may be best for the child. *Id.* at 821 (Blackburn, J., concurring).

Page 432, n. 113. *McVey v. Frederickson*, 226 Ill. App. 3d 1082, 1084, — N.E.2d — (1992) (in a case in which the grandparents cared for the child frequently after the father's death, the appellate court stated, "we find that while a different trial court may have granted more visitation, the instant trial court's grandparent visitation order of one Saturday per month [8 a.m. to 8 p.m.] was not an abuse of discretion").

Thompson v. Vanaman, 210 N.J. Super. 225, 509 A.2d 304 (Ch. Div. 1986) (granting visitation to grandmother on the third Saturday of each month from 10 a.m. to 6 p.m.). For a further description of this case, see *supra* § 8.11, note 100. See also *Sketo v. Brown*, discussed in note 108-1 *supra* in this supplement.

§ 8.16 —Procedure

Page 433, n. 114. *Quintella v. Rameri*, 117 A.D.2d 1019, 499 N.Y.S.2d 562 (1986) (reversing an order of grandparent visitation that was entered without

an evidentiary hearing and remanding the case so that a hearing could be held).

§ 8.17 Antagonism between the parties: effect on visitation

Page 434, n. 122. In *Strouse v. Olson*, 397 N.W.2d 651, 655 (S.D. 1986), the court affirmed termination of the paternal grandmother's visitation with her two granddaughters, ages ten and eight, who were in the custody of the father (the grandmother's son). The court found termination of visitation to be in the best interest of the children because of the "severe ill feelings, bitterness, and animosity" between the grandmother and the father. The grandmother had threatened the father's life, demeaned his new wife, and threatened to sue them over personal property matters. In addition, the children testified that they did not wish to visit with their grandmother any more. Aside from visitation no longer being in the children's best interest, the Iowa statutory law on which the visitation originally was based was interpreted as not permitting grandparent visitation when the child of the grandparent objected to visitation.

For discussion of the effect of antagonism between the parties when a stepparent seeks visitation, see *infra* § 8.18 in this supplement.

Page 435, n. 125. Compare *Truitt v. Truitt*, 65 Ohio App. 3d 126, 583 N.E.2d 331, 334-35 (1989), in which the court held that a mother's contempt of court and lack of cooperation in providing visitation to the paternal grandparents could not serve as a basis for placing custody of the children with the department of children's services. The court adopted the language of another court for the proposition that:

Too long have courts labored under the notion that divorced parents must somehow be perfect in every respect. The law should recognize that parents, married or not, are individual human beings each with his or her own peculiar virtues and vices. The children of married parents are expected to take their parents as they find them—as Oliver Cromwell said to his portraitist, "with warts and all." Whatever their faults, unless the married parent's conduct is harming the child, the courts will not intervene in the parent-child relationship.

583 A.2d at 334-35, quoting *Conkel v. Conkel*, 31 Ohio App. 3d 169, 171-72, 509 N.E.2d 983, 985-86 (1987). The court said other penalties for contempt could have been imposed and "We find it was unconscionable to award custody of the children to the county as punishment for contempt." 583 N.E.2d at 335.

Page 435. Change title of § 8.18 to:

§ 8.18 Visitation for stepparents and other third parties

Page 435, n. 127. States which specifically provide for stepparent visitation by statute include Oregon, Virginia, and Wisconsin. For citations to statutes see appendix at *infra* § 8.19. The Wisconsin Supreme Court, with three jus-

ices dissenting, held that the state's stepparent visitation statute applied only to actions for divorce between the stepparent and natural parent, and did not apply to a stepparent seeking visitation after death of the natural parent to whom the stepparent was married. *In re Marriage of Cox*, 177 Wis. 2nd 433, 502 N.W.2d 128 (Wis. 1993). The Chief Justice Heffernan commented in his dissent: "If the law is construed as the majority has construed it, the words of Charles Dickens in *Oliver Twist* are pertinent, 'If the law supposes that the law is a ass, a idiot'" 502 N.W.2d at 131.

Page 435, n. 128. *Cf. In re Marriage of Goetz*, 203 Cal. App. 514, 250 Cal. Rptr. 30 (1988) (holding that under California statutes, a stepparent may obtain visitation, but not joint custody).

Page 435, n. 129. *But see In re Boland*, 186 A.D.2d 1065, 588 N.Y.S.2d 485 (1992) (holding that a former stepmother lacked standing to seek visitation with her former stepdaughter). Compare this case with *In re Ronald FF, infra* n. 130, in which another New York court allowed a man who was led to believe he was the father to obtain visitation with a child even though he was not the father.

Page 436, n. 130. In *In re Custody of Banning*, 541 N.E.2d 283 (Ind. Ct. App. 1989), the court affirmed visitation for the stepmother following death of the father. The court noted that the stepmother had helped care for the child on a daily basis. The criteria in Indiana is: "To establish visitation, a third person must first show that a custodial and parental relationship exists and then, that visitation would be in the best interest of the child." *Id.* at 284.

In *Honaker v. Burnside*, 388 S.E.2d 322 (W. Va. 1989), the stepfather was able to obtain "liberal" visitation following the death of the custodial mother. The court noted that after the death of the mother, the two people closest to the six-year-old girl were her stepfather and her half brother. The natural father (who had kept contact with the child) was given custody as a natural right, but the court ordered a six-month transition period in which the stepfather would have custody and the father would have ever-increasing amounts of visitation until a transfer of custody after six months with visitation for the stepfather.

In *In re Ronald FF*, 117 A.D.2d 332, 502 N.Y.S.2d 823 (1986), a man who lived with the mother and child during much of the child's first two years of life and was listed on the child's birth certificate as father (although he was not the father) was found to be entitled to visitation under New York's "extraordinary circumstance" test for giving rights to third parties.

Similarly, in *In re Marriage of Dureno*, 854 P.2d 1352 (Col. Ct. App. 1983), a man who first learned at the time of the divorce that he was not the biological father of the child was able to obtain visitation. The court said, "Therefore, we hold that the trial court in a dissolution of marriage proceeding may grant visitation privileges to a stepparent or surrogate parent under the following conditions: (1) the nonparent is jurisdictionally capable of litigating custody; (2) the nonparent has acted in a custodial and parental capacity toward the minor child; and (3) visitation would be in the minor child's best interest." *Id.* at 1357.

But see In re Maricopa County Juvenile Action, 134 Ariz. 407, 650 P.2d 1208 (1982), in which the court provided the following dictum in a case involving termination of parental rights: "A stepfather has no legal right to custody or control of a minor child nor even a right of visitation. To give such rights to stepfathers would invade the rights of natural parents and would further endanger the welfare of children by pitting the rights of stepparents against those of the natural parents."

Compare *In re Marriage of Gayden*, 229 Cal. App. 3d 1510, 280 Cal. Rptr. 802 (1991), in which the court rejected a visitation request by a woman who moved in with the custodial father and later sought visitation with the child when the relationship terminated. In *Gayden*, the woman said she lived with the custodial father and the child from the time the child was seven months old until the child was about 1 1/2 years old. She then moved out, but continued to see the child until the child was 3 1/2 years old. (The father disputed the length of the time periods.) At the time the woman sought visitation, the father and his former wife were attempting to reconcile, and they both opposed visitation by the woman. The appellate court denied visitation, stating "Where the parents are united in opposition, visitation must not be allowed unless it is clearly and convincingly shown that denial of visitation would be detrimental to the child." 280 Cal. Rptr. at 867.

In a case somewhat similar to *Gayden*, the court in *Cooper v. Merkel*, 470 N.W.2d 253 (S.D. 1991), held that a man who had lived with a woman and her son for seven years did not state a cause of action for visitation with the boy in the absence of an allegation that the mother was unfit or had engaged in misconduct. Under the court's ruling, the man's assistance in raising the boy was not a sufficient basis for seeking visitation. For commentary applicable to this case, see the "Comment" in *infra* § 8.18A.

Page 437, n. 134. *Cf. Klipstern v. Klipstern*, 230 N.J. 567, 553 A.2d 1384 (Ch. Div. 1988) (holding that a stepfather was not entitled to visitation when his marriage to the child's mother lasted less than one year; the stepfather had not paid support; and the child had a natural father with whom the child apparently had a good relationship).

Page 437. *Add at end of section:*

As with grandparent visitation,¹³⁴¹ the existence of a high degree of animosity between the divorcing stepparent and natural parent can result in a finding that visitation with the party seeking visitation will not be in the child's best interest. In one case in which a stepmother sought visitation upon divorce from the natural father (who had custody of the children), the court commented:

Ideally, had the parties been capable of controlling their animosity and hostility toward one another, we would agree that the trial court may well have found that continuing stepmother's visitation would have been in the child

legislature could expand "parental" rights to cover situations, but the courts would not do so.

In the California case, the court said that expanding the definition of "parent" to cover this case "could expose other natural parents to litigation brought by child-care providers of long standing, relatives, successive sets of step-parents or other close friends of the family.... By deferring to the Legislature in matters involving complex social and policy ramifications far beyond the facts of a particular case, we are not telling the parties that the issues they raise are unworthy of legal recognition. To the contrary, we intended only to illustrate the limitations of the courts in fashioning a comprehensive solution to such a complex and socially significant issue."^{134.10}

COMMENT: Just as a child can have a very significant relationship with a stepparent which could justify visitation, and even custody,^{134.11} so too can a child have such a relationship with a person who has lived with the parent and child and served as a parent to the child. The fact that both "parents" are of the same sex does not diminish the child's potential attachment to both parties as well as both parties' attachments to the child. Granting custody or visitation to a party who is not related by blood or adoption to a child is an extraordinary circumstance which should be done with caution, but it nonetheless should be done if it will serve the best interest of the child.

^{134.10} *Alison D. v. Virginia M.*, 77 N.Y.2d 651, 569 N.Y.S.2d 586, 572 N.E.2d 27 (1991); *Nancy S. v. Michele G.*, 228 Cal. App. 3d 831, 279 Cal. Rptr. 212 (1991).

^{134.11} *But compare In re Adoption of Evan*, 153 Misc. 2d 844, 583 N.Y.S.2d 997 (Sup. Ct. 1992) in which the court approved adoption of a six-year-old boy by the lesbian life-partner of the biological mother. The biological mother and her partner decided to have a child together and obtained sperm from a friend who relinquished any claims to the child. The adoption was recommended by a guardian ad litem and two licensed social workers. The court

stated, "Here this Court finds a child who has all of the above benefits and *two* adults dedicated to his welfare, secure in their loving partnership, and determined to raise him to the very best of their considerable abilities. There is no reason in law, logic, or social philosophy to obstruct such a favorable situation." 583 N.Y.S.2d at 1002 (court's emphasis). The court also cited several trial court opinions from other states approving adoptions by lesbian partners. *Id.* The court also noted that in the event the couple separated, the lesbian partner would be entitled to seek visitation.

^{134.12} *In re Interest of Z.J.H.*, 157 Wis. 2d 431, 459 N.W.2d 602 (Ct. App. 1990).

^{134.13} 9228 Cal. App. 3d at ___, 279 Cal. Rptr. at 219.

^{134.14} For discussion of visitation and custody for stepparents and other third parties, see *supra* §§ 8.06, 8.07 and 8.18.

§ 8.19 Appendix: Grandparent visitation statutes

Pages 438-447. Add new text:

The grandparent visitation statutes cited in this section are part of the divorce statutes of the respective states unless otherwise indicated. For discussion of the significance of including a general grandparent visitation provision as part of a divorce statute, see *supra* § 8.11 and the cases cited under California and Wisconsin, in this supplement.

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| <i>Alabama</i> | Ala. Code § 30-3-4 (1989), allowing visitation on death or divorce of parents, and under general provision if grandparent has been unreasonably denied visitation with the child for a period exceeding 90 days. |
| <i>Alaska</i> | Alaska Stat. § 25.24.150 (Supp. 1991), allowing visitation on death, divorce, or separation of parents. |
| <i>Arizona</i> | Ariz. Rev. Stat. Ann. § 25-337.01 (West 1991), allowing visitation on death or divorce of parent, or if parent has been missing three months. |
| <i>Arkansas</i> | Ark. Code Ann. § 9-13-103 (1991), allowing visitation on death, divorce, or separation of parents. |
| <i>California</i> | Cal. Fam. Code §§ 3102—3104 (West 1994), allowing visitation on death, divorce, or separa- |

ration of parents, but not if parents live together in an intact marriage, unless one of the parents joins in a petition of the grandparent who seeks visitation

Colorado:

Colo. Rev. Stat. § 19-1-117 (West 1990), recodifying statute allowing grandparent visitation on death or divorce of parents, or upon child being placed with party other than parent.

Connecticut:

Conn. Gen. Stat. Ann. §§ 46b-57, 46b-59 (1986), allowing visitation to "any person" according to the best interest of the child.

Delaware:

Del. Code Ann. § 10-950(7) (Supp. 1988), containing a general provision for grandparent visitation, but prohibiting an order of visitation if both parents object and they cohabit and live as husband and wife.

Georgia:

The parallel provision to the Official Code is Ga. Code Ann. § 74-112 (Harrison Supp. 1989), allowing visitation on death or divorce of the parents, or upon termination of parental rights.

Illinois:

750 Ill. Comp. Stat. § 5/607(b) (West 1993), allowing grandparent or sibling visitation on separation, divorce, or death of parent, or if a parent joins in the petition for visitation. The statute, as amended in 1991, does away with a former provision which allowed a court to give grandparents or siblings visitation for children in intact marriages even if both parents opposed visitation.

Indiana:

Ind. Code Ann. § 31-1-11.7-2 (Burns Supp. 1993), allowing visitation on death or divorce of parents or if child is born out of wedlock.

Iowa:

Iowa Code Ann. § 598.35 (West Supp. 1990), allowing visitation on death or divorce of

parents, or upon foster placement of the child.

Kentucky:

Ky. Rev. Stat. Ann. § 405.021 (1984), general visitation provision.

Louisiana:

La. Rev. Stat. Civ. Code Ancillaries § 9:572 (West 1991), allowing visitation on death or divorce of the parents; however, a grandparent may seek visitation only if the parent to whom the grandparent is related does not have custody.

Maine:

Me. Rev. Stat. Ann. tit. 19, § 752(6) (West Supp. 1989), providing "[t]he court may award reasonable rights of contact with a minor child to any 3rd persons."

Maryland:

Md. Fam. Law Code § 9-102 (Michie Supp. 1993), allowing grandparent visitation if it is in the best interest of the child (and deleting former requirement that visitation was granted only on death or divorce of parent).

Massachusetts:

Mass. Gen. Laws Ann. § 119-39D (West Supp. 1992), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, and as part of paternity proceedings.

Michigan:

Mich. Comp. Laws Ann. §§ 722.27(b) & 722.27b (Supp. 1990), allowing grandparent visitation on death or divorce of parents, or upon placement of custody of the child with a person other than a parent.

Minnesota:

Minn. Stat. Ann. § 257.022 (West Supp. 1991), providing grandparents may seek visitation on death or divorce of parents, or if child has lived with grandparent 12 months or more; a non-grandparent may seek visitation if the child has lived with that person more than two years.

- Mississippi*: Miss. Code Ann. §§ 93-16-1 & 93-16-3 (West Supp. 1990), allowing visitation on death or divorce of the parents, or upon termination of parental rights. The statute also provides a general grandparent visitation provision (§§ 93-16-3(2)–93-16-3(4)) under which any grandparent may petition for visitation and obtain visitation rights if the grandparent "had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child, and . . . visitation rights of the grandparent with the child would be in the best interests of the child." "Viable relationship" requires financial support of the grandchild for six months and frequent visitation, including occasional overnight visitation, for not less than one year. This general grandparent provision will be repealed automatically on July 1, 1992, unless there is further action by the legislature.
- Missouri*: Mo. Rev. Stat. § 452.402 (Vernon Supp. 1990), recodifying statute allowing grandparent visitation on death or divorce of parents. The statute also allows visitation when "[a] grandparent is unreasonably denied visitation with the child for a period exceeding 90 days."
- Montana*: Mont. Code Ann. § 40-9-102 (1989), containing general provision for grandparent visitation.
- Nebraska*: Neb. Rev. Stat. §§ 43-1801–43-1803 (1986), allowing visitation on death or divorce of the parents.
- Nevada*: Nev. Rev. Stat. Ann. §§ 125A.330 & 125A.340 (Supp. 1989), recodifying statute allowing grandparent and sibling visitation on death, divorce, or separation of parents, or upon termination of parental rights.
- New Hampshire*: N.H. Rev. Stat. Ann. §§ 458:17(VI), 458:17-d (Supp. 1990), general grandparent visitation provision enumerating eight factors for consideration relating to quality of grandparent-grandchild relationship and degree of conflict between grandparent and parent.
- New Jersey*: N.J. Stat. Ann. § 9:2-7.1 (West Supp. 1990), allowing grandparent or sibling visitation on death, divorce, or separation of parents. See also *Thompson v. Vanaman*, 210 N.J. Super. 225, 509 A.2d 304 (Ch. Div. 1986) (holding that the court had "inherent equitable jurisdiction as well as jurisdiction pursuant to court rules" to grant visitation in circumstances other than death and divorce of the parents). *Thompson* is described further in § 8.11, note 100 *supra* of this supplement.
- New Mexico*: N.M. Stat. Ann. §§ 40-9-1–40-9-4 (1989), allowing visitation on death or divorce of parents, or if child has lived with grandparents six months or more.
- New York*: N.Y. Dom. Rel. Law §§ 72 & 240(1) (McKinney Supp. 1990), allowing visitation on death, divorce, or separation of parents. The statute (§ 72) also contains a general visitation provision: "Where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions may exist which equity would see fit to intervene," the grandparent may seek visitation.
- Ohio*: Ohio Rev. Code Ann. § 3109.051 (Page's Supp. 1990), allowing visitation to grandparent, relative, or any other person if action relates to divorce or support; the statute lists

- 15 factors for consideration. § 3109.11 provides for visitation upon death of parent.
- Oklahoma:* Okla. Stat. Ann. tit. 10, § 5 (West Supp. 1990), allowing visitation upon termination of parental rights; plus a general visitation provision not in the divorce statute—providing: "any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child."
- Oregon:* Or. Rev. Stat. Ann. §§ 109.119, 109.121 & 109.123 (Butterworth 1990), general visitation and custody provision, allowing "any person" including, but not limited to, a grandparent, stepparent, relative by blood or marriage, and foster parent who has "established emotional ties creating a parent-child relationship" to seek visitation or custody regardless of whether other proceedings are pending (a "parent-child relationship" includes providing day-to-day care for the child); the statute also provides that third parties with an "ongoing personal relationship with substantial community for at least one year with the child" (or three years for foster parents) may seek visitation; another provision of the statute applying specifically to grandparents allows grandparents to seek visitation if: "(A) The grandparent has established or has attempted to establish ongoing personal contact with the child; (B) The custodian has denied the grandparent reasonable opportunity to visit the child."
- Pennsylvania:* Pa. Cons. Stat. Ann. tit. 23, §§ 5311-5314 (Purdon Supp. 1990), allowing visitation on death or divorce of the parents or after the child had lived with the grandparent for one year.
- Rhode Island:* R.I. Gen. Laws §§ 15-5-24.1—15-5-24.3 (Supp. 1988), allowing visitation on death or divorce of parents; the grandparents must present "clear and convincing evidence" to rebut a presumption that the parents' refusal of visitation was reasonable.
- South Dakota:* S.D. Codified Laws Ann. §§ 25-4-52, 25-4-56 (Smith 1984 & Smith Supp. 1990), general grandparent visitation provision. "The circuit court may grant grandparents reasonable rights of visitation with their grandchild, with or without petition by the grandparents, if it is in the best interest of the grandchild." The statute is part of South Dakota's divorce laws, but the general nature of the visitation provision is reflected by the legislature's repeal of a section of the law which limited visitation to cases involving the death or divorce of the parents.
- Tennessee:* Tenn. Code Ann. § 36-6-301 (Michie Supp. 1990), general "best interests" visitation provision, including for children in the custody of non-parents.
- Texas:* Tex. Fam. Code Ann. § 14.03(c) (Vernon Supp. 1990), allowing visitation in a variety of circumstances, including: the death, divorce, separation, or incarceration of the parents; abuse or neglect of the child; termination of parental rights; and cases in which the child resided with the grandparent for at least six months.
- Utah:* Utah Code Ann. § 30-3-5(4) (Michie Supp. 1993), providing: In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child." (The phrase "other members of the immedi-

cluding death, divorce, or separation of parents, or if child had lived with grandparents for six consecutive months, or in connection with juvenile proceedings.

- ate family" was substituted for the phrase "other relatives.")
- Vermont:* Vt. Stat. Ann. tit. 15, §§ 1011-1016 (1989), allowing visitation on death or divorce of the parents.
- Virginia:* Va. Code § 20-107.2 (1990), allowing visitation upon divorce of the parents; visitation can be for grandparents, stepparents, or other family members.
- Washington:* Wash. Code Ann. 26.09.210 (West Supp. 1990), providing, "The court may order visitation rights for a person other than the parent when visitation may serve the best interest of the child whether or not there has been any change of circumstances."
- West Virginia:* W. Va. Code §§ 48-2-15(b)(1) & 48-2B-1 - 48-2B-9 (Michie Supp. 1993), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, or if child had resided with grandparent for six consecutive months during the preceding two years, or when child was born out of wedlock.
- Wisconsin:* Wis. Stat. Ann. § 767.245 (West 1993), allowing visitation to grandparents, stepparents, and other persons who have maintained a relationship with the child similar to a parent-child relationship. *Van Cleeve v. Hemminger*, 111 Wis. 2d 513, 115 N.W.2d 571 (App. Ct. 1987), holding that Wisconsin's former general visitation statute which allowed visitation if "it is in the best interest and welfare of the child" did not include a right to seek visitation of grandchildren in an intact marriage.
- Wyoming:* Wyo. Stat. Ann. §§ 20-2-113(c) & 20-7-101 (Michie Supp. 1993), allowing visitation of grandparent in several circumstances, in-

1989



APPENDIX A

GRANDPARENT VISITATION STATUTES^a

State	Citation to Statute	On Death ¹ of Parent	On Divorce ² of Parents	After Living with ³ Grandparent	General ⁴ Provision
1. Alabama	Ala. Code §30-3-3 (1983)	X	X		X
2. Alaska	Alaska Stat. §25.24.150 (1983)	X	X		
3. Arizona	Ariz. Rev. Ann. §25-337.01 (Supp. 1987)	X	X		
4. Arkansas	Ar. Stat. Ann. §9-13-103 (Supp. 1987)	X	X		
5. California	Cal. Civ. Code §§197.5, 4601 (West 1984 & Supp. 1987)	X			X
6. Colorado	Colo. Rev. Stat. §19-1-116 (1986)	X	X		
7. Connecticut	Conn. Gen. Stat. Ann. §§46b-59, -59a (West 1986 & Supp. 1988)				X
8. Delaware	Del. Code Ann. tit. 10, §950(7) (Supp. 1986)		X		X
9. Florida	Fla. Stat. §61.13(2) (b)2c (Supp. 1987)		X		
10. Georgia	Ge. Code Ann. §19-7-3 (Supp. 1988)	X			
11. Hawaii	Haw. Rev. Stat. §571.46(7) (1985)		X		
12. Idaho	Idaho Code §32-1008 (1983)				X
13. Illinois	Ill. Ann. Stat. ch.40, para. 607(b) (c) (Smith-Hurd Supp. 1988)	X	X		
14. Indiana	Ind. Code Ann. §§31-1-11.7-1 to .7-8 (Burns 1987 & Supp. 1988)	X	X		

^aReprinted, with minor editorial and substantive changes, from J. Atkinson 2 Modern Child Custody Practice §8.19 (1986 & Supp. 1987)

FOOTNOTES

- 1 Under this type of provision, visitation could be granted to a grandparent whose son or daughter (the parent of the child) died.
- 2 Several statutes also specifically provided for grandparent visitation while the parents are separated, where the marriage was annulled, or where there are or have been child custody proceedings.

- 3 The length of the time in which the child lived with the grandparent triggered the right of the grandparent to seek visitation: twelve months (Minnesota and Pennsylvania) and six months (Texas and New Mexico).
- 4 "General provision" refers to visitation statutes which did not specify or restrict the circumstances under which a grandparent could obtain visitation.

State	Citation to Statute	of Parent	of Parents	Grandparent	Provision
15. Iowa	Iowa Code Ann. §§598.35, .36 (West 1987 & Supp. 1988)	X	X		
16. Kansas	Kan. Stat. Ann. §60-1616(b) (Supp. 1987)				X
17. Kentucky	Ky. Rev. Stat. Ann. §405.021 (Baldwin 1984)				X
18. Louisiana	La. Rev. Stat. Ann. §9:572 (West Supp. 1988)	X	X		
19. Maine	Me. Rev. Stat. Ann. tit. 19, §752 (Supp. 1988)				X
20. Maryland	Md. Fam. Law Code Ann. §9-102 (1984)		X		X
21. Massachusetts	Mass. Gen. Laws Ann. ch.119, §39D (West Supp. 1988)	X	X		
22. Michigan	Mich. Comp. Laws Ann. §§722.72(b), 722.72b (West Supp. 1988)	X	X		
23. Minnesota	Minn. Stat. Ann. §257.022 (West 1982 & Supp. 1988)	X	X	X	
24. Mississippi	Miss. Code Ann. §§93-16-1, -3, -5, -7 (Supp. 1988)	X	X		X
25. Missouri	Mo. Ann. Stat. §§452.400, .402 (Vernon 1986)	X	X		
26. Montana	Mont. Code Ann. §§40-9-101 to -102 (1987)				X
27. Nebraska	Neb. Rev. Stat. §§43-1801 to -1803 (Supp. 1986)	X	X		
28. Nevada	Nev. Rev. Stat. §§125A.330, .340 (1987)	X	X		
29. New Hampshire	N.H. Rev. Stat. Ann. §458:17 VI (1983)		X		X
30. New Jersey	N.J. Stat. Ann. §9:2-7.1 (West Supp. 1988)	X	X		
31. New Mexico	N.M. Stat. Ann. §§40-9-1 to -4 (1986 & Supp. 1988)	X	X	X	
32. New York	N.Y. Dom. Re. Law §§72, 240(1) (McKinney 1986 & 1988)	X	X		X
33. North Carolina	N.C. Gen. Stat. §§50-13.2(b1), .2A, .5(j) (1987)		X		
34. North Dakota	N.D. Cent. Code §14-09-05.1 (Supp. 1987)				X
35. Ohio	Ohio Rev. Code Ann. §3109.05(B) (Anderson Supp. 1987)		X		
36. Oklahoma	Okla. Stat. Ann. tit. 10, §5 (West 1987)	X	X	X	
37. Oregon	Or. Rev. Stat. §§109.121, .123 (1987)	X	X		X

	State	Citation to Statute	On Death ¹ of Parent	On Divorce ² of Parents	After Living with ³ Grandparent	General ⁴ Provision
38.	Pennsylvania	23 Pa. Cons. Stat. Ann. §§5311-5314 (Purdon Supp. 1988)	X		X	
39.	Rhode Island	R.I. Gen. Laws §§15-5-24.1 to .2 (1981 & Supp. 1987)	X	X		
40.	South Carolina	S.C. Code Ann. §20-7-420(33) (Law. Co-op. 1976)				X
41.	South Dakota	S.D. Codified Laws Ann. §§25-4-52 to -54 (1984)	X	X		X
42.	Tennessee	Tenn. Code Ann. §36-6-301 (Supp. 1988)				X
43.	Texas	Tex. Fam. Code Ann. §14.03(u)-(g) (Vernon Supp. 1988)	X	X	X	
44.	Utah	Utah Code Ann. §30-3-5(4),(7) (Supp. 1988)				X
45.	Vermont	Vt. Stat. Ann. tit. 15, 1011-1016 (Supp. 1988)	X	X		
46.	Virginia	Va. Code Ann. §20-107.2 (Supp. 1988)		X		
47.	Washington	Wash. Rev. Code Ann. §26.09.240. (Supp. 1988)				X
48.	West Virginia	W. Va. Code §§48-2-15(b)(1), 48-2B-1 (1986)	X	X		
49.	Wisconsin	Wis. Stat. Ann. §767.245 (West Supp. 1988)				X
50.	Wyoming	Wyo. Stat. §20-2-113(c) (Supp. 1988)	X	X		

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No 1
Bill Version: SSSB 27
(S) Publish Date: 3/1/95

Revision Date: _____ Dept. Affected: Alaska Court System
Title: An Act relating to child visitation rights BRU: Trial Courts
of grandparents and other persons Components: _____
Sponsor: Sens. Donley, Ellis, Lincoln
Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
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 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
Agency: Alaska Court System Date: 02/21/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 02/21/95
Agency: Alaska Court System

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Alaska State Legislature

Chairman
Judiciary Committee

Vice Chairman
Transportation Committee

Member
Resources Committee
Western Legislative Forestry Task Force



State Capitol
Juneau, Alaska 99801
907-465-3873
Fax: 907-465-3922

352 Front Street
Ketchikan, Alaska 99901
907-225-8088
Fax: 907-225-0714

Senator Robin L. Taylor

Memorandum

DATE: April 4, 1995

TO: Representative Brian Porter, Chairman
House Judiciary Committee

FROM: Senator Robin Taylor 

SUBJECT: CSSB 41(JUD), relating to reports by foreign fishing vessels not registered under the laws of the state

Thank you for the hearing on CS for Senate Bill 41(JUD). This legislation would require foreign fishing vessels transiting or lying in state waters to report their catch by species, quantity and the area where harvested.

It was introduced at the request of the Ketchikan Trollers Committee. In a letter to me and Representative Williams the trollers committee stated that this requirement would result in better harvest information during the season. The letter continued "southeast Alaskan fishermen are suffering irreparable harm at the U.S./Canada Pacific Salmon Treaty due to the inability or unwillingness of fishery managers in British Columbia to monitor this growing fishery." This legislation would allow the Alaska Department of Fish and Game to better monitor in-season catch statistics.

The fishery is located in southern Southeast Alaska off of Cape Chacon and Cape Muzon. In a period of five years the fishery has gone from a relatively minor one with a dozen or so trollers to a modern freezer fleet, that at times exceeds 100 vessels. These boats are targeting Alaskan and Canadian salmon just off our coast. Since a run to Canadian harbors is some 30 miles across waters exposed to the ocean -- the Canadian boats more often than not anchor in state waters until their holds are full.

While it would be ideal to have the board of fish implement this for the upcoming season, timing considerations probably preclude this from occurring until next year. The Department of Fish and Game has said this measure will be given a zero fiscal note.

Attached is backup and a sponsor statement for the committee packets. A sectional analysis will follow soon.

District A

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Alaska State Legislature

Chairman
Judiciary Committee

Staff Chairman
Transportation Committee

Member
Resources Committee
Western Legislative Conference Task Force



State Capitol
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Ketchikan, Alaska 99901
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Senator Robin L. Taylor

CS for Senate Bill 41(JUD)

Sponsor Statement

Relating to reports by fishing vessels not registered under the laws of the state

This legislation would require foreign fishing vessels transiting or lying in state waters to report their catch by species, quantity and the area where harvested.

The bill was introduced at the request of the Ketchikan Trollers Committee in response to the rapid expansion of the fishery off Cape Muzon and Cape Chacon. It has gone from a relatively minor fishery with a dozen or so trollers, to a modern freezer fleet, that is at times in excess of 100 vessels. It will be possible to monitor this fishery because a transit to Canadian harbors is some 30 miles across waters exposed to the ocean -- so the ships often anchor in state waters until their holds are full.

The CS makes changed the phrase "Foreign fishing vessels" to "unlicensed fishing vessel" and defines an unlicensed fishing vessel as a vessel that is not licensed under AS 16.05.490 - 530. This change eliminates possible confusion with federal statutes which place a different definition on "foreign fishing vessels".

In a letter to Senator Taylor and Representative Williams, the trollers committee states, "southeast Alaskan fishermen are suffering irreparable harm at the U.S./Canada Pacific Salmon Treaty due to the inability or unwillingness of fishery managers in British Columbia to monitor this growing fishery." The letter continues, "these reporting requirements would result in better harvest information during the season."

While it would be ideal to have the board of fish implement this for the upcoming season, timing considerations preclude this from occurring until next year. The Department of Fish and Game has given this measure a zero fiscal note. I encourage your support of this measure.

District A:

Hoyer • Ketchikan • Eganmoff • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

**Proposal by the Ketchikan Trollers Committee
to require that all foreign salmon fishing vessels that enter Alaskan waters
be required to report to the Alaska Department of Fish & Game**

The Problem -

Within the last five years there has been a dramatic increase in the number of Canadian salmon trollers fishing in the "disputed waters" at the Alaskan border near Cape Chacon and Cape Muzon and anchoring each night in Alaskan harbors (Nichols Bay and McLeod Bay). A border fishery that once attracted no more than a dozen trollers now has, at times, in excess of 100 vessels targeting Alaskan and Canadian salmon. Many of these vessels are state-of-the-art freezer trollers, with large crews, that are able to fish until their holds are full.

The magnitude and effect of this shift in salmon harvesting from the British Columbia side of Dixon Entrance over towards the Alaskan border is impossible to determine because:

- a. there is absolutely minimal monitoring of their border fishery by the British Columbia enforcement vessels,
- b. the reporting requirements for British Columbia fishermen are extremely lax,
- c. B.C. salmon managers are unable (or unwilling) to provide information in a timely and appropriate manner, and
- d. what data is available does not adequately differentiate the sub-areas in or near Dixon Entrance in which salmon harvesting has occurred.

The lack of appropriate information about this growing border fishery may mask an overharvest of Alaskan stocks and definitely harms Alaska during negotiations of the U.S./Canada Pacific Salmon Treaty.

The Solution -

Most of the Canadian trollers that participate in the border fishery in this "disputed" zone are allowed (for safety considerations) to anchor each night in harbors that are undisputedly in the jurisdiction of the United States and the State of Alaska. It is the recommendation of the Ketchikan Trollers Committee that legislation be enacted to require the operators of all foreign fishing vessels with salmon aboard that enter undisputed Alaskan waters to report the following information to the Alaska Department of Fish & Game:

- a. the quantity of salmon, per species, aboard the vessel, and
- b. the area where these fish have been harvested.

Additional Details -

- a. the "report" should be provided in person or via radio-telephone to the nearest ADF&G office or Fish & Wildlife Protection enforcement vessel within 48 hours of entering Alaska and prior to departing Alaskan waters (note that British Columbia has an extremely effective marine radio network that enables all vessels in the area of Dixon Entrance to access the land-based telephone systems).
- b. the reported harvest area and catch should be specific enough to allow ADF&G to accumulate data to evaluate the overall potential of these harvests to impact Alaskan stocks,
- c. failure to provide a timely or accurate report will subject the offending fisherman to a substantial fine and/or seizure of the vessel and its fishhold contents,
- d. failure to report prior to departing Alaskan waters will subject the offending vessel and its owners to a fine and/or seizure if the vessel again enters Alaska,
- e. Alaskan fishery enforcement officers and ADF&G personnel should be authorized and directed to board foreign fishing vessels in undisputed Alaskan waters in order to enforce these regulations.

DIVISION OF LEGAL 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 11, 1995

SUBJECT: Draft CSSB 41 (JUD); Reports by certain fishing vessels
(Work Order No. 9-LS0445\C)

TO: Senator Robin Taylor

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is a draft CSSB 41 (JUD). This draft CS addresses certain technical issues concerning SB 41 that were raised by the United States Coast Guard.

In particular, the CS avoids the use of two terms ("foreign fishing vessel" and "registered under the laws of the state") that may be confusing to many people. The term "foreign fishing vessel" is replaced by "unlicensed fishing vessel." The term "registered under the laws of the state" is replaced by "licensed under AS 16.05.490 - 16.05.530."

In SB 41, "foreign fishing vessel" means any fishing vessel that is not licensed under the laws of Alaska and would include any fishing vessel from another country (Canada, Japan, etc) or from another state (Washington, Oregon, etc.) that is not licensed in Alaska. In this sense "foreign" means non-Alaskan. A fishing vessel becomes an Alaskan fishing vessel by being licensed under the laws of the state.

Also in SB 41, "registered under the laws of the state" means any fishing vessel that is not licensed in Alaska. But to many people and especially many federal agencies the term "registered" refers to a Coast Guard sanctioned system of state registration and numbering of boats. Alaska is the only state in the country that has not assumed responsibility for registering boats within its territorial limits. When the term "registered" is used many people automatically think of the boat registration system that is in place in other states, but not in Alaska. Since Alaska does not have a comparable registration system there is a possibility for some confusion.

SB 41, as introduced, would achieve its goal of allowing the Board of Fisheries to compel non-Alaskan fishing vessels to report certain information to the Department of Fish and Game. The proposed changes are not necessary to make the bill effective. However, the proposed changes will make the bill easier to understand by eliminating technical legal terms that may lead to confusion.

If I may be of further assistance, please advise.

GU:lmb
95-117.lmb
Enclosure

Alaska State Legislature



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1142
907-465-6573
FAX 907-465-6222

32 Front Street
Ketchikan, Alaska 99901
907-225-8088
FAX 907-225-0771

Memorandum

DATE: March 2, 1995

TO: Senator Mike Miller, Chairman
Senate Rules Committee

FROM: Senator Robin Taylor *RT*

RE: SB 41 Federal agency jurisdictional
question

cc: Senate Resource Committee Members

While Senate Bill 41 was being considered in the Senate Resources Committee Senator Pearce expressed concern about possible federal jurisdiction regarding SB 41, her concerns have been addressed. After the bill was referred to the Judiciary Committee, I sent a letter to the United States Coast Guard asking for comments. They articulated concerns with nomenclature in the legislation and so the Judiciary Committee adopted a committee substitute to address their expressed concerns.

The Coast Guard indicated the U.S. Department of Commerce might want to comment. Commerce sent a letter stating they had no comments to offer at this time. I have attached both letters to this memorandum for your review.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth Coast Guard
District

P.O. Box 25517
Juneau, AK 99802-5517
Staff Symbol: (d1)
Phone: (907)463-2050

16214

FEB 15 1995

The Honorable Robin L. Taylor
Alaska Senate
State Capitol
Juneau, AK 99801-1182

Dear Mr. Taylor:

My legal officer reviewed Senate Bill No. 41 (SB 41) at your request. Our analysis is limited solely to the impact of the proposed legislation on Coast Guard missions, and on statutes and regulations we enforce or administer.

Our primary concern with SB 41 is with terminology. The proposed legislation defines "foreign fishing vessel" as "a fishing vessel which is not registered under the laws of the state." I understand the intent of SB 41 is to limit the reporting requirement to vessels which do not have an Alaska Department of Fish & Game permit. However, these terms are legal terms of art under the Magnuson Act, 16 U.S.C. §1801 et. seq., and the vessel documentation laws at 46 U.S.C. Chapter 121. Under the Magnuson Act, a foreign fishing vessel is generally a vessel which is not a vessel of the United States. "Certificate of registry", "register", and "registry" all refer to a registry endorsement as provided for in 46 U.S.C. §12105. The use of these terms in the proposed legislation could be a potential source of confusion.

Our other concern is that SB 41 does not identify the mechanism for making these reports. Relaying these reports through our communications facilities could place an undue burden on our ability to respond to a distress call, or accomplish other missions.

The Magnuson Act generally does not diminish the authority of a state within its boundaries. However, under 16 U.S.C. §1856 the Secretary of Commerce may make certain exceptions. Therefore, I recommend you also discuss this proposed legislation with the National Oceanic and Atmospheric Administration General Counsel for Alaska.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. T. Rufe Jr.", written over a printed name.

E. T. RUFÉ JR.
Rear Admiral, U.S. Coast Guard
Commander,
Seventeenth Coast Guard District



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box - 21109
Juneau, Alaska 99802-1109
Telephone (907) 586-7414

February 16, 1995

Mr. George Utermohle
Office of Legislative Affairs
Division of Legal Service
Juneau, Alaska

Re: SB 41

Dear Mr. Utermohle,

Thank you for the opportunity to review draft SB 41. NOAA does not have any comments to offer at this time.

Sincerely

Jonathan Pollard
Staff Attorney



FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 1
Bill Version: SB 41
(S) Publish Date: 2/6/95

Revision Date: _____ Dept. Affected: Fish and Game
Title: Reports by Fishing Vessels Not Registered BRU: Commercial Fisheries Manage. & Dev.
Under the Laws of the State. Component: Fisheries Management
Sponsor: Senator Taylor
Requester: Senate Resources COMPONENT SERIAL NO. 1941

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY95) cost: \$ 0.0

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)

The proposed legislation should not have any fiscal or programmatic impact on the Commercial Fisheries Management and Development Division.

Prepared by: Bob Cleasby *RC*
Division: Commercial Fisheries Management and Development
Approved by Commissioner: *Frank*
Agency: _____

Phone: 485-4210
Date: 1/26/95
Date: 1-30-95

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(7)

Date Referred to Committee: April 30, 1996

FURTHER REFERRALS:

Date of Committee Action: 5/2/96

The JUDICIARY Committee considered:

CSSB 43(L&C)

CS FOR SENATE BILL NO. 43(L&C)

ARCHITECTS, ENGINEERS, LAND SURVEYORS

"An Act relating to registration by the Board of Registration for Architects, Engineers, and Land Surveyors; clarifying the meaning of practicing or offering to practice architecture, engineering, or land surveying; and amending the definition of 'practice of land surveying.'"

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) _____ [zero fiscal note(s) Commerce (3-12-96)]

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Brian D. Porter</i>	<input checked="" type="checkbox"/>			
<i>Joseph [unclear]</i>	<input checked="" type="checkbox"/>			
<i>John [unclear]</i>	<input checked="" type="checkbox"/>			
<i>[unclear]</i>	<input checked="" type="checkbox"/>			
<i>[unclear]</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<i>[unclear]</i>	<input checked="" type="checkbox"/>			
<i>Betty [unclear]</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE Brian Porter

9-LS0497W
Lauterbach
5/1/96

HOUSE CS FOR CS FOR SENATE BILL NO. 43()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to registration by the Board of Registration for Architects,
2 Engineers, and Land Surveyors; clarifying the meaning of practicing or offering
3 to practice architecture, engineering, or land surveying; and amending the
4 defintion of 'practice of land surveying.'"

5 BE IT ENACTED BY THE LEGISLATURE OF THE S' ALASKA:

6 * Section 1. AS 08.48.191(b) is amended to read:

7 (b) A person holding a certificate of registration authorizing the person to
8 practice engineering in a state, territory, or possession of the United States, the District
9 of Columbia, or a foreign country, that, in the opinion of the board meets the
10 requirements of this chapter, based on verified evidence, may, upon application, be
11 registered in accordance with regulations of the board. [A PERSON HOLDING A
12 CERTIFICATE OF QUALIFICATION ISSUED BY THE NATIONAL COUNCIL OF
13 EXAMINERS FOR ENGINEERING AND SURVEYING MAY, UPON
14 APPLICATION, BE REGISTERED IN ACCORDANCE WITH THE REGULATIONS

1 OF THE BOARD.]

2 * Sec. 2. AS 08.48 is amended by adding a new section to read:

3 Sec. 08.48.215. **RETIRED STATUS REGISTRATION.** (a) On retiring from
4 practice and payment of an appropriate one-time fee, an individual who is a registrant
5 in good standing with the board may apply for the conversion of a certificate of
6 registration to a retired status registration. An individual holding a retired status
7 registration may not practice architecture, engineering, or land surveying in the state.
8 A retired status registration is valid for the life of the registration holder and does not
9 require renewal.

10 (b) An individual with a retired status registration may apply for a certificate
11 of registration. Before issuing a certificate of registration under this subsection, the
12 board may require the applicant to meet reasonable criteria as determined under
13 regulations of the board. The criteria may include submission of continuing education
14 credits and reexamination requirements.

15 * Sec. 3. AS 08.48.321 is amended to read:

16 Sec. 08.48.321. **EVIDENCE OF PRACTICE.** A person practices or offers to
17 practice architecture, engineering, or land surveying who

18 (1) practices a branch of the profession of architecture, engineering, or
19 land surveying as defined in AS 08.48.341;

20 (2) by verbal claim, sign, advertisement, letterhead, card, or other
21 means represents to be an architect, engineer, or land surveyor, or through the use of
22 some other title implies that the person is an architect, engineer, or land surveyor; or

23 (3) holds out as able to perform or who does perform an architectural,
24 engineering, or land surveying service recognized by the professions covered by this
25 chapter, and specified in regulations of the board, as architectural, engineering, or land
26 surveying.

27 * Sec. 4. AS 08.48.341(10) is amended to read:

28 (10) "practice of land surveying" means any service or work the
29 adequate performance of which involves the application of special knowledge of the
30 principles of mathematics [, **THE RELATED SCIENCES,**] and the relevant
31 requirements of law for adequate evidence of the act of measuring and locating land.

1 geodetic and cadastral surveys for the location and monumentation of property
2 boundaries, for the platting and planning of land and subdivisions, and for the
3 preparation and perpetuation of maps, record plats, [FIELD NOTE RECORDS,] and
4 property descriptions that represent these surveys;

FISCAL NOTE

o. 1

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSSB 43(L&C)

(S) Publish Date: 3/12/96

Revision Date: _____
 Title: An Act relating to registration by the Board of Registration
for Architects, Engineers, and Land Surveyors;....
 Sponsor: Senator Leman
 Requestor: Senate Labor & Commerce

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations

COMPONENT SERIAL NO. 1844

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						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other 1091 Designated PR						
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						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSSB 43(L&C) makes amendments to the meaning of practicing or offering to practice in the architects, engineers, and land surveyors statutes; and creates a registration for retired status. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: March 8, 1996
 Date: 3-8-96

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William W. Mendenhall
1907 Yankovich Road
Fairbanks, AK 99709-6540
Phone 479-2786
Fax 479-2531

May 2, 1996

via Fax

To: Chairman Brian Porter Fax 465-3834
Con Bunde Fax 465-3871
Al Vezey Fax 465-3258

Re: CS SB 43 (Labor & Commerce)

As the Land Surveyor member of the Alaska Board of Architects, Engineers, and Land Surveyors, and also a registered civil engineer, I strongly oppose any change in the proposed AS 08.48.341 (10).

The original bill was meant to allow land surveyors to lay out streets, grades, etc. on plats. Such change was necessary, because some people had thought that only engineers could lay out streets on plats. This bill would not preclude other surveyors from doing the construction surveying they have been doing for years.

I urge you to pass this bill in its original form

I will be testifying on this bill via teleconference at 1:00 p.m. today.

To: Terry Lauderbach
From: Al Vezy
Proposal for House CS
Words to be deleted in section 4
are bracketed.

9-LS0497U

CS FOR SENATE BILL NO. 43(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/12/96
Referred: Finance

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to registration by the Board of Registration for Architects,
2 Engineers, and Land Surveyors; clarifying the meaning of practicing or offering
3 to practice architecture, engineering, or land surveying; and amending the
4 definition of 'practice of land surveying.'"

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

6 * Section 1. AS 08.48.191(b) is amended to read:

7 (b) A person holding a certificate of registration authorizing the person to
8 practice engineering in a state, territory, or possession of the United States, the District
9 of Columbia, or a foreign country, that, in the opinion of the board meets the
10 requirements of this chapter, based on verified evidence, may, upon application, be
11 registered in accordance with regulations of the board. [A PERSON HOLDING A
12 CERTIFICATE OF QUALIFICATION ISSUED BY THE NATIONAL COUNCIL OF
13 EXAMINERS FOR ENGINEERING AND SURVEYING MAY, UPON
14 APPLICATION, BE REGISTERED IN ACCORDANCE WITH THE REGULATIONS

1 **OF THE BOARD.]**2 * **Sec. 2. AS 08.48 is amended by adding a new section to read:**3 **Sec. 08.48.215. RETIRED STATUS REGISTRATION. (a)** On retiring from
4 practice and payment of an appropriate one-time fee, an individual who is a registrant
5 in good standing with the board may apply for the conversion of a certificate of
6 registration to a retired status registration. An individual holding a retired status
7 registration may not practice architecture, engineering, or land surveying in the state.
8 A retired status registration is valid for the life of the registration holder and does not
9 require renewal.10 (b) An individual with a retired status registration may apply for a certificate
11 of registration. Before issuing a certificate of registration under this subsection, the
12 board may require the applicant to meet reasonable criteria as determined under
13 regulations of the board. The criteria may include submission of continuing education
14 credits and reexamination requirements.15 * **Sec. 3. AS 08.48.321 is amended to read:**16 **Sec. 08.48.321. EVIDENCE OF PRACTICE.** A person practices or offers to
17 practice architecture, engineering, or land surveying who18 (1) practices a branch of the profession of architecture, engineering, or
19 land surveying as defined in AS 08.48.341;20 (2) by verbal claim, sign, advertisement, letterhead, card, or other
21 means represents to be an architect, engineer, or land surveyor, or through the use of
22 some other title implies that the person is an architect, engineer, or land surveyor; or23 (3) holds out as able to perform or who does perform an architectural,
24 engineering, or land surveying service recognized by the professions covered by this
25 chapter, and specified in regulations of the board, as architectural, engineering, or land
26 surveying.27 * **Sec. 4. AS 08.48.341(10) is amended to read:**28 (10) "practice of land surveying" means any service or work the
29 adequate performance of which involves the application of special knowledge of the
30 principles of mathematics [the physical and applied related sciences] and the relevant
31 requirements of law for adequate evidence of the act of measuring and locating land.

1 geodetic and cadastral surveys for the location and monumentation of property
2 boundaries, for the platting and planning of land and subdivisions of land, including
3 the topography, alignment, and grades for streets and for the preparation and
4 perpetuation of maps, record plats field note records and property descriptions that
5 represent these surveys;



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

MEMORANDUM

TO: Representative Brian Porter, Chairman
House Judiciary Committee

FROM: Senator Loren Lemman

A handwritten signature in cursive script that reads "Loren Lemman".

DATE: April 30, 1996

RE: SB 43

I respectfully request that SB 43 be waived from the House Judiciary Committee.

SB 43 makes two changes to AS 08.48 requested by the Board of Registration for Architects, Engineers and Land Surveyors.

The first change provides ability for the Board to discipline improper representation by non-registrants. This is a change suggested to the board by the Department of Law. The second change is an update to the definition of land surveying.

Finally, the bill provides for a "retired engineer" status. This was requested by several engineers who are no longer active in the engineering profession. The Board supports this request.

This bill was heard in the House Labor & Commerce Committee today and was reported without opposition. I am not aware of any opposition to this bill.

Thank you for your consideration.



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

SPONSOR STATEMENT

SENATE BILL 43

"An Act relating to Architects, Engineers and Land Surveyors..."

SB 43 makes two changes to AS 08.48 requested by the Board of Registration for Architects, Engineers and Land Surveyors.

The first change provides ability for the Board to discipline improper representation by non-registrants. This is a change suggested to the board by the Department of Law. The second change is an update to the definition of land surveying.

Finally, the bill provides for a "retired engineer" status. This was requested by several engineers who are no longer active in the engineering profession. The Board supports this request.

I urge your support of this bill.

SB

46

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 8
Bill Version: SSA 4.1.14
(S) Publish Date: 3-22-95

Revision Date: _____
Title: "An Act revising the provision of law under which a minor may be charged...as an adult in the district court..."
Sponsor: Sen. Taylor
Requestor: (S) FIN

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
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 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

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

phone: 264-4400
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 3/22/95

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FISCAL NOTE

Bill Version: SB 46^{rc} Sub Am
 (S) Publish Date: 3.6.95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: 3/3/95 Dept. Affected: Department of Law
 Title: "...revising the provisions ... under which a minor
may be charged, prosecuted, and sentenced as an adult ..." BRU: Prosecution
 Sponsor: Senator Taylor Component: All
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
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 (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Senate Judiciary Committee amendment to SB 46 changes the penalty for possession, control, or consumption of an alcoholic beverage by a minor from a class A misdemeanor to a violation. Consequently, the costs shown in the Department of Law fiscal note analysis of 2/24/95 will not be required, because the large majority of misdemeanor cases expected were for the offense of possession, control, or consumption. Although we anticipate an increase in paperwork and forms processing, this increased work does not warrant fiscal note costs. Generally, violations are presented in District Court by arresting officers and the services or prosecutors (or publically paid defenders) are not required.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/3/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/3/95
 Agency: Department of Law

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FISCAL NOTE

Bill Version: SA 11-0000

3 (S) Publish Date: 3/6/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: <u>03/03/95</u>	Dept. Affected: <u>Alaska Court System</u>
Title: <u>Prosecute juvenile as adult in District</u>	BRU: <u>Trial Courts</u>
Court: _____	Components: _____
Sponsor: <u>Sen. Taylor, Kelly, Pearce</u>	
Requestor: _____	COMPONENT SERIAL NO. <u>768</u>

EXPENDITURES/REVENUES	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	64.5	64.5	64.5	64.5	64.5	64.5
TRAVEL						
CONTRACTUAL	0.5	0.5	0.5	0.5	0.5	0.5
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	1.0					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	66.9	65.9	65.9	65.9	65.9	65.9
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	66.9	65.9	65.9	65.9	65.9	65.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	66.9	65.9	65.9	65.9	65.9	65.9

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: <u>C. S. Christensen III, Staff Counsel</u>	Phone: <u>264-8228</u>
Agency: <u>Alaska Court System</u>	Date: <u>03/03/95</u>
Approved by: <u>Arthur H. Snowden, II, Administrative Director</u>	
Agency: <u>Alaska Court System</u>	Date: <u>03/03/95</u>

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Alaska Court System
Fiscal Analysis
CSSB 46 (JUD)

At the present time, a minor is charged, prosecuted and sentenced in the district court in the same manner as an adult if the minor is accused of committing certain infractions, violations, or misdemeanors. These include traffic statutes, regulations or ordinances; AS 11.76.105, relating to the possession of tobacco by a minor; fish and game statutes or regulations under AS 16; and parks and recreational facilities statutes or regulations under AS 41.21.

CSSB 46 (JUD) adds certain new misdemeanor offenses to this list. These include AS 04.16.049, relating to access to licensed premises; 04.16.051, relating to furnishing of alcoholic beverages to a minor; AS 04.16.060, relating to alcoholic beverage purchases; and any misdemeanor drug offense defined in AS 11.71 or AS 17.30. CSSB 46 (JUD) also adds a new infraction to this list, AS 04.16.050, relating to possession or consumption of alcohol. This infraction would require a mandatory court appearance.

The practical effect of this legislation is to take a number of juveniles who previously had been dealt with by the juvenile justice system (DFYS and the superior court) and move them to the adult system (district court). Statistics obtained from DFYS indicate that in FY 94, DFYS handled 138 cases involving the additional misdemeanors listed in CSSB 46 (JUD), and 1116 cases involving the infraction of minor consumption. DFYS handled approximately 1173 of those cases without filing a delinquency petition with the superior court. None of the 81 cases referred to superior court resulted in a jury trial. Thus, actual costs to the court system were relatively low. On the other hand, if CSSB 46 (JUD) had been law in FY 94, virtually all 1254 cases would have gone straight to the court system (understand that police officers generally file citations for infractions and misdemeanors directly with the court, not with the municipal prosecutor or the district attorney; thus, prosecutors do not serve a screening function that will keep some of these cases out of court). There would have been judicial costs associated with 138 additional misdemeanor arraignments, approximately 136 sentencing hearings, judicial costs associated with 1116 additional infraction arraignments, clerical costs associated with processing the citations and collecting the fines, and a trial rate of approximately two percent (the rate at which adults go to trial for misdemeanors and infractions) resulting in additional judicial time and juror costs. The misdemeanor trials would have been expected to last one day, and utilize a six member jury. The infraction trials would have been expected to last under one hour and would not have required a jury.

Note that the actual number of charged offenses is likely to increase dramatically as a result of the changes made by CSSB 46 (JUD). It is common for state troopers and municipal police officers to simply take juveniles home with a warning when they are caught committing the specified offenses, rather than refer them to DFYS; while DFYS received 1254 referrals in FY 94 for the listed offenses, the Division of Motor Vehicles was notified by police officers of juvenile alcohol or drug use over 3200 times (this was done for purposes of revoking the minor's driver's license or privilege to obtain a license pursuant to AS 28.15.183). The reason that officers generally do not refer these offenses to DFYS is to avoid overloading DFYS with relatively minor cases when its resources have been strained by the substantial increase in serious juvenile crime. This is likely to change if the officer is empowered to simply write a citation for the juvenile to appear before a magistrate as an adult. This note assumes that the court system will receive 2000 citations for processing which involve cases that were not previously seen by either DFYS or the court system.

Alaska Court System

Fiscal Analysis

CSSB 46

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
In-Court Clerk, 12A, Anchorage, PPT, 4 months	\$9,036	\$2,385	\$11,421
Committing Magistrate, range 22A, PPT, Anchorage, 4 months	17,768	4,689	22,457
Court Clerk II, 10A, Anchorage, PFT, 12 months	24,012	11,440	35,452
			<hr/>
Total Personal Services			69,330
Offset of judicial time (master and superior court judge) for 81 superior court juvenile cases estimated at one hour each.			<hr/> (4,849)
Net Personal Services			64,481

This legislation will require over 80 hours of court time for a committing magistrate for arraignments and trials. For purposes of this analysis, this time requirement is offset by a reduction in the time currently used by superior court judges and standing masters for petition review. Most of the new cases will be processed as citations, approximately one clerical position is needed for every 3,000 citations.

Contractual

Jury fees - 3 one-day trials with 6 jurors at \$25 a day 450

Supplies

Offices supplies for processing additional cases 1,000

Equipment

Desk, chair and filing cabinet for permanent full-time position

1,000

Total estimated cost

\$66,931

Alaska State Legislature



Senator Robin L. Taylor

Sponsor Statement

Senate Bill 46

Senate Bill 46 was introduced at the urging of parents concerned with the lack of consequences within the juvenile justice system when a minor is arrested for an alcohol related offense.

Most of SB 46 is a re-write of existing law. The drafter took the occasion of complying with my request to address alcohol issues by re-ordering the material already in AS 47.10.010 (b). Juveniles are already exempted from juvenile delinquency rules for traffic offenses, tobacco related offenses and fish and game statutes, etc.

SB 46 would add alcohol and controlled-substance related offenses to that list and provide that such cases be handled in district court. A parent, guardian or individual with legal custody would have to be present at all proceedings.

The bill, as amended by the Judiciary and Finance Committees, would change minor consuming from its current misdemeanor status to that of an infraction, punishable by a fine of not less than \$100. More importantly, by moving the jurisdiction in these cases to district court, a judge would be able to intervene in cases of alcohol abuse which are currently falling through the cracks in the juvenile justice system. Often a minor must commit a serious crime in conjunction with alcohol before intervention takes place.

District A:

Hyder • Ketchikan • Kupreanof • Mevers Chuck • Petersburg • Saxman • Sitka • Wrangell

STATE OF ALASKA
LEGISLATIVE COUNCIL
152 Front Street
Sitka, Alaska 99781
907 225 9088
FAX 907 225 9713

Judiciary Committee
Transportation Committee
Resources Committee
Western Legislative Forestry Task Force

Sponsor Statement- SB 46
Page Two

The Finance Committee substitute for SB 46 included a provision that would add minor consuming to the list of situations where a law enforcement officer can make an arrest without a warrant. This is intended to address a problem in the First Judicial District where the court has ruled that an officer must actually witness the consumption before an intoxicated minor can be arrested.

The Rules Committee substitute added language, which appears on page two, beginning at line 27, to make clear that the intent is protective and not punitive. The new language requires that a person under 18 subjected to a warrantless arrest be cited and then released to a responsible adult.

MEMO

To: Rep. Brian Porter, Chair

From: Anne Carpeneti,
Staff Counsel

Subject: CSSB 46 (RLS) *AK*

Date: April 17, 1995

The reference bill deals with juveniles as they relate to the justice system. It provides the following:

1/ Changes the penalty for minor consuming alcohol from an A misdemeanor to a violation with penalty of a fine of at least \$100;

2/ Allows a peace officer to arrest a person for minor consuming without actually seeing the person consume the alcohol; however, if the minor is under 18 the bill provides the person should be cited for the violation and released to his or her parents or guardian;

3/ Adds to the criminal jurisdiction of the district court the power to hear cases of minor consuming (a violation under the bill) and minor in possession of tobacco (also a violation);

4/ AS 47.10.010 is the basic statute setting out the jurisdiction of the superior court for juvenile cases; the bill amends subsection (b) of the statute which excepts certain offenses from juvenile court jurisdiction and directs that the cases be handled in district court as if the person were an adult; the bill amends this subsection by expanding the type of offense where the child is treated as an adult in district court; specifically, new areas of law include:

- a/ Minor entering licensed premises, and none of the exceptions apply, for example entering a dining room with parents (AS04.16.049);
- b/ Minor consuming or possessing alcohol (AS04.16.050);
- c/ A minor furnishing alcohol to a minor (AS04.16.051);
- d/ Illegal purchase of alcoholic beverages (AS04.16.060);
- e/ Violation of controlled substances statutes in Title 11 which are misdemeanors;
- f/ Violation of the controlled substances misdemeanors in AS 17.30 (prescription drugs, etc.)

I spoke with Margot in the Department of Law; they have no problem with making minor consuming a violation and the automatic waiver in those cases. They do have concerns about the possibility of automatic waiver of juveniles for the other additions which are A misdemeanors. Apparently Sen. Taylor wanted it this way, though Margot said she wasn't able to understand the rationale. Sen. Adams offered an amendment on the floor deleting the A misdemeanors from the automatic waiver, but the amendment failed.

CS FOR SENATE BILL NO. 46(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Offered: 4/7/95

Referred: Today's Calendar

Sponsor(s): SENATORS TAYLOR, Kelly, Pearce, Phillips, Leman

A BILL

FOR AN ACT ENTITLED

1 "An Act revising the provision of law under which a minor may be charged,
2 prosecuted, and sentenced as an adult in the district court, and adding to the
3 list of offenses for which a minor may be prosecuted as an adult in the district
4 court; amending the criminal jurisdiction of the district court to provide for the
5 disposition of certain offenses relating to possession, control, or consumption of
6 alcoholic beverages by a person under 21 years of age and possession of
7 tobacco by a person under 19 years of age; allowing a person under age 21
8 to be arrested by a peace officer without a warrant for acts relating to illegal
9 possession, consumption, or control of alcohol; and amending the penalty
10 applicable to persons under 21 years of age who possess, control, or consume
11 alcoholic beverages."

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

SB0046C

-1-

CSSB 46(RLS)

New Text Underlined (DELETED TEXT BRACKETED)

Engrossed

COMMITTEE COPY

1 * Section 1 AS 04.16.050 is amended by adding a new subsection to read:

2 (b) A person who violates (a) of this section is guilty of a violation. Upon
3 conviction in the district court, the court may impose a fine of not less than \$100.

4 * Sec. 2. AS 04.16.180(a) is amended to read:

5 (a) Except as provided in AS 04.11.015, AS 04.16.050(b), 04.16.051
6 [AS 04.16.051], 04.16.200 - 04.16.210, and AS 04.21.065, a person who violates a
7 provision of this title or a regulation adopted by the board is guilty, upon conviction,
8 of a class A misdemeanor. Each violation is a separate offense.

9 * Sec. 3. AS 12.25.030(b) is amended to read:

10 (b) In addition to the authority granted under (a) of this section, a peace officer
11 without a warrant may arrest a person when the peace officer has reasonable cause for
12 believing that the person

13 (1) has committed a crime under, or violated conditions imposed as part
14 of the person's release before trial on misdemeanor charges brought under

15 (A) [(1)] AS 11.41.270 or AS 11.56.740; or

16 (B) [(2)] AS 11.41, AS 11.46.330, or AS 11.61.120, or has
17 violated an ordinance with elements substantially similar to the elements of a
18 crime under AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a
19 spouse or former spouse of the person who committed the crime; a parent,
20 grandparent, child, or grandchild of the person who committed the crime; a
21 member of the social unit comprised of those living together in the same
22 dwelling as the person who committed the crime; or another person who is not
23 a spouse or former spouse of the person who committed the crime but who
24 previously lived in a spousal relationship with the person who committed the
25 crime or is in or has been in a dating, courtship, or engagement relationship
26 with the person who committed the crime; or

27 (2) has violated AS 04.16.050; however, unless there is lawful
28 reason for further detention, a person who is under the age of 18 and who has
29 been arrested for violating AS 04.16.050 shall be cited for the offense and released
30 to the person's parent, guardian, or legal custodian.

31 * Sec. 4. AS 22.15.060(a) is amended to read:

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The district court has jurisdiction

(1) of the following crimes:

- (A) a misdemeanor, unless otherwise provided in this chapter;
- (B) a violation of an ordinance of a political subdivision;
- (C) a violation of AS 04.16.050 or AS 11.76.105;

(2) to provide post-conviction relief under the Alaska Rules of Criminal Procedure, if the conviction occurred in the district court.

* Sec. 5. AS 47.10.010(b) is amended to read:

(b) When a minor is accused of violating a statute specified in this subsection, other than [A TRAFFIC STATUTE OR REGULATION, A TRAFFIC ORDINANCE OR REGULATION OF AN INCORPORATED MUNICIPALITY, AS 11.76.105 RELATING TO THE POSSESSION OF TOBACCO BY A MINOR, A FISH AND GAME STATUTE OR REGULATION UNDER AS 16, OR A PARKS AND RECREATIONAL FACILITIES STATUTE OR REGULATION UNDER AS 41.21, EXCEPTING] a statute the violation of which is a felony, [THE PROCEDURE PRESCRIBED IN] AS 47.10.020 - 47.10.090 and the Alaska Delinquency Rules do not apply and the [MAY NOT BE FOLLOWED, EXCEPT THAT A PARENT, GUARDIAN, OR LEGAL CUSTODIAN SHALL BE PRESENT AT ALL PROCEEDINGS. THE] minor accused of the [AN] offense [SPECIFIED IN THIS SUBSECTION] shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult. If a minor is charged, prosecuted, and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian shall be present at all proceedings. The provisions of this subsection apply when a minor is accused of violating

(1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;

(2) AS 11.76.105, relating to the possession of tobacco by a person under 19 years of age;

(3) a fish and game statute or regulation under AS 16;

(4) a parks and recreational facilities statute or regulation under AS 41.21;

mc
to
tobacco

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- (5) each of the following statutes relating to alcoholic beverages:
 - (A) AS 04.16.049, relating to access to licensed premises:
 - (B) AS 04.16.050, relating to possession or consumption:
 - (C) AS 04.16.051, relating to furnishing of alcoholic beverages; or
 - (D) AS 04.16.060, relating to alcoholic beverage purchases:
- and
- (6) an offense defined in AS 11.71 or AS 17.30.

* Sec. 6. APPLICABILITY. This Act applies to an offense committed on or after the effective date of this Act.

*murder/manslaughter
drug offenses*

S B

5 2

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

April 19, 1996

TO: Members of House Judiciary Committee

FROM: Tom Meyer

RE: Fiscal notes for death penalty bills

Attached are incomplete sets of fiscal notes for SB 52 (missing OPA and updated Public Safety) and HB 481 (missing Public Safety, Courts) for your review for these bills. The next hearing for these bills is likely Monday, April 22, 1996, as "bills held from previous calendars".

FISCAL NOTE

No. 3

Bill Version: CS SS SB 52 (JUD)

(S) Publish Date: 3/28/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 03/25/96
Title: Capital Punishment for Murder
Sponsor: Sens. Taylor, Pearce
Requestor: Senate Judiciary

Dept. Affected: Alaska Court System
BRU: Trial Courts
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						
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)

*002 Federal Receipts						
1003 GF Match						
1004 GF		0.0	0.0	0.0	0.0	0.0
*005 GF/Program Receipts						
*007 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

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

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

Phone: 264-8228
Date: 03/25/96

Date: 03/25/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 2
 B) Bill Version: CS SSS852(JWD)
 (S) Publish Date: 3/28/96

Revision Date: March 18, 1996 Dept. Affected: Public Safety
 Title: Capital Punishment for Murder BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Senator Taylor
 Requestor: S. Finance 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	9.0	0.0	0.0	0.0	0.0

CAPTITAL EXPENDITURES						
------------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

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

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

POSITIONS:

FULL - TIME						
PART - TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of State Troopers. The impact of this bill on the division is the possibility of troopers having to attend court proceedings that they do not currently have to attend.

Prepared By: Li. Dan Lowden Phone: 465-5505
 Division: Alaska State Troopers Date: March 18, 1996
 Approved by Commissioner: Ronald L. Otte Date: 3/19/96
 Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

No. 1
 Bill Version: CSSSSR 52(TUD)
 (S) Publish Date: 3/12/96

**STATE OF ALASKA
 1996 LEGISLATIVE SESSION**

Revision Date: 3/7/96 Dept. Affected: Office of the Governor
 Title: An Act authorizing capital punishment BRU: Elective Operations
 authorizing an advisory vote on instituting capital punishment Component: General and Primary Elections
 Sponsor: Senator Taylor
 Requester: Senate Judiciary COMPONENT SERIAL NO. 22

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the question. However, only four measures can be printed on a single ballot card. If this measure requires an additional ballot card, the costs will increase by \$53.4.

Prepared by: Dana LaTour Phone: 465-5347
 Division: Division of Elections Date: 3/7/96
 Approved by: Lt. Governor Fran Ulmer Date: 3/7/96
 Commissioner: John Lundbeck, Jr.
 Agency: Office of the Lt. Governor

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Revision Date: _____
 Title: "An Act authorizing capital punishment..."

 Sponsor: Senator Taylor
 Requestor: (S) 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		770.4	1032.0	1638.7	1638.7	2496.3
TRAVEL		50.0	150.0	250.0	350.0	450.0
CONTRACTUAL		184.8	468.2	896.6	1256.6	1699.6
SUPPLIES		25.0	24.0	33.0	33.0	48.0
EQUIPMENT		54.0	18.0	40.5	-0-	40.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1084.2	1692.2	2858.8	3278.3	4734.4

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

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1084.2	1692.2	2858.8	3278.3	4734.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	1084.2	1692.2	2858.8	3278.3	4734.4

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

POSITIONS:

FULL-TIME		12.0	16.0	25.0	25.0	38.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4412
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/7/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

ANALYSIS: (continued)

Introduction

This bill authorizes capital punishment for the crime of Murder in the First Degree if certain attendant aggravating factors are found to exist and are established by competent evidence. Prosecution is given discretion whether to seek the death penalty in a given case.

The capital caseload of the Public Defender Agency will be a direct function of the number of murder cases prosecuted in the state combined with prosecutorial decisions to seek the death penalty. As such the Public Defender Agency's fiscal analysis is premised on projections made by the Department of Law in its fiscal analysis of HB 45. The Department of Law indicated it prosecuted 17 murder cases in 1994 where the death penalty could have been sought in that the requisite statutory aggravators were present. Of those 17, ten would likely result in death penalty trials. The Department of Law concluded that they would gain nine convictions from which the death penalty would be imposed in six cases.

Of the ten cases which are projected to go to trial as capital cases, the Public Defender anticipates being assigned to seven, with the other three either involving private lawyers or attorneys secured through the Office of Public Advocacy (where the PD is unable to undertake representation because of legal conflict of interest).

Because the number of murders can vary significantly from year to year, predicting actual numbers of cases is difficult. It is not difficult, however, to predict a profound fiscal impact for the PD once the death penalty becomes law. The concept of "super due process", established by the U.S. Supreme Court as the required standard of practice for defending death penalty cases, necessitates that highly capable lawyers and support staff (in sufficient numbers) be in place to handle any and all cases of this nature.

Fiscal Impact

Passage of 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;

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

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.

Breakdown of Fiscal Impact

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

Assuming that the Public Defender Agency handles six to seven capital cases per year, death penalty units will be established in its two largest offices; Anchorage and Fairbanks. A trial team in each of these offices will be established the first year. The second year an appellate team will be placed in Anchorage. (Please note that unlike the Department of Law, the Public Defender Agency has no equivalent to the Office of Special Prosecutions and Appeals.) The appellate team will not be needed until the second year following enactment of the death penalty because it is not expected that an appeal would be "ripe" until that time. Obviously adequate support staff, to include legal interns (designated as "Associate Attorneys" under state personnel classification) paralegals, investigators and secretaries, will be necessary. A second appellate team will be established in Fairbanks in the third year following enactment of capital punishment.

2. Travel and Contractual. Travel expenses will be necessarily high in that a team approach is being taken by this agency. These teams will have to travel to locations where the crime occurred and where trial is being held. Travel expenses are higher in Alaska because of the geography of the state, the lack of surface roads, and the high cost of air travel and lodging. Costs will be even higher for the considerable out-of-state travel associated with these cases. Once an individual is convicted of a capital offense, preparation begins for the penalty phase (sentencing hearing). Defense investigators will travel to locations where the defendant lived, went to school, etc., to interview people and develop facts for the purpose of vitiating a sentence of execution. If favorable witnesses are located, they will then have to be subpoenaed for travel to Alaska for the hearing.

Contractual expenditures for expert witnesses will be significant. As the Department of Law pointed out in a 1993 fiscal note related to a death penalty proposal, "recent cost studies of capital trials in other states indicate that expert witnesses for both the trial and sentencing proceedings cost about \$60,000, on the average". This estimate is consistent with the research by the Public Defender Agency on this issue. In addition there will be expert witness costs for the appellate work done following trial, conviction and sentence to death. These costs can be as high as the expert witness fees incurred during trial.

FISCAL NOTE

BILL NO. SSSB 52

STATE OF ALASKA
1996 LEGISLATIVE SESSION

3. Supplies and Equipment. These expenses naturally accrue when additional staff are required. Estimates which follow are conservative projections without consideration of inflationary factors.

4. Training. Training for lawyers engaged in death penalty work is a critical component for any death penalty defense unit. Both the prosecution and the defense will avail themselves of national training programs which are conducted on a yearly basis related to these kinds of cases.

Conclusion

Due to the accrual of cases from year to year, once implementation of the death penalty occurs expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion which will be exercised by the prosecution in seeking the death penalty. There is the real likelihood that additional staff will have to be added to this agency beyond the third year of implementation of the capital crime law. Simply stated, this cost estimate very well might understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

Fiscal Impact--FY 98

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
Investigator II	
Salary & Benefits	52.1
Legal Secretary I	
Salary & Benefits	37.0

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	<u>38.3</u>

SUBTOTAL

\$ 770.4

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

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

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 and Fairbanks P.D. offices	30.8
Communications	15.0
Printing	4.0
Depositions	10.0
Westlaw	<u>5.0</u>

SUBTOTAL \$ 184.8

Supplies (400 Line)

Office consumables	\$ 5.0
Law library	10.0
New position supplies (one time)	<u>10.0</u>

SUBTOTAL \$ 25.0

Equipment (500 Line)

Office furniture and equipment, pc/word processing, etc. (one time)	SUBTOTAL	\$ <u>54.0</u>
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TOTAL FY 98 \$1084.2

Fiscal Impact--FY 99

(These costs are in addition to FY 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
Legal Secretary I	
Salary & Benefits	<u>37.0</u>

SUBTOTAL \$261.6

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Travel (200 Line)

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

Expert witness fees (based on accrual of FY 98 and 99 cases)	\$240.0	
Office space for Anchorage appellate team	11.4	
Training for Death Penalty Appellate Team	4.0	
Communications	10.0	
Depositions	5.0	
Document production	5.0	
Westlaw	<u>8.0</u>	
	SUBTOTAL	\$ 283.4

Supplies (400 Line)

Office consumables	\$ 3.0	
Law library	2.0	
New position supplies (one time)	<u>4.0</u>	
	SUBTOTAL	\$ 9.0

Equipment (500 Line)

New position equipment (one time)	SUBTOTAL	<u>\$ 18.0</u>
	SUBTOTAL FY 99	\$ 672.0
	FY 98 CONTINUING COSTS	<u>\$1020.2</u>
	TOTAL FY 99 EXPENDITURES	\$1692.2

Fiscal Impact--FY 00

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

Personal Services (100 Line)

Anchorage

Attorney V (Additional death penalty trial attorney)	
Salary & Benefits	\$ 88.9
Associate Attorney I	
Salary & Benefits	53.8
Legal Secretary I	
Salary & Benefits	37.0

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Fairbanks

Attorney V (Additional death penalty trial attorney)	
Salary & Benefits	\$ 100.9
Legal Secretary I (Trial support)	
Salary & Benefits	38.3

Appellate Team (Fairbanks)

Attorney V (Additional lawyer for death penalty appellate work)	
Salary & Benefits	100.9
Attorney IV (Additional lawyer for death penalty appellate work)	
Salary & Benefits	94.7
Paralegal Assistant II	
Salary & Benefits	53.9
Legal Secretary I (Appellate support)	
Salary & Benefits	<u>38.3</u>

SUBTOTAL	\$606.7
----------	---------

Travel (200 Line)

Staff travel, expert travel and per diem.	
SUBTOTAL	\$100.0

Contractual (300 Line)

Expert witness fees based on trial and appellate cases for FY 00	\$ 360.0
Additional office space for new staff	25.4
Communications	20.0
Depositions	10.0
Document production	5.0
Westlaw	<u>8.0</u>

SUBTOTAL	\$ 428.4
----------	----------

Supplies (400 Line)

Office consumables	\$ 5.0
New position supplies (one time)	<u>8.0</u>

SUBTOTAL	\$ 13.0
----------	---------

Equipment (500 Line)

New position equipment (one time)	SUBTOTAL	<u>\$ 40.5</u>
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SUBTOTAL FY 00	\$1188.6
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FY 99 CONTINUING COSTS	<u>\$1670.2</u>
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TOTAL FY 00 EXPENDITURES	\$2858.8
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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Fiscal Impact--FY 01

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

<u>Personal Services (100 Line)</u>	SUBTOTAL	.0
<u>Travel (200 Line)</u>		
Death penalty teams will travel to appropriate venue for all relevant hearings. Travel includes that of staff, witnesses, expert witnesses, etc.	SUBTOTAL	\$100.0
<u>Contractual (300 Line)</u>		
Expert witness fees, office space, communications, Westlaw, etc.	SUBTOTAL	360.0
<u>Supplies (400 Line)</u>		
Office, law library	SUBTOTAL	<u>8.0</u>
	SUBTOTAL FY 01	\$ 468.0
	FY 00 CONTINUING COSTS	<u>\$2810.3</u>
	TOTAL FY 01 EXPENDITURES	\$3278.3

Fiscal Impact--FY 02

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

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
Investigator III	
Salary & Benefits	59.2
Legal Secretary II	
Salary & Benefits	39.1

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Fairbanks

Attorney V (Additional death penalty trial attorney)		
Salary & Benefits	100.9	
Investigator II		
Salary & Benefits	53.9	
Legal Secretary I (Trial support)		
Salary & Benefits	38.3	
Attorney V (Additional lawyer for death penalty appellate work)		
Salary & Benefits	100.9	
Attorney IV (Additional lawyer for death penalty appellate work)		
Salary & Benefits	94.7	
Paralegal Assistant II		
Salary & Benefits	53.9	
Legal Secretary I (Appellate support)		
Salary & Benefits	<u>\$ 38.3</u>	

SUBTOTAL \$ 857.6

Travel (200 Line)

Staff travel, expert travel and per diem.		
	SUBTOTAL	\$ 100.0

Contractual (300 Line)

Expert witness fees based on trial and appellate cases for FY 00	360.0	
Additional office space for new staff	30.0	
Training for staff	10.0	
Communications	20.0	
Depositions	10.0	
Document production	5.0	
Westlaw/CD Rom	<u>8.0</u>	

SUBTOTAL \$ 443.0

Supplies (400 Line)

Office consumables	\$ 5.0	
New position supplies (one time)	<u>10.0</u>	

SUBTOTAL \$ 15.0

Equipment (500 Line)

New position equipment (one time)	SUBTOTAL	<u>\$ 40.5</u>
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SUBTOTAL FY 02 \$1456.1

FY 01 CONTINUING COSTS \$3278.3

TOTAL FY 02 EXPENDITURES \$4734.4

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

BUDGET BACKGROUND

TRAVEL EXPENDITURES:

Round trip fares between the following locations are used as the basis for computing estimated travel by attorneys, support staff, witnesses and experts: (per diem expenses additional)

Anchorage -	Dillingham	\$ 466	Fairbanks -	Fort Yukon	\$156
	Unalaska	1014		Barrow	650
	St. Paul	1106		Galena	216
	Kodiak	386		Wainwright	530
	Cordova	224		Pt. Hope	600
	Valdez	200			
	Bethel	694			
	Nome	580			
	Kotzebue	580			
	Fairbanks	406			
	Juneau	444			
	Sitka	470			
	Ketchikan	588			
	Seattle	986			
	Washington, DC	1678			
	Kenai	130			

OFFICE SPACE FOR ADDITIONAL EMPLOYEES:

Attorney V	175 sq. ft.	@ \$1.75	= \$306/mo. x 12	= \$3672/yr.
Attorney IV	175 sq. ft.	@ \$1.75	= \$306/mo. x 12	= \$3672/yr.
Assoc. Attorney I	122 sq. ft.	@ \$1.75	= \$213/mo. x 12	= \$2,556/yr.
Paralegal II	98 sq. ft.	@ \$1.75	= \$171/mo. x 12	= \$2052/yr.
Investigator II	68 sq. ft.	@ \$1.75	= \$119/mo. x 12	= \$1428/yr.
Legal Secretary I	98 sq. ft.	@ \$1.75	= \$171/mo. x 12	= \$2052/yr.

OFFICE EQUIPMENT FOR ADDITIONAL EMPLOYEES: (one time)

Desk, chairs, table, bookshelves PC/word processing - \$4500 each.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CS SS SB 52 (JUD)

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing...." BRU: Statewide Programs
 Sponsor: Senator Taylor Component: Spring Creek CC
 Requester: _____ COMPONENT SERIAL NO. # 0772

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			
TRAVEL		3.0				
CONTRACTUAL		1,665.0				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS			350.0	2,343.0	2,343.0	2,343.0
TOTAL OPERATING	0.0	1,735.1	419.4	2,343.0	2,343.0	2,343.0

CAPITAL EXPENDITURES			9,135.0			
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,735.1	9,554.4	2,343.0	2,343.0	2,343.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	1,735.1	9,554.4	2,343.0	2,343.0	2,343.0

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

POSITIONS

FULL-TIME	0	1	26	25	25	25
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note assumes that the proposed advisory vote succeeds and leads to reinstating capital punishment. It also assumes that the capital punishment bill proposed will be similar to SS SB 52 version C. If the advisory vote fails there will be no fiscal impact on the Department of Corrections.

The Dept. of Law estimates six individuals per year would be prosecuted and sentenced to death under this bill. Experience in states with a death penalty statute indicate that an individual remains on death row for slightly less than ten years before execution. Using these estimates, the Department of Corrections must plan for a death row facility capable of holding 60 inmates. Additionally the new facility would need to contain suitable structure for the execution itself. This bill requires death by intravenous injection administered by a licensed physician. CONTINUED ON PAGE TWO:

Prepared by: Jerry Shriner Phone: 465-4652
 Division: Office of the Commissioner Date: 4/18/96
 Approved by Commissioner: Margaret Pugh Date: 4/18/96
 Agency: Department of Corrections

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CS SS SB 52 (JUD)

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The average age of Alaskan male inmates sentenced for murder in the first degree is 31 years. 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 new death row facility 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 facility would have to be built to the highest security standards. The cost of construction of a maximum security bed is \$180,000.00 to \$200,000.00. The lower figure is based on the assumption that the facility would be built adjacent to the Spring Creek Correctional Center and some infrastructure construction cost savings could be realized. Construction would need to begin immediately and engineering (E) and design (D) funds have been included in the contractual line item for FY 98 with construction to begin in FY 99. (It is expected that these funds would be transferred by RSA to DOT & PF.) 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 \$300,000.00 assuming that it would be built in conjunction with the death row facility.

CONSTRUCTION COSTS

(60 bed facility X \$180,000 per bed) + 300,000.00 = \$11,100,000.

.15 E & D X \$11,100,000. + \$1,665,000. in FY 98

\$10,800,000. - \$1,665,000. + \$9,135,000. in FY 99

The Department of Corrections does not expect to be required to house prisoners sentenced to the death penalty until FY 00. The only staff necessary in FY 99 would be a facilities manager to deal with DOC's responsibilities in the planning and design phase. The position is carried on until completion of the project which is expected to be at the end of FY 99. Actual operation of the facility would come on line in FY 00, with staff hiring and training to begin in Mid FY 99. This cost is estimated to be \$350,000. CONTINUED ON PAGE THREE:

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Staffing of the facility would require eighteen to twenty correctional officers, and five administrative and support staff. The average daily cost rate of \$107.00 has been used and is shown in the miscellaneous line simply because the final design will determine the line item cost break down. Also, no inflation factor has been used, so the further out in time one goes the less accurate the estimates become. The facility 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, as it now does; other high security inmates could be housed there to mitigate the costs.

OPERATING COSTS

60 beds x \$107.00 per day X 365 days = \$2,343,000.00 in FY 00 and beyond

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSSSB 52 (JUD)

Revision Date: 4/18/96 Dept. Affected: Department of Law
 Title: "An Act providing for an advisory vote on the BRU: Criminal Division
issue of capital punishment." Component: Criminal Division
 Sponsor: Senator Taylor
 Requester: House Judiciary Committee 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		481.0	1,005.5	1,462.9	1,462.9	1,462.9
TRAVEL		243.5	480.5	605.5	605.5	605.5
CONTRACTUAL		430.8	1,089.7	1,529.7	1,464.7	1,464.7
SUPPLIES		32.4	55.5	72.6	60.6	60.6
EQUIPMENT		56.0	64.5	58.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,243.7	2,695.7	3,728.7	3,593.7	3,593.7

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		1,243.7	2,695.7	3,728.7	3,593.7	3,593.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	1,243.7	2,695.7	3,728.7	3,593.7	3,593.7

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

POSITIONS

FULL-TIME		8.0	17.0	25.0	25.0	25.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Senate Judiciary Committee substitute for SSSB 52 would place an advisory vote before the voters at the next general election asking whether the legislature should enact a law providing for capital punishment for murder in the first degree. In the event that the voters respond in the affirmative, and the legislature enacts capital punishment legislation, there will be significant costs for the Department of Law. These costs have been noted before in the department's previous analysis of SB 52, when the bill provided for a statutory mechanism that authorized capital punishment.

A subsequent legislative bill would authorize capital punishment, classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. The death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 4/18/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/18/96
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

In 1994, the department's criminal division had 17 first degree murder cases (that could have been accepted for prosecution at this level) where aggravating factors were present that would justify the death penalty, had the bill already been the law. The number of murders committed in Alaska varies somewhat from year-to-year and, therefore, the assumptions made in this fiscal note are as conservative as possible.

Overview

Capital felony trials would be bifurcated, 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 1994's data, where 17 murders having death penalty aggravators occurred, the department would probably seek the death penalty in ten cases. In the remaining seven cases, prosecutors would elect to try the cases as noncapital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. As a result of this preliminary screening, between capital and noncapital charging, the department expects that nine capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed six times each year.

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

In its several reviews of capital penalty laws, the United States Supreme Court has 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 date of sentence.

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BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

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 9.6 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 three attorneys, three paraprofessionals, and two legal secretaries to handle capital felony prosecutions. Although only four bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all 17 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

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BILL NO. CSSSSB 52 (JUD)

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, eight or more additional capital felonies are expected to go to trial, and 17 new capital felony offenses will occur. At this point, it will be necessary to add two attorneys, two paraprofessionals, and two legal secretaries to help handle the increasing capital felony trial caseload and to help with the first capital felony appeal. It will be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to be in the appellate review process. Initially, one attorney, one paraprofessional, and one legal secretary will be needed to handle capital felony appeals.

During the third year, the number of bifurcated trials (10) should equal the number of new capital offenses (after screening), 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 eight by year three, and they will continue to increase at the rate of six new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year.

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

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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 nearly \$266,000 or less than one-half of the \$597,000 cost for the *first Peel* trial.

8) The cost for appeals is shown only through the fourth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of 10 or more capital felony defendants annually, within 10 years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

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

Capital Felony Trials

- Witness travel and subsistence, \$50,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees, \$60,000 per case.
- 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 in years two and three.
- Socio-psychiatric experts, \$50,000 by year four.
- Transcription/court reporter costs, \$30,000 per case.

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BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
 Cost Summary (First Year - FY 98 - Capital Trials)

OBJECT	Attv V	(2) Attv IV	Assoc. ATTY I	P/A II	Sec I	Sec I	TOTAL
100 - Salaries & Benefits	<u>86.6</u> 86.6	<u>164.0</u> 164.0	<u>105.8</u> 105.8	<u>51.1</u> 51.1	<u>36.4</u> 36.4	<u>36.4</u> 36.4	<u>481.0</u> 481.0
200 - Travel							
Staff Travel & Per Diem	<u>7.5</u> 7.5	<u>15.0</u> 15.0	<u>10.0</u> 10.0	<u>5.0</u> 5.0	<u>3.0</u> 3.0	<u>3.0</u> 3.0	<u>43.5</u> 43.5
300 - Contractual							
Communications, Copy	3.6	7.2	4.8	2.4	2.4	2.4	22.8
Office Space Leases	5.6	11.2	11.2	5.6	5.6	5.6	44.8
PC Network Maintenance	1.5	3.0	3.0	1.5	1.5	1.5	12.0
WestLaw	<u>1.2</u>	<u>2.4</u>	<u>2.4</u>	<u>1.2</u>	<u>0.0</u>	<u>0.0</u>	<u>7.2</u>
	11.9	23.8	21.4	10.7	9.5	9.5	86.8
400 - Supplies							
Office Consumables	1.8	3.6	3.6	1.8	1.2	1.2	13.2
Law Library	1.2	2.4	2.4	1.2	0.0	0.0	7.2
New Position Supplies	<u>1.5</u>	<u>3.0</u>	<u>3.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>12.0</u>
	4.5	9.0	9.0	4.5	2.7	2.7	32.4
500 - Equipment							
New Position Equipment	2.5	5.0	5.0	2.5	2.0	2.0	19.0
PC/Word Processing	<u>4.0</u>	<u>8.0</u>	<u>8.0</u>	<u>4.0</u>	<u>6.5</u>	<u>6.5</u>	<u>37.0</u>
	6.5	13.0	13.0	6.5	8.5	8.5	56.0
TOTAL	117.0	224.8	159.2	77.8	60.1	60.1	699.7

FISCAL NOTE

1996 LEGISLATIVE SESSION

BILL NO CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
 Cost Summary (Second and Third Years Additions -
 FY 99 and FY 00 - Capital Trials)

OBJECT	<u>Second Year</u>					<u>Third Year</u>			
	<u>Attv V</u>	<u>Attv IV</u>	(2) Assoc <u>Attv I</u>	2 Legal <u>Sec I</u>	<u>TOTAL</u>	<u>Attv IV</u>	<u>P/A II</u>	Legal <u>Sec I</u>	<u>TOTAL</u>
100 - Salaries & Benefits	<u>87.3</u>	<u>82.0</u>	<u>105.8</u>	<u>72.8</u>	<u>347.9</u>	<u>82.0</u>	<u>51.1</u>	<u>36.4</u>	<u>169.5</u>
	87.3	82.0	105.8	72.8	347.9	82.0	51.1	36.4	169.5
200 - Travel									
Staff Travel & Per Diem	<u>7.5</u>	<u>7.5</u>	<u>10.0</u>	<u>6.0</u>	<u>31.0</u>	<u>7.5</u>	<u>5.0</u>	<u>3.0</u>	<u>15.5</u>
	7.5	7.5	10.0	6.0	31.0	7.5	5.0	3.0	15.5
300 - Contractual									
Communications, Copy, Document Production	<u>3.6</u>	<u>3.6</u>	<u>7.2</u>	<u>4.8</u>	<u>19.2</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>11.2</u>	<u>11.2</u>	<u>33.6</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>3.0</u>	<u>3.0</u>	<u>9.0</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>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>1.2</u>	<u>1.2</u>	<u>0.0</u>	<u>2.4</u>
	11.9	11.9	23.8	19.0	66.6	11.9	11.9	9.5	33.3
400 - Supplies									
Office Consumables	<u>1.8</u>	<u>1.8</u>	<u>3.6</u>	<u>2.4</u>	<u>9.6</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>2.4</u>	<u>0.0</u>	<u>4.8</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>3.0</u>	<u>3.0</u>	<u>9.0</u>	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>4.5</u>
	4.5	4.5	9.0	5.4	23.4	4.5	4.5	2.7	11.7
500 - Equipment									
New Position Equipment	<u>2.5</u>	<u>2.5</u>	<u>5.0</u>	<u>4.0</u>	<u>14.0</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>8.0</u>	<u>13.0</u>	<u>29.0</u>	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>
	6.5	6.5	13.0	17.0	43.0	6.5	6.5	8.5	21.5
TOTAL	117.7	112.4	161.6	120.2	511.9	112.4	79.0	60.1	251.5

FISCAL NOTE

1996 LEGISLATIVE SESSION

BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
 Cost Summary (Second and Third Years Additions -
 FY 99 and FY 00 - Appellate Review Process)

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	<u>Atty V</u>	<u>Assoc Atty I</u>	<u>Legal Sec. I</u>	<u>TOTAL</u>	<u>(2.0) Atty IV</u>	<u>P/A II</u>	<u>(2) Legal 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>	<u>164.0</u>	<u>51.1</u>	<u>72.8</u>	<u>287.9</u>
	87.3	52.9	36.4	176.6	164.0	51.1	72.8	287.9
200 - Travel								
Staff Travel & Per Diem	<u>3.5</u>	<u>2.5</u>	<u>0.0</u>	<u>6.0</u>	<u>7.0</u>	<u>2.5</u>	<u>0.0</u>	<u>9.5</u>
	3.5	2.5	0.0	6.0	7.0	2.5	0.0	9.5
300 - Contractual								
Communications, Copy, Document Production	22.4	22.4	2.4	47.2	44.8	22.4	4.8	72.0
Office Space Leases	5.6	5.6	5.6	16.8	11.2	5.6	11.2	28.0
PC Network Maintenance	1.5	1.5	1.5	4.5	3.0	1.5	3.0	7.5
WestLaw	<u>2.4</u>	<u>2.4</u>	<u>0.0</u>	<u>4.8</u>	<u>4.8</u>	<u>2.4</u>	<u>0.0</u>	<u>7.2</u>
	31.9	31.9	9.5	73.3	63.8	31.9	19.0	114.7
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	3.6	1.8	2.4	7.8
Law Library	1.2	1.2	0.0	2.4	2.4	1.2	0.0	3.6
New Position Supplies	<u>1.5</u>	<u>1.5</u>	<u>1.5</u>	<u>7.2</u>	<u>3.0</u>	<u>1.5</u>	<u>3.0</u>	<u>11.4</u>
	4.5	4.5	2.7	11.7	9.0	4.5	5.4	18.9
500 - Equipment								
New Position Equipment	2.5	2.5	2.0	7.0	5.0	2.5	4.0	11.5
PC/Word Processing	<u>4.0</u>	<u>4.0</u>	<u>6.5</u>	<u>14.5</u>	<u>8.0</u>	<u>4.0</u>	<u>13.0</u>	<u>25.0</u>
	6.5	6.5	8.5	21.5	13.0	6.5	17.0	36.5
TOTAL	133.7	98.3	57.1	289.1	256.8	96.5	114.2	467.5

FISCAL NOTE

1996 LEGISLATIVE SESSION

BILL No. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Fiscal Analysis CSSSSB 52 (JUD)
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>
100 - Personal Services	481.0	828.9	998.4	998.4	0.0	176.6	464.5	464.5
200 - Travel - Staff	43.5	74.5	90.0	90.0	0.0	6.0	15.5	15.5
Travel - Witness	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
300 - Contractual - Staff	86.8	153.4	186.7	186.7	0.0	73.3	188.0	188.0
Contractual - Outside Svcs	344.0	688.0	860.0	860.0	0.0	175.0	295.0	230.0
400 - Supplies	32.4	43.8	46.5	42.0	0.0	11.7	26.1	18.6
500 - Equipment	<u>56.0</u>	<u>43.0</u>	<u>21.5</u>	<u>0.0</u>	<u>0.0</u>	<u>21.5</u>	<u>36.5</u>	<u>0.0</u>
TOTAL	1,243.7	2,231.6	2,703.1	2,677.1	0.0	464.1	1,025.6	916.6

FISCAL NOTE

1996 LEGISLATIVE SESSION

BILL NO.

CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Out-of-Pocket Costs - Capital Felony Trials

Year One (4 cases underway) (FY 98)

Witness travel and subsistence \$50,000 per case X's 4 cases =	\$200,000
Expert witness fees \$60,000 per case X's 4 cases =	\$240,000
Witness fees (witnesses of fact) \$6,000 per case X's 4 cases =	\$24,000
Deposition/court reporter charges \$20,000 per case X's 4 cases =	\$80,000

Year Two (8 cases underway) (FY 99)

Witness travel and subsistence \$50,000 per case X's 8 cases =	\$400,000
Expert witness fees \$60,000 per case X's 8 cases =	\$480,000
Witness fees (witnesses of fact) \$6,000 per case X's 8 cases =	\$48,000
Deposition/court reporter charges \$20,000 per case X's 8 cases =	\$160,000

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

Year Three (10 cases underway) (FY 00)

Witness travel and subsistence \$50,000 per case X's 10 cases =	\$500,000
Expert witness fees \$60,000 per case X's 10 cases =	\$600,000
Witness fees (witnesses of fact) \$6,000 per case X's 10 cases =	\$60,000
Deposition/court reporter charges \$20,000 per case X's 10 cases =	\$200,000

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSSSB 52 (JUD)

ANALYSIS CONTINUATION:

Capital Felony Appeals

Year Two (4 cases underway) (FY 99)

Expert witness/legal scholars
to uphold death penalty law
(year two and three only)
\$30,000 per year X's 1 = \$30,000

Expert witness
Socio-psychiatric experts
\$25,000 per year X's 1 = \$25,000

Deposition/court reporter charges
\$30,000 per case X's 4 cases = \$120,000

Year Three (8 cases underway) (FY 00)

Expert witness/legal scholars
to uphold death penalty law
(year two and three only)
\$30,000 per year X's 1 = \$30,000

Expert witness
Socio-psychiatric experts
\$25,000 per year X's 1 = \$25,000

Deposition/court reporter charges
\$30,000 per case X's 8 cases = \$240,000

Year Four (14 cases underway) (FY 01)

Expert witness
Socio-psychiatric experts
\$50,000 per year X's 1 = \$50,000

Deposition/court reporter charges
\$30,000 per case X's 6 cases = \$180,000

02/01/96

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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	T S	LOCATION NAME	R B S C U	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#011		ATTORNEY V		F ANCHORAGE	A XE AA	25A	12	66332	0	20933	87265.67	

**** 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 1998.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	117665.67	87265.67

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87265.67
TOTAL FUNDING	87265.67

03#012		ATTORNEY IV		F ANCHORAGE	A XE AA	24A	12	61923	0	20100	82023.52	
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**** JUSTIFICATION:

This Attorney IV position will be required to handle capital felony trials, during the first year after the law goes into effect. "Super" due process trial consideration and sentencing proceedings are expected to more than triple the time now required for murder trials. First degree murder trials require highly skilled prosecutors and for this reason the department is requesting the full working level prosecutor classification of Attorney IV. This attorney will be needed for the bifurcated capital trials, beginning in FY 1998.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	112423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52
TOTAL FUNDING	82023.52

03#013		ATTORNEY IV		F ANCHORAGE	A XE AA	24A	12	61923	0	20100	82023.52	
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**** JUSTIFICATION:

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	112423.52	82023.52

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	82023.52
TOTAL FUNDING	82023.52

02/01/96

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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 PRU NAME: CRIMINAL DIVISION

PCN	UNAI/II PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03/014		ASSOC ATTORNEY I	F	ANCHORAGE	A XE AA	17A	12	38440	0	14412	52052.89	

*** 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 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	79552.89	52052.89

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52852.89
TOTAL FUNDING	52852.89

03/015		PARALEGAL ASST II	F	ANCHORAGE	A GG 2A	16A	12	36990	0	14157	51148.42	
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*** JUSTIFICATION:

This paralegal assistant position will be needed during the first year after the capital felony law goes into effect to assist the attorneys assigned to prosecuting defendants in capital crimes, where the state is seeking the death penalty. The position will be responsible for witness assistance and coordination, and assist with trial logistics. Allocation to the full working paraprofessional level of Paralegal Assistant II is recommended. This position will be required in FY 1998.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	10700.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	77048.42	51148.42

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	51148.42
TOTAL FUNDING	51148.42

03/016		LEGAL SECRETARY I	F	ANCHORAGE	A GG 2A	10A	12	25127	0	11284	36411.80	
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*** JUSTIFICATION:

This is one of two 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 1998.

TRAVEL COSTS	3000.00	
CONTRACTUAL COSTS	9500.00	
SUPPLIES COSTS	2700.00	
EQUIPMENT COSTS	8500.00	
OTHER COSTS	0.00	
TOTAL COSTS	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

02/01/96

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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 DRU NAME: CRIMINAL DIVISION

PCN	UNAUTII 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
03#017		LEGAL SECRETARY I		F ANCHORAGE	A GG 2A 10A 12		25127	0	11284	36411.80	

**** JUSTIFICATION:

This is one of two legal secretaries needed to provide office services support for the 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 is required 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	60111.80	36411.80

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

03#018		ATTORNEY V		F ANCHORAGE	A XE AA 25A 12		66332	0	20933	87265.67	
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**** JUSTIFICATION:

This senior level Attorney V 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 eight additional trials should be underway and ten additional capital felonies will have been committed. The extraordinary due process standards required of prosecution, in capital cases, necessitate the highest level of legal expertise. Allocation to the Attorney V level is therefore recommended. This position will be required in FY 1999.

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	117665.67	87265.67

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	87265.67
TOTAL FUNDING	87265.67

03#019		ASSOC ATTORNEY I		F ANCHORAGE	A XE AA 17A 12		38440	0	14412	52852.89	
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**** 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. Eight new trials are expected to commence during the second year, and ten 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 1999.

TRAVEL COSTS	5000.00	
CONTRACTUAL COSTS	11900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	80752.89	52852.89

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	52852.89
TOTAL FUNDING	52852.89

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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	T S	LOCATION NAME	R B C U	\$	R&S BUDG	MOS	SALARY	PREM PAY	BENEF	PER.SERV. COSTS	G. F. AMOUNT
03#020		LEGAL SECRETARY I	F	ANCHORAGE	A	CG	2A	10A	12	25127	0	11284	36411.80

**** 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. Eight new capital felony trials are expected to commence, and ten 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 commended. 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	60111.80	36411.80

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	36411.80
TOTAL FUNDING	36411.80

03#021		ATTORNEY V	F	ANCHORAGE	A	XE	AA	25A	12	66332	0	20933	87265.67
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**** JUSTIFICATION:

This Attorney V position will be required, during the second 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 second year. Up to ten years or more may pass before these 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 these appeals. Allocation to the Attorney V level is therefore recommended. This position will be needed in FY 1999.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	31900.00	
SUPPLIES COSTS	4500.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	133665.67	87265.67

*** FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	87265.67
TOTAL FUNDING	87265.67

03#022		ASSOC ATTORNEY I	F	ANCHORAGE	A	XE	AA	17A	12	38440	0	14412	52852.89
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**** JUSTIFICATION:

This Associate Attorney paraprofessional position will be required, during the second 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 second 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	98252.89	52852.89

*** FUNDING DETAIL: