

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9237 HOUSE JUDICIARY

Page 6, line 15:

Following: "information that a"

Delete: "regulatory"

Insert: "government"

Reasons: Same reasoning as previously proposed amendment.

Page 6, line 24:

Following: "between a"

Delete: "regulatory"

Insert: "government"

Reasons: Same reasoning as previously proposed amendment.

Page 8, lines 5-6:

Following "an agency":

Delete: "that has regulatory authority"

Insert: "the department or a municipality with  
enforcement jurisdiction"

Reasons: Only DEC and municipalities are affected by the immunity provisions.

Page 8, line 8:

Following "detected by":

Delete: "an agency"

Insert: "the department or a municipality"

Reasons: *Same reasons as the previous proposed amendment.*

Page 8, line 9:

Following "under this paragraph, the":

Delete: "agency"

Insert: "department or municipality"

Reasons: *Same reasons as the previously proposed amendment.*

Page 8, line 22:

Following "agreement with the":

Delete: "appropriate agency"

Insert: "department or the municipality, as  
appropriate"

Reasons: *Same reasons as the previously proposed amendment.*

Page 8, line 26:

Following "cooperate with the":

Delete: "appropriate agency"

Insert: "department or municipality, as appropriate,"

Reasons: Same reasons as the previously proposed amendment.

Page 8, line 27:

Following "disclosure;":

Delete: "an agency"

Insert: "the department or municipality"

Reasons: Same reasons as the previously proposed amendment.

Page 9, line 9:

Following "the department"

Insert: "or municipality"

Reasons: Same reasons as the previously proposed amendment.

Page 9, line 12:

Following "The department"

Insert: "or municipality"

Reasons: Same reasons as the previously proposed amendment.

Page 9, line 17:

Following "identified by the"

Delete: "regulatory agency"

Insert: "the department or municipality"

Reasons: *Same reasons as the previously proposed amendment.*

Page 9, line 19:

Following "to prevent":

Delete: "a regulatory agency"

Insert: "the department or a municipality"

Reasons: *Same reasons as the previously proposed amendment.*

Page 13, line 10:

Following "state":

Insert: "or a municipality"

Reasons: *A penalty may be imposed under municipal ordinance.*

Page 13, line 11:

Following "ordered by a":

Delete: "regulatory authority"

Insert: "government agency"

Reasons: A technical or remedial provision could be ordered pursuant to regulatory enforcement or pursuant to enforcement of a lease or contract provision.

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A M E N D M E N T #8

OFFERED IN THE HOUSE

TO: CSSB 41 (FIN)

Page 12, lines 20-30:

Delete all material and insert:

"(4) 'environmental audit' means a voluntary audit that an owner or operator of a regulated facility, operation, or property conducts or causes to be conducted, whether or not on a regular basis or in response to a particular event, that is specifically designed and undertaken to assess compliance with environmental laws or a permit, license, or approval issued under those laws, including an assessment that is part of the owner or operator's compliance management system; and that is a

(A) systematic, objective, and periodic review of the facility, operation, or property related to meeting the requirements of environmental laws or a permit, license, or approval issued under those laws; or

(B) documented, systematic procedure or practice that reflects the owner or operator's due diligence in preventing, detecting, and correcting violations of

environmental laws or a permit, license, or approval issued under those laws at the facility, operation, or property."

Reasons: The definition of "environmental audit" in CSSB 41 (FIN) repeats the definition of "confidential self-evaluation and analysis," the part of the audit report that is privileged. The "audit," however, is an assessment of whether the owner or operator is in compliance with environmental requirements or whether the owner or operator's compliance management system is in place, functioning, and effective. The proposed amendment retains the portions of the definition in CSSB 41 (FIN) that define an audit and deletes the portions that are contained in the definition of "confidential self-evaluation and analysis." The "audit" will lead to the preparation of the "audit report," part of which is privileged as "confidential self-evaluation and analysis."

The proposed amendment also adds two subparagraphs, (A) and (B), components of the definition of "audit" in the U.S. Environmental Protection Agency's Final Policy Statement on Incentives for Self-Policing, 60 Fed. Reg. 66706, 66708, 66710 (1995). The definition of an audit as a systematic procedure or practice, or as a management tool involving an audit plan or protocol, is also found in the International Standardization Organization (ISO) 14010 Guidelines for Environmental Management System Auditing, the British Standards Institute BS7750 Environmental Audit Requirements, and International Chamber of Commerce position paper on environmental auditing. See Lawrence B. Cahill, Environmental Audits 25-27, 33 (7th ed. 1996).

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AMENDMENT #9

OFFERED IN THE HOUSE

TO: CSSB 41(FIN)

Page 7, line 27:

Following: "for the violation disclosed"

Delete the comma and insert "or"

Page 7, lines 27 - 29:

Following: "based on the facts disclosed"

Delete: ", and for a violation discovered because of  
a disclosure that was unknown to the owner or  
operator making the disclosure"

Reasons: This amendment is proposed to address a concern raised by the U.S. Environmental Protection Agency that the language in the bill may lead to disputes over whether subsequently discovered violations are "fruit of the poisonous tree." If the last clause is read literally, it could potentially immunize violations years after and well beyond the scope of any disclosure. With an earlier amendment that added the language "or of circumstances, conditions, or occurrences that constitute or may constitute a such a violation," it is clear that an owner or operator may obtain immunity for violations that are disclosed and for violations that are based upon the facts disclosed, regardless of whether the owner or operator knows that the facts disclosed would constitute a violation. The last clause is at the very least redundant to the previous amendment and at worst, a potential source of conflict and litigation over whether subsequently discovered violations are immunized by virtue of an earlier disclosure.

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**SB**

**60**

(7)  
Date Referred to Committee: May 2, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 5/8/97

The JUDICIARY Committee considered:

SB 60

SENATE BILL NO. 60

ADVISORY VOTE ON CAPITAL PUNISHMENT

"An Act providing for an advisory vote on the issue of capital punishment."

recommends it be replaced with the following committee substitute HCS SB 60 (JUD)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

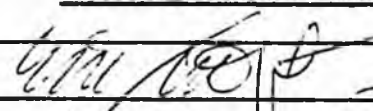
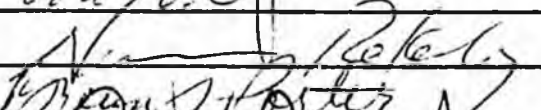
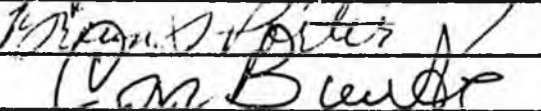
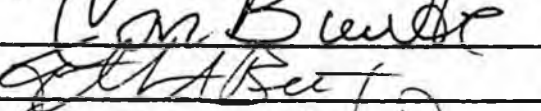
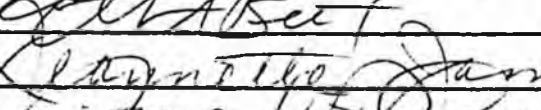
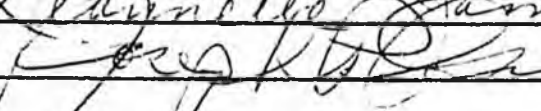
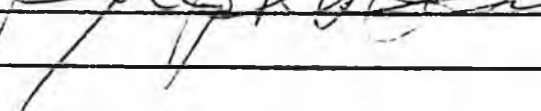
APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

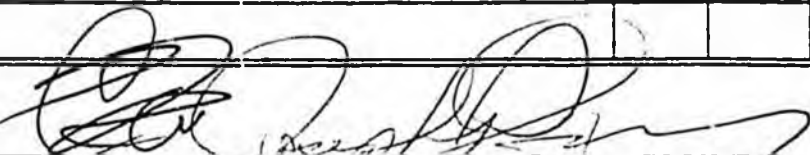
fiscal note(s) \_\_\_\_\_

fiscal note(s) ELECTIONS, CORR., ADMIN (OPA), ADMIN (PD) & LAW

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
 CROFT		✓		
 ROKEBERG				✓
 PORTER			✓	
 BUNDE	✓			
 BERKOWITZ		✓		
 JAMES				✓
 GREEN			✓	

CHAIR'S SIGNATURE 

# FISCAL NOTE

No. 1  
 Bill Version: SB 107  
 (S) Publish Date: 3/11/97

**STATE OF ALASKA  
 1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ 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: Senate Judiciary COMPONENT SERIAL NO. 2085

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			485.0	834.1	1,265.1	1,265.1
TRAVEL			243.5	465.0	590.0	590.0
CONTRACTUAL			416.8	1,023.4	1,446.9	1,336.9
SUPPLIES			32.4	43.8	62.7	52.2
EQUIPMENT			52.0	39.0	45.5	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>1,229.7</b>	<b>2,405.3</b>	<b>3,410.2</b>	<b>3,244.2</b>

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			1,229.7	2,405.3	3,410.2	3,244.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>1,229.7</b>	<b>2,405.3</b>	<b>3,410.2</b>	<b>3,244.2</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	8.0	14.0	21.0	21.0
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

HB 131 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.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a 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. (See, for example, SB 52, introduced in the 19th Alaska Legislature.)

Prepared by: Joan M. Kasson *Joan M. Kasson*  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce Botelho for*  
 Agency: Department of Law

Phone: 465-5370  
 Date: 3/10/97  
 Date: 3/10/97

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ANALYSIS CONTINUATION:

In 1994, the department's criminal division had 17 first degree murder cases in which aggravating factors were present that would justify the death penalty, had a similar provision 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, that is, 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, all of which would require trials. 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. 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 taken the position that "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-eight 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 and during sentencing proceedings, 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 sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart 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,

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STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO SB 60

### ANALYSIS CONTINUATION:

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. 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 addition, 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. 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 capital murder trials.

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 to 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 the first phase of a 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 perhaps as few as 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 potential capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed.

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### ANALYSIS CONTINUATION:

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 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 potential capital felony offenses will occur. At this point, it will be necessary to add one attorney, one paraprofessional, and one legal secretary to handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to begin 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 capital murder trials (10) should equal the number of new capital offenses charged, 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. The trial staff would be increased by one attorney, one paraprofessional, and one legal secretary. 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 by adding two attorneys, one paraprofessional, and one legal secretary.

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 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 per diem 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.

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### ANALYSIS CONTINUATION:

(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, the total 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 considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs (both personal and non-personal services) of a bifurcated capital felony case has been projected to be nearly \$240,000 or considerably 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.
- Standard witness fees paid to others, \$2,500 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.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.

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BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
Cost Summary (First Year, Capital Trials)

*ASSUMPTION: 4 trials, trial preparation, preparation on 17 potential capital felonies*

OBJECT	(1) <u>Atty V</u>	(2) <u>Atty IV</u>	(2) Assoc <u>Atty I</u>	(1) <u>P/A II</u>	(2) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	166.8	101.1	52.5	75.8	485.0
	<u>88.8</u>	<u>166.8</u>	<u>101.1</u>	<u>52.5</u>	<u>75.8</u>	<u>485.0</u>
200 - Travel						
Staff Travel & Per Diem	7.5	15.0	10.0	5.0	6.0	43.5
	<u>7.5</u>	<u>15.0</u>	<u>10.0</u>	<u>5.0</u>	<u>6.0</u>	<u>43.5</u>
300 - Contractual						
Communications, Copy	3.6	7.2	4.8	2.4	4.8	22.8
Office Space Leases	5.6	11.2	11.2	5.6	11.2	44.8
PC Network Maintenance	1.5	3.0	3.0	1.5	3.0	12.0
Westlaw	1.2	2.4	2.4	1.2	0.0	7.2
	<u>11.9</u>	<u>23.8</u>	<u>21.4</u>	<u>10.7</u>	<u>19.0</u>	<u>86.8</u>
400 - Supplies						
Office Consumables	1.8	3.6	3.6	1.8	2.4	13.2
Law Library	1.2	2.4	2.4	1.2	0.0	7.2
New Position Supplies	1.5	3.0	3.0	1.5	3.0	12.0
	<u>4.5</u>	<u>9.0</u>	<u>9.0</u>	<u>4.5</u>	<u>5.4</u>	<u>32.4</u>
500 - Equipment						
New Position Equipment	2.5	5.0	5.0	2.5	5.0	20.0
Personal Computer	4.0	8.0	8.0	4.0	8.0	32.0
	<u>6.5</u>	<u>13.0</u>	<u>13.0</u>	<u>6.5</u>	<u>13.0</u>	<u>52.0</u>
<b>TOTAL</b>	<b>119.2</b>	<b>227.6</b>	<b>154.5</b>	<b>79.2</b>	<b>119.2</b>	<b>699.7</b>

FISCAL NOTE

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1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
Cost Summary (Second and Third Year Additions, Capital Trials)

**ASSUMPTION:**

Year 2 - 8 trials, preparation on 17 new potential capital felonies  
Year 3 - 10 trials, preparation on 10 new charges

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	(1) <u>Atty IV</u>	(1) Assoc <u>Atty I</u>	(1) <u>Sec I</u>	TOTAL	(1) <u>Atty IV</u>	(1) <u>P/A II</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
	83.4	50.6	37.9	171.9	83.4	52.5	37.9	173.8
200 - Travel								
Staff Travel & Per Diem	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
	7.5	5.0	3.0	15.5	7.5	5.0	3.0	15.5
300 - Contractual								
Communications, Copy	3.6	3.6	2.4	9.6	3.6	3.6	2.4	9.6
Office Space Leases	5.6	5.6	5.6	16.8	5.6	5.6	5.6	16.8
PC Network Maintenance	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
Westlaw	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
	11.9	11.9	9.5	33.3	11.9	11.9	9.5	33.3
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	1.8	1.8	1.2	4.8
Law Library	1.2	1.2	0.0	2.4	1.2	1.2	0.0	2.4
New Position Supplies	1.5	1.5	1.5	4.5	1.5	1.5	1.5	4.5
	4.5	4.5	2.7	11.7	4.5	4.5	2.7	11.7
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	2.5	2.5	2.5	7.5
Personal Computer	4.0	4.0	4.0	12.0	4.0	4.0	4.0	12.0
	6.5	6.5	6.5	19.5	6.5	6.5	6.5	19.5
<b>TOTAL</b>	<b>113.8</b>	<b>78.5</b>	<b>59.6</b>	<b>251.9</b>	<b>113.8</b>	<b>80.4</b>	<b>59.6</b>	<b>253.8</b>

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 6

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
Cost Summary (Second and Third Year Additions, Appellate Review Process)

**ASSUMPTION:**

Year 2 - 4 trials begin appellate review process

Year 3 - 8 trials on appeal, with 6 new cases each following year

OBJECT	<u>Second Year</u>				<u>Third Year</u>			
	(1) <u>Atty V</u>	(1) Assoc <u>Atty I</u>	(1) <u>Sec I</u>	TOTAL	(2) <u>Atty IV</u>	(1) <u>P/A I</u>	(1) <u>Sec I</u>	TOTAL
100 - Salaries & Benefits	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
	88.8	50.6	37.9	177.3	166.8	52.5	37.9	257.1
200 - Travel								
Staff Travel & Per Diem	3.5	2.5	0.0	6.0	7.0	2.5		9.5
	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	2.4	69.6
Office Space Leases	5.6	5.6	5.6	16.8	11.2	5.6	5.6	22.4
PC Network Maintenance	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
Westlaw	2.4	2.4	0.0	4.8	4.8	2.4	0.0	7.2
	31.9	31.9	9.5	73.3	63.8	31.9	9.5	105.2
400 - Supplies								
Office Consumables	1.8	1.8	1.2	4.8	3.6	1.8	1.2	6.6
Law Library	1.2	1.2	0.0	2.4	2.4	1.2	0.0	3.6
New Position Supplies	1.5	1.5	1.5	4.5	3.0	1.5	1.5	6.0
	4.5	4.5	2.7	11.7	9.0	4.5	2.7	16.2
500 - Equipment								
New Position Equipment	2.5	2.5	2.5	7.5	5.0	2.5	2.5	10.0
Personal Computer	4.0	4.0	4.0	12.0	8.0	4.0	4.0	16.0
	6.5	6.5	6.5	19.5	13.0	6.5	6.5	26.0
<b>TOTAL</b>	<b>135.2</b>	<b>96.0</b>	<b>56.6</b>	<b>287.8</b>	<b>259.6</b>	<b>97.9</b>	<b>56.6</b>	<b>414.0</b>

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
Out-of-Pocket Costs - Capital Felony Trials

Year 1: (4 cases underway)

Witness travel and per diem \$50,000 per case X 4 cases	=	200.0
Expert witness fees \$60,000 per case X 4 cases	=	240.0
Witness fees (witnesses of fact) \$2,500 per case X 4 cases	=	10.0
Deposition/court reporter charges \$20,000 per case X 4 cases	=	80.0

Year 2: (8 cases underway)

Witness travel and per diem \$50,000 per case X 8 cases	=	400.0
Expert witness fees \$60,000 per case X 8 cases	=	480.0
Witness fees (witnesses of fact) \$2,500 per case X 8 cases	=	20.0
Deposition/court reporter charges \$20,000 per case X 8 cases	=	160.0

Year 3: (10 cases underway)

Witness travel and per diem \$50,000 per case X 10 cases	=	500.0
Expert witness fees \$60,000 per case X 10 cases	=	600.0
Witness fees (witnesses of fact) \$2,500 per case X 10 cases	=	25.0
Deposition/court reporter charges \$20,000 per case X 10 cases	=	200.0

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB

ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
Out-of-Pocket Costs - Capital Felony Appeals

Year 2: (4 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
Deposition/court reporter charges \$30,000 per case X 4 cases	=	120.0

Year 3: (8 cases underway)

Outside counsel to uphold death penalty law \$50,000 per case X 1 case	=	50.0
Deposition/court reporter charges \$30,000 per case X 8 cases	=	240.0

Year 4: (14 cases underway)

Deposition/court reporter charges \$30,000 per case X 6 cases	=	180.0
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ANALYSIS CONTINUATION:

Fiscal Analysis HB 131  
Cumulative Implementation Cost by Year

OBJECT	<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 - Salaries & Benefits	485.0	656.9	830.6	830.6	0.0	177.3	434.4	434.4
	485.0	656.9	830.6	830.6	0.0	177.3	434.4	434.4
200 - Travel								
Staff Travel & Per Diem	43.5	59.0	74.5	74.5	0.0	6.0	15.5	15.5
Witness Travel	200.0	400.0	500.0	500.0	0.0	0.0	0.0	0.0
	243.5	459.0	574.5	574.5	0.0	6.0	15.5	15.5
300 - Contractual								
Staff Contractual	86.8	120.1	153.4	153.4	0.0	73.3	178.5	178.5
Outside Services	330.0	660.0	825.0	825.0	0.0	170.0	290.0	180.0
	416.8	780.1	978.4	978.4	0.0	243.3	468.5	358.5
400 - Supplies	32.4	32.1	39.3	34.8	0.0	11.7	23.4	17.4
	32.4	32.1	39.3	34.8	0.0	11.7	23.4	17.4
500 - Equipment	52.0	19.5	19.5	0.0	0.0	19.5	26.0	0.0
	52.0	19.5	19.5	0.0	0.0	19.5	26.0	0.0
TOTAL	1,229.7	1,947.6	2,442.3	2,418.3	0.0	457.8	967.8	825.8
PFT	8	11	14	14	0	3	7	7

# FISCAL NOTE

 No. 2

 Bill Version: SBC

 (S) Publish Date: 3/11/97
**STATE OF ALASKA  
1997 LEGISLATIVE SESSION**

 Revision Date: \_\_\_\_\_  
 Title: "An Act providing for an advisory vote on the  
issue of capital punishment"  
 Sponsor: Senator Taylor  
 Requester: Senate Judiciary

 Dept. Affected: Corrections  
 BRU: Statewide Programs  
 Component: Spring Creek Correctional Center

 COMPONENT SERIAL NO. #0772
**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES			68.4	68.4		
TRAVEL						
CONTRACTUAL			1,665.0			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				350.0	2,305.4	2,305.4
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>1,733.4</b>	<b>418.4</b>	<b>2,305.4</b>	<b>2,305.4</b>

CAPITAL EXPENDITURES				9,435.0		
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CHANGE IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF			1,733.4	9,853.4	2,305.4	2,305.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>1,733.4</b>	<b>9,853.4</b>	<b>2,305.4</b>	<b>2,305.4</b>

 Estimate of any current year (FY97) cost: \$ 0.0
**POSITIONS**

FULL-TIME			1	31	30	30
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Please see attached explanation.

 Prepared by: Bruce Richards  
 Division: Commissioner's Office  
 Approved by Commissioner: Margaret M. Pugh  
 Agency: Department of Corrections

 Phone: 465-3307  
 Date: 3/9/97  
 Date: 3/9/97

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Assumptions

1. This fiscal note is based on the assumption the proposed advisory vote is approved by the residents of Alaska during the next general election. It further contemplates that the Alaska Legislature would enact a capital punishment law following such an advisory vote.
2. The Dept. of Law estimates that six individuals per year would be prosecuted and sentenced to death for first degree murder. Other states who have instituted the death penalty statute indicate that an individual convicted of a capital felony remains on death row for approximately ten years before execution. Using this estimate the Department of Corrections (DOC) would be required to construct a death row facility capable of housing 60 inmates. The death row facility would require construction that is of the highest security standards. The cost of this type of facility is estimated at \$180,000.00 per bed. The DOC does not expect to house prisoners until the year FY02. Engineering and design (E&D) would begin in FY00. The costs for E&D would be transferred to DOT & PF via an RSA. These costs are estimated to be 15% of the total cost of construction.
4. The DOC would be required to construct an execution facility for administration of the penalty. Special technology and hardware would be required for this portion of the construction. The cost of this facility is estimated to be in excess of \$300,000.00 assuming it would be built in conjunction with the death row facility.
5. The DOC would not house death row inmates until FY02. A Facilities Manager I position is required to manage the DOC responsibilities in the planning and design phase. This position would begin in FY00 and remain in place until completion of the project in FY02. The cost of this position is \$68.4 per year.
6. Actual operation of the death row facility would begin in FY02, with staff hiring and training to begin in FY01. This cost is estimated to be \$350,000.00. Staffing of the new facility would require twenty-five correctional officers, and five administrative support staff. The average daily cost of housing an inmate is \$105.27 and is shown in the miscellaneous line.

**Construction Costs**

60 bed death row X \$180,000 per bed + \$300,000 execution facility = \$11,100,000.00

.15 X \$11,100,000 = \$1,665,000 for E&D in FY00

\$11,100,000 total cost - \$1,665,000 E&D = \$9,435,000 for facility completion in FY01

**Operating Costs**

60 beds X \$105.27 per day X 365 days = \$2,305,413 in FY02 and continuing into the future.

# FISCAL NOTE

No. 3

Bill Version: SB 60

(S) Publish Date: 3/11/97

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Revision Date \_\_\_\_\_ Dept. Affected Office of the Governor  
 Title Advisory Vote on Capital Punishment BRU Elective Operations  
 Component General and Primary Elections  
 Sponsor Senator Taylor  
 Requester Senate Judiciary Component Serial No. #22

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	3.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES [    ]						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

**POSITIONS**

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Dana LaTour  
 Division Division of Elections  
 Approved by Co Lt. Governor Fran Ulmer  
 Agency Office of the Lieutenant Governor

Phone 465-5347  
 Date 3/7/97  
 Date 3/7/97

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**FISCAL NOTE**

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 4

Bill Version: SB 60

(S) Publish Date: 3-24-97

Revision Date: \_\_\_\_\_  
Title: "An Act providing for an advisory vote on the issue of capital punishment."  
Sponsor: Senator Taylor  
Requestor: Senate Judiciary

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

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	.	.	.	.	.	.

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	.	.	.	.	.	.

estimate of any current year (FY 97) cost: \$ 0

**POSITIONS:**

FULL-TIME	.	.	.	.	.	.
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.) Should legislation subsequently be enacted, the following fiscal analysis applies. Passage of death penalty legislation would have a dramatic fiscal impact on the Office of Public Advocacy (OPA). The OPA, as a purely reactive agency, must provide legal representation when appointed by the court. OPA is responsible for providing representation to indigent criminal defendants in cases where the Alaska Public Defender Agency has a conflict of interest.

The Department of Law has estimated it would seek the death penalty in approximately ten trials annually. Therefore, OPA anticipates it would be responsible for three capital cases in FY 00 and three more in each of the following years. Because almost no one in Alaska could afford the cost of defending capital cases, it is assumed the Public Defender Agency and OPA would represent all capital defendants. (See attached)

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

Phone: 269-3500  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Bover  
Agency: Administration

*Mark Bover*  
Date: 3/19/97

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FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

ANALYSIS: (continued)

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

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

It is anticipated that OPA would have to contract for representation of at least one death penalty case per year. Such a case would arise where OPA has a conflict of interest. The New York Defender Association has estimated the cost of defense services in each case to be \$350,000 in 1988. The cost in Alaska would probably be significantly higher.

Death penalty cases will accumulate in the agency each year. It is highly likely that each case that comes into the office will remain its responsibility for at least 8-10 years.

In FY 01, the first year in which actual death penalty trials will probably occur, OPA costs rise because of the addition of an appellate attorney, and support personnel including an associate attorney (nonlawyer) position, a paralegal, and a legal secretary. In FY 02, an additional trial attorney position would be needed to support the initial three-trial positions created in FY 00 and FY 01.

In FY 03, the death penalty defense staff would need to be enlarged by at least one attorney, to complete the formation of two larger teams, together with a paralegal and legal secretary.

OPA assumes that it will have only one or less conflict case per year. For this reason, the accumulating appellate costs are conservatively estimated at an additional \$100.0 per year.

Finally, even though OPA assumes the addition of only three cases per year, the costs associated with the accumulation of cases can be expected to more than double at least every three years. There is little doubt that, within ten years of the adoption of the death penalty in Alaska, OPA costs for the defense of these relatively few cases would surpass its FY 97 budget of \$7,439.6 for over 10,000 cases.

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 00

Personal Services - Anchorage

Attorney V - Salary and Benefits	\$ 90.6
Attorney IV - Salary and Benefits	85.1
Associate Attorney II - Salary and Benefits	62.4
Paralegal Assist II - Salary and Benefits	53.1
Legal Secretary I - Salary and Benefits	<u>37.8</u>
<b>Subtotal Personal Services</b>	<b>329.0</b>

Travel

Staff Travel and Per Diem	28.0
Witness Travel and Per Diem	<u>150.0</u>
<b>Subtotal Travel</b>	<b>178.0</b>

Contractual

Communications	15.2
Copy & Discovery	28.0
Office Space	16.5
PC Network Maintenance	7.5
Westlaw	4.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case X 1 case per year)	432.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>
<b>Subtotal Contractual</b>	<b>844.7</b>

Supplies

Office Supplies	8.4
Law Library	4.8
New Position Supplies	<u>7.5</u>
<b>Subtotal Supplies</b>	<b>20.7</b>

Equipment

New Position Equipment	12.5
Computer Equipment	<u>20.0</u>
<b>Subtotal Equipment</b>	<b>32.5</b>

**TOTAL FY 00** **\$1404.9**

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 01

Personal Services - Anchorage

Salary and Benefits for 5 current positions	\$ 329.0
Attorney IV - Salary and Benefits	85.1
Paralegal Assistant II - Salary and Benefits 53.1	
Associate Attorney II - Salary and Benefits	62.4
Legal Secretary II - Salary and Benefits	<u>39.9</u>

Subtotal Personal Services 569.5

Travel

Staff Travel and Per Diem	37.5
Witness Travel and Per Diem	<u>150.0</u>

Subtotal Travel 187.5

Contractual

Communications	28.0
Copy & Discovery	73.0
Office Space	38.9
PC Network Maintenance	14.7
Westlaw	10.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case plus \$100.0 for appeals)	532.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

Subtotal Contractual Services 1038.1

Supplies

Office Supplies	15.0
Law Library	10.8
New Position Supplies	<u>6.0</u>

Subtotal Supplies 31.8

Equipment

New Position Equipment	10.0
Computer Equipment	<u>16.0</u>

Subtotal Equipment 26.0

TOTAL FY 01 \$1852.9

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 02

Personal Services - Anchorage

Salary and Benefits for 9 current positions	\$ 569.5
Attorney IV - Salary and Benefits	<u>85.1</u>

**Subtotal Personal Services** 654.6

Travel

Staff Travel and Per Diem	40.0
Witness Travel and Per Diem	<u>150.0</u>

**Subtotal Travel** 190.0

Contractual

Communications	32.0
Copy & Discovery	91.0
Office Space	44.5
PC Network Maintenance	17.1
Westlaw	12.3
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 plus \$200.00 for appeals)	632.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>

**Subtotal Contractual Services** 1169.6

Supplies

Office Supplies	16.8
Law Library	12.0
New Position Supplies	<u>1.5</u>

**Subtotal Supplies** 30.3

Equipment

New Position Equipment	2.5
Computer Equipment	<u>4.0</u>

**Subtotal Equipment** 6.5

**TOTAL FY 02** \$2051.0

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

FISCAL ANALYSIS -- FY 03

Personal Services - Anchorage

Salary and Benefits for 10 current positions \$ 654.6

Attorney IV - Salary and Benefits	85.1
Paralegal Assistant II - Salary and Benefits	53.1
Legal Secretary I - Salary and Benefits	<u>37.8</u>
<b>Subtotal Personal Services</b>	<b>830.6</b>

Travel

Staff Travel and Per Diem	51.0
Witness Travel and Per Diem	<u>150.0</u>
<b>Subtotal Travel</b>	<b>201.0</b>

Contractual

Communications	40.8
Copy & Discovery	118.0
Office Space	61.3
PC Network Maintenance	24.3
Westlaw	16.8
Expert Witness Fees (\$74.2 per case X 3 cases per year)	222.6
Witness Fees (\$2.5 per case X 3 cases per year)	7.5
Contract Representation for Conflict (\$432.6 per case plus \$300.0 for appeals)	732.6
Depositions and Court Reporter (\$20.0 per case X 3 cases per year)	60.0
Training and Consultation	<u>50.0</u>
<b>Subtotal Contractual Services</b>	<b>1333.9</b>

Supplies

Office Supplies	21.6
Law Library	14.4
New Position Supplies	<u>4.5</u>
<b>Subtotal Supplies</b>	<b>40.5</b>

Equipment

New Position Equipment	7.5
Computer Equipment	<u>12.0</u>
<b>Subtotal Equipment</b>	<b>19.5</b>

**TOTAL FY 03** **\$2425.5**

# FISCAL NOTE

No. 5

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Bill Version: SB 60

(S) Publish Date: 3-24-97

Revision Date: \_\_\_\_\_  
 Title: "An Act providing for an advisory vote on the issue of capital punishment."  
 Sponsor: Sen. 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 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*
<b>CAPITAL EXPENDITURES</b>	*	*	*	*	*	*
<b>CHANGE IN REVENUES ( )</b>	*	*	*	*	*	*

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY 97) cost: \$ 0

**POSITIONS:**

FULL-TIME	*	*	*	*	*	*
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

Should legislation subsequently be enacted, the following fiscal analysis applies.

See attached.

Prepared by: Barbara K Brink, Director  
 Division: Public Defender Agency

Phone: (907) 264-4414  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Byer  
 Agency: Department of Administration

*Mark Byer*  
 Date: 3/19/97

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## FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 60

### ANALYSIS: (continued)

#### Introduction

HB 131 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 Public Defender Agency.

A subsequent legislative bill that would authorize capital punishment, would classify murder in the first degree as a capital felony, and establish sentencing procedures for capital felonies. In general, if the procedures are similar to those suggested in previous capital punishment bills, a 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. (See, for example, SB 52, introduced in the 19th Legislature.)

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 131. 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 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.

Capital felony trials are bifurcated, that is, two separate trials are actually held. The first determines guilt or innocence; the second determines whether aggravating factors exist to justify execution; whether mitigating factors exist that outweigh the aggravating factors, and whether to impose a period of imprisonment or death. The experiences of other states is that these trials require far more defense resources than first degree murder cases that do not involve

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the potential for execution.

Many states that have a death penalty provide a minimum of two defense attorneys to each capital defendant to insure that the required heightened procedural safeguards are met. The American Bar Association Standards for Criminal Justice: Providing Defense Services (3d. Ed.) note the following:

Workload in capital cases creates extraordinary difficulties in every jurisdiction in which the death penalty can be imposed. Time requirements in such cases vastly exceed those of non-capital felony cases. In some states where death row populations are high, the situation has reached crisis proportions. After conducting a national survey, for example, attorneys in Florida arrived at an annual caseload standard of five cases per attorney when the defendant was not under a warrant of death, and three cases per attorney when a warrant for execution had been issued. In California, where the Office of the State Public Defender handled capital appeals in the California Supreme Court, one study concluded that the attorneys handling such cases should be responsible for only two to three briefs per year in such cases.

(at p. 73; footnotes omitted).

During the investigation and preparation phase of the case, crime scene evidence will have to be examined and the forensic examinations performed by the state will have to be scrutinized. Psychiatric experts are essential to deal with competency, insanity or diminished capacity issues. Motion practice in death penalty cases has been estimated to be five times more labor and cost-intensive than in non-capital homicide trials. Trial itself in capital cases is an extremely time consuming process, lasting in excess of six months in some cases. Serious scheduling conflicts will arise in staff resources to provide simultaneous representation in a number of cases.

A sentencing, or penalty phase trial is categorically different in breadth and procedure from any comparable proceeding in a non-capital trial. Heightened due process requirements continue. In addition to the expert witnesses employed during the trial phase, such expertise will be necessary when mental health issues do not rise to the level of perfect defenses but are important in establishing mitigators. Additionally, extensive investigation and presentation of the defendant's family friends, co-workers, neighbors, and school and social workers is minimally required. The analysis of defendants' entire life and the gathering of historical detail is absolutely mandated. In a recent California case 240 such witnesses were located and interviewed, and 120 of those were called as actual witnesses in a single penalty phase.

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. There is also extensive appellate work which is routinely done in each death penalty case following conviction. Following are the procedures which are typically utilized after a trial and sentencing:

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

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12. Emergency stays to the United States Supreme Court prior to execution.

While precise numbers may be difficult to predict, the conclusion is inescapable: to meet the extraordinary workload difficulties of capital cases extraordinary resources must be allocated.

### 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 is appointed 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. Even if only 4 cases proceed to trial in that year, preparation must begin immediately. 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 given the broad geographic area served by these teams. 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 its fiscal note 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.

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

4. Training. Attorneys will most likely need to be recruited from outside as there are few or no "death-qualified" attorneys available locally, and none currently employed by the Public Defender Agency. Training in Alaska law will be required. Additionally, 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 on an on-going basis.

### 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. Continued additional staff will have

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to be added to this agency beyond the fourth year of implementation of the capital crime law. Despite our best predictive efforts, 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.

(Analysis continues on next page)

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Fiscal Impact--FY 98

First Year Cost Summary

Development of two Capital Defense Teams, one in Anchorage and one in Fairbanks.

OBJECT	(2) Atty V	(2) Atty IV	(2)Assoc Atty I	(2) Invest	(2) Paralegal	(2) Sec I	Total
100 - Salaries & Benefits	193.4	181.6	117.3	122.8	108.1	76.9	800.1
	193.4	181.6	117.3	122.8	108.1	76.9	800.1
200 - Travel							
Staff Travel & Per Diem	15.0	15.0	10.0	15.0	10.0	6.0	71.0
	15.0	15.0	10.0	15.0	10.0	6.0	71.0
300 - Contractual							
Communications	7.2	7.2	2.4	7.2	2.4	2.4	28.8
Copy & Discovery	11.2	11.2	11.2	11.2	11.2	11.2	67.2
Office Space Leases	10.0	10.0	5.0	5.0	5.0	3.0	38.0
PC Network Maint.	3.0	3.0	3.0	3.0	3.0	3.0	18.0
Westlaw	2.4	2.4	2.4	0.0	2.4	0.0	9.6
	33.8	33.8	24.0	26.4	24.0	19.6	161.6
400 - Supplies							
Office Supplies	3.6	3.6	3.6	3.6	3.6	2.4	20.4
Law Library	2.4	2.4	2.4	1.2	2.4	0.0	10.8
New Position Supplies	3.0	3.0	3.0	3.0	3.0	3.0	18.0
	9.0	9.0	9.0	7.8	9.0	5.4	49.2

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500 - Equipment

New Position Equipment	5.0	5.0	5.0	5.0	5.0	5.0	30.0
Personal Computer	8.0	8.0	8.0	8.0	8.0	8.0	48.0
	13.0	13.0	13.0	13.0	13.0	13.0	78.0

TOTAL	264.2	252.4	173.3	185.0	164.1	120.9	1159.9
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Second Year Cost Summary  
Additional Costs

Development of Capital Appellate Team in Anchorage

OBJECT	(1) Atty V	(1) Atty IV	(1) Paralegal	(1) Secretary	Total
100 - Salaries & Benefits	90.6	85.1	53.1	37.8	266.6
	90.6	85.1	53.1	37.8	266.6
200 - Travel					
Staff Travel & Per Diem	3.5	3.5	2.5	0.0	9.5
	3.5	3.5	2.5	0.0	9.5
300 - Contractual					
Communications	4.0	4.0	2.4	2.4	12.8
Copy & Discovery	18.0	18.0	9.0	0.0	45.0
Office Space Leases	5.6	5.6	5.6	5.6	22.4
PC Network Maint.	2.4	2.4	2.4	0.0	7.2
Wetlaw	1.5	1.5	1.5	1.5	6.0
	31.5	31.5	20.9	9.5	93.4

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400 - Supplies

Office Supplies	1.8	1.8	1.8	1.2	6.6
Law Library	3.6	1.2	1.2	0.0	6.0
New Position Supplies	1.5	1.5	1.5	1.5	6.0
	6.9	4.5	4.5	2.7	18.6

500 - Equipment

New Position Equipment	2.5	2.5	2.5	2.5	10.0
Personal Computer	4.0	4.0	4.0	4.0	16.0
	6.5	6.5	6.5	6.5	26.0

TOTAL	139.0	131.1	87.5	56.5	414.1
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Third Year Cost Summary  
Additional Costs

Development of second Capital Appellate Team in Fairbanks and addition of trial lawyers and staff in Anchorage and Fairbanks due to increased caseload.

OBJECT	(3) Atty V	(1) Atty IV	(1)Assoc Atty I	(2) Invest	(1) Paralegal	(3) Sec I	Total
100 - Salaries & Benefits	296.2	96.5	54.9	122.8	55.0	116.0	741.4
	296.2	96.5	54.9	122.8	55.0	116.0	741.4
200 - Travel							
Staff Travel & Per Diem	18.5	2.5	5.0	15.0	2.5	6.0	49.5
	18.5	2.5	5.0	15.0	2.5	6.0	49.5

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300 - Contractual

Communications	11.2	4.0	3.6	7.2	2.4	4.8	33.2
Copy & Discovery	28.0	18.0	5.0	5.0	9.0	3.0	68.0
Office Space Leases	16.8	5.6	5.6	11.2	5.6	16.8	61.6
PC Network Maint.	4.8	2.4	1.2	0.0	2.4	0.0	10.8
Westlaw	4.5	1.5	1.5	1.5	1.5	4.5	15.0
	65.3	31.5	16.9	24.9	20.9	29.1	188.6

400 - Supplies

Office Supplies	5.4	1.8	1.8	3.6	1.8	3.6	18.0
Law Library	3.6	1.2	1.2	1.2	1.2	0.0	8.4
New Position Supplies	4.5	1.5	1.5	3.0	1.5	4.5	16.5
	13.5	4.5	4.5	7.8	4.5	8.1	42.9

500 - Equipment

New Position Equipment	7.5	2.5	2.5	5.0	2.5	7.5	27.5
Personal Computer	12.0	4.0	4.0	8.0	4.0	12.0	44.0
	19.5	6.5	6.5	13.0	6.5	19.5	71.5

TOTAL	413.0	141.5	87.8	183.5	89.4	178.7	1093.9
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Additional Case Costs

First Year: 4 Trials

Expert Witness Fees  
\$60,000 per case x 4 cases = 240.0

Witness travel and per diem  
\$50,000 per case x 4 cases = 200.0

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Witness fees		
\$2,500 per case x 4 cases	=	10.0
Deposition/Court Reporter charges		
\$20,000 per case x 4 cases	=	80.0
Training and Consultation	=	50.0

Second Year: 6 Trials plus 4 Appeals

Expert Witness Fees		
\$60,000 per case x 6 cases	=	360.0
Witness travel and per diem		
\$50,000 per case x 6 cases	=	300.0
Witness fees		
\$2,500 per case x 6 cases	=	15.0
Deposition/Court Reporter charges		
\$20,000 per case x 6 cases	=	120.0
\$30,000 per case x 4 case	=	120.0
Training and Consultation	=	50.0

Third Year: 7 Trials plus 6 new appeals

Expert Witness Fees		
\$60,000 per case x 7 cases	=	420.0
Witness travel and per diem		
\$50,000 per case x 7 cases	=	350.0
Witness fees		
\$2,500 per case x 7 cases	=	17.5
Deposition/Court Reporter charges		
\$20,000 per case x 7 cases	=	140.0
\$30,000 per case x 6 case	=	180.0
Training and Consultation	=	50.0

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Cumulative Cost Summary

OBJECT	Year 1	Year 2	Year 3	Year 4
100 - Salaries & Benefits	800.1	1066.7	1808.1	1808.1
	<u>800.1</u>	<u>1066.7</u>	<u>1808.1</u>	<u>1808.1</u>
200- Travel				
Staff Travel	71.0	80.5	130.0	130.0
Witness Travel	200.0	300.0	350.0	350.0
	<u>271.0</u>	<u>380.5</u>	<u>480.0</u>	<u>480.0</u>
300 - Contractual				
Staff Contractual	161.6	255.0	443.6	443.6
Outside Services	380.0	665.0	807.5	807.5
	<u>541.6</u>	<u>920.0</u>	<u>1251.1</u>	<u>1251.1</u>
400 - Supplies	49.2	57.2	94.1	53.6
	<u>49.2</u>	<u>57.2</u>	<u>94.1</u>	<u>53.6</u>
500 - Equipment	78.0	26.0	71.5	17.5
	<u>78.0</u>	<u>26.0</u>	<u>71.5</u>	<u>17.5</u>
Total	1739.9	2450.4	3704.8	3610.3
PFT	12.0	16.0	27.0	27.0

HOUSE CS FOR SENATE BILL NO. 60(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS TAYLOR, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for an advisory vote on the issue of capital punishment."

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

3 \* Section 1. The lieutenant governor shall place before the qualified voters of the state at  
4 the next general election the question advisory to the legislature of whether the legislature  
5 should enact a law providing for capital punishment for murder in the first degree. The  
6 question shall appear on the ballot in substantially the following form:

7 Q U E S T I O N

8 If the Alaska State Legislature enacts a law providing for capital  
9 punishment for murder, the following annual fiscal costs to the following state  
10 agencies are estimated to result:

11 (INSERT FISCAL COSTS)

12 These estimates assume 10 capital punishment cases annually.

13 It is also estimated that the total fiscal cost for the trial and subsequent  
14 legal proceedings, incarceration pending execution, and execution for one  
15 capital punishment case would be:

1 (INSERT FISCAL COST)

2 For the purpose of comparison, the estimated total fiscal cost of the trial and  
3 subsequent legal proceedings and incarceration of a person sentenced to a  
4 mandatory 99-year term of imprisonment without parole as provided under  
5 current law is:

6 (INSERT FISCAL COST)

7 Considering this, shall the Alaska State Legislature enact a law  
8 providing for capital punishment for murder in the first degree and establishing  
9 procedures for the imposition of capital punishment that are consistent with the  
10 United States Constitution as interpreted by the United States Supreme Court?

11 Yes [ ] No [ ]

12 \* Sec. 2. Each department that expects to be affected by the enactment of a law providing  
13 for capital punishment for murder in the first degree shall estimate, in consultation with the  
14 Legislative Budget and Audit Committee, and submit the fiscal costs to that department to the  
15 lieutenant governor not less than 180 days before the time the question in sec. 1 of this Act  
16 will appear on the ballot. The lieutenant governor shall insert those estimates into the  
17 question at the appropriate places shown in sec. 1 of this Act.

18 \* Sec. 3. The lieutenant governor shall add the following language to the ballot before the  
19 paragraph beginning "Considering this" if, after having conducted a survey of states with the  
20 death penalty, the lieutenant governor determines the ratio between the cost of imposition of  
21 the death penalty and the cost of imposition of life imprisonment without parole, estimated  
22 in sec. 2 of this Act, is consistent with the experience of other states:

23 This ratio (INSERT RATIO) between the cost of imposition of the  
24 death penalty and the cost of life imprisonment is confirmed by the experience  
25 of other states.

Department of Corrections  
Inmates Incarcerated for Murder - 1st

Females

Asian	0	0.00%	Average Age at Arrest - All	29
Black	1	11.11%	Average Age at Arrest - Female	31
Hispanic	0	0.00%	Average Age at Arrest - Male	29
Native American	1	11.11%		
Unknown	0	0.00%	Average Sentence - All	89
White	7	77.78%	Average Sentence - Female	67
			Average Sentence - Male	90
<b>Total Females</b>	<b>9</b>			

Males

Asian	5	2.98%
Black	15	8.93%
Hispanic	3	1.79%
Native American	39	23.21%
Unknown	0	0.00%
White	106	63.10%
<b>Total Males</b>	<b>168</b>	

Total Population

Asian	5	2.82%
Black	16	9.04%
Hispanic	3	1.69%
Native American	40	22.60%
Unknown	0	0.00%
White	113	63.84%
<b>Grand Total</b>	<b>177</b>	

*SENATE file*  
*Death Penalty Bill*  


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*TAYLOR'S (Just came over)*

Department of Corrections  
Inmates Incarcerated for Murder - 1st

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SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
F	B	T70-15.010	3/10/45	7/6/78	33	Life
F	I	41.1	2/14/71	6/10/85	14	7/13/2075
F	W.	41.1	9/12/56	6/10/91	35	12/14/2004
F	W	41.1	1/31/42	7/29/88	46	7/28/2008
F	W	41.1	12/9/61	4/10/87	26	8/8/2000
F	W	41.1	9/1/59	3/26/92	33	5/20/1994
F	W	41.1	12/8/38	6/25/82	44	4/24/2007
F	W	41.1	5/20/65	3/5/87	22	Life
F	W	41.1	6/15/65	3/10/84	19	6/2/2050
F	W	41.1	8/8/59	12/10/94	35	8/9/2051
M	A	41.1	7/30/63	8/2/86	23	4/3/2003
M	A	41.1	12/28/46	5/23/88	42	3/6/2005
M	A	41.1	2/17/17	10/4/88	71	6/4/2015
M	A	41.1	8/19/76	5/31/95	19	9/28/2028
M	A	41.1	1/26/56	1/17/89	33	11/06/2121
M	B	41.1	11/17/53	12/6/82	29	4/20/2049
M	B	T70-15.010	7/30/50	6/28/74	24	12/31/2099
M	B	41.1	4/18/50	7/8/87	37	07/11/2119
M	B	41.1	11/17/62	6/23/94	32	10/11/2039
M	B	41.1	5/15/66	6/12/85	19	9/10/2051
M	B	41.1	12/7/75	7/18/95	20	7/17/2035
M	B	41.1	5/3/60	9/20/86	26	9/19/2052
M	B	41.1	10/8/60	8/6/86	26	04/05/2255
M	B	41.1	7/15/56	5/6/87	31	9/3/2020
M	B	41.1	2/23/47	11/11/83	36	10/16/2018
M	B	41.1	11/6/61	9/4/90	29	3/5/1998
M	B	41.1	7/8/51	10/25/93	42	10/24/2129
M	B	41.1	4/14/73	10/6/89	16	2/3/2049
M	B	41.1	7/6/74	10/28/94	20	7/2/2041
M	B	41.1	2/26/63	12/26/88	25	12/25/2054
M	B	41.1	5/1/58	6/6/89	31	6/6/2055
M	H	41.1	7/31/60	5/20/96	36	9/18/2029
M	H	41.1	10/27/61	7/21/89	28	8/10/2059
M	H	41.1	11/19/56	9/21/89	33	5/21/2036
M	I	41.1	11/1/75	5/1/93	18	07/03/2099
M	I	41.1	12/17/60	10/31/95	35	10/30/2061
M	I	41.1	8/6/30	11/26/91	61	11/25/2067
M	N	41.1	7/12/72	7/9/95	23	7/7/2013
M	N	41.1	9/5/62	6/14/85	23	3/17/2012
M	N	41.1	11/30/66	11/18/88	22	3/9/1998
M	N	41.1	3/16/66	9/16/84	18	8/18/2028
M	N	41.1	5/1/62	4/22/81	19	11/14/2031
M	N	41.1	4/13/75	11/24/93	18	Life
M	N	41.1	2/27/68	7/31/83	15	3/30/2020
M	N	T70-15.010	11/13/43	7/21/71	28	11/27/2072
M	N	41.1	6/8/66	2/16/90	24	02/15/2122

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Department of Corrections  
Inmates Incarcerated for Murder - 1st

SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
M	N	41.1	4/11/45	10/20/94	49	12/5/2002
M	N	41.1	7/24/33	7/10/90	57	Life
M	N	T70-15.010	6/6/59	2/4/81	22	Life
M	N	41.1	8/7/71	8/7/92	21	8/7/2022
M	N	41.1	10/11/82	2/11/90	28	2/11/2040
M	N	41.1	11/12/69	7/22/89	20	3/21/2060
M	N	41.1	12/15/68	3/11/89	21	3/11/2039
M	N	41.1	5/17/48	3/24/85	37	5/4/2005
M	N	41.1	3/18/69	7/2/90	21	10/30/2033
M	N	41.1	3/11/66	5/2/87	21	12/30/2189
M	N	41.1	9/5/69	5/30/86	17	2/26/2033
M	N	41.1	12/3/53	4/24/93	40	8/23/2072
M	N	41.1	8/1/65	8/26/86	21	3/16/2053
M	N	41.1	11/26/47	12/27/82	35	06/25/2116
M	N	41.1	4/11/62	2/17/85	23	9/13/2049
M	N	41.1	10/13/74	2/12/92	18	6/13/2035
M	N	41.1	3/10/51	3/20/81	30	04/05/2179
M	N	41.1	3/19/62	9/18/95	33	1/18/2065
M	N	41.1	10/28/63	11/18/84	21	9/13/2011
M	N	T70-15.010	2/9/62	12/5/79	17	07/10/2080
M	N	41.1	9/10/65	9/6/94	29	9/5/2060
M	N	T70-15.010	11/8/57	3/23/78	20	1/1/2078
M	N	41.1	2/12/43	10/3/88	45	10/2/2030
M	N	41.1	6/1/53	9/6/95	42	1/6/2009
M	N	41.1	6/23/62	2/13/83	21	2/17/1998
M	N	41.1	5/7/57	2/10/84	27	5/8/2070
M	N	T70-15.010	8/25/51	9/16/77	26	1/22/2002
M	N	41.1	12/27/63	1/19/83	20	8/31/2013
M	N	41.1	10/21/51	5/25/95	44	Life
M	N	41.1	11/5/65	3/30/95	30	11/26/2021
M	N	41.1	3/3/54	3/17/81	27	4/18/2001
M	N	41.1	9/3/53	12/31/88	35	12/30/2038
M	W	41.1	9/7/28	9/23/83	55	12/3/2010
M	W	41.1	11/2/74	4/11/94	20	7/31/2067
M	W	41.1	12/23/63	4/24/87	24	04/22/2225
M	W	41.1	9/10/62	2/10/83	21	1/16/2052
M	W	41.1	9/24/49	6/14/80	31	2/8/2047
M	W	41.1	10/21/75	2/26/94	19	2/26/2044
M	W	41.1	6/12/69	3/23/91	22	7/22/2022
M	W	41.1	2/25/66	11/11/85	19	11/9/2026
M	W	41.1	4/12/67	1/17/84	17	Life
M	W	41.1	2/27/62	6/6/93	31	6/5/2023
M	W	T70-15.010	11/4/46	5/17/77	31	12/31/2099
M	W	41.1	5/13/64	11/9/85	21	11/29/2051
M	W	41.1	9/21/68	12/23/93	25	4/23/2027
M	W	T70-15.010	7/23/54	5/20/76	22	12/31/2099

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Department of Corrections  
Inmates Incarcerated for Murder - 1st

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SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
M	W	41.1	10/1/49	7/26/85	36	7/5/2012
M	W	41.1	12/6/68	9/4/84	16	10/7/2005
M	W	41.1	9/5/47	1/26/85	37	11/25/2001
M	W	41.1	2/22/59	8/15/86	27	8/13/2016
M	W	41.1	8/29/64	4/4/85	21	1/14/2010
M	W	41.1	12/16/65	12/13/95	30	12/12/2025
M	W	41.1	9/19/72	3/21/91	19	3/20/2057
M	W	41.1	1/23/51	7/7/86	35	3/6/2013
M	W	41.1	7/25/65	4/4/85	20	9/11/2005
M	W	41.1	4/4/66	3/5/87	21	3/4/2037
M	W	41.1	1/4/63	5/26/85	22	3/10/2042
M	W	41.1	11/19/40	5/16/93	53	5/15/2033
M	W	41.1	9/1/57	1/1/94	37	1/1/2060
M	W	41.1	8/31/61	3/10/84	23	8/5/2024
M	W	41.1	5/25/66	5/14/89	23	5/14/2005
M	W	41.1	5/30/53	9/22/96	43	8/22/2002
M	W	41.1	3/18/58	4/11/83	25	11/24/2022
M	W	41.1	3/31/53	2/11/88	35	2/27/2054
M	W	41.1	5/28/52	11/11/85	33	7/11/2002
M	W	T70-15.010	8/24/60	10/3/78	18	06/14/2079
M	W	41.1	4/27/57	1/8/91	34	01/06/2157
M	W	41.1	4/9/60	10/22/85	26	2/20/2020
M	W	41.1	7/4/63	2/10/83	20	9/4/2008
M	W	41.1	2/15/39	10/27/83	44	02/27/2545
M	W	41.1	11/11/59	9/3/92	33	9/2/2078
M	W	41.1	7/10/64	8/29/86	22	8/28/2052
M	W	41.1	1/1/44	3/1/83	39	08/30/2458
M	W	41.1	5/22/71	4/3/88	17	12/3/2055
M	W	41.1	5/21/54	10/4/94	40	10/4/2060
M	W	41.1	10/20/58	4/9/86	28	8/9/2019
M	W	41.1	12/29/54	7/28/88	34	3/27/2015
M	W	41.1	1/9/45	11/8/80	35	8/24/2047
M	W	41.1	2/2/61	6/9/81	20	08/23/2094
M	W	41.1	1/5/72	3/21/91	19	3/20/2057
M	W	41.1	11/17/50	4/10/86	35	12/16/2012
M	W	41.1	8/31/41	10/13/88	47	08/20/2127
M	W	41.1	10/3/52	5/19/86	34	9/17/2053
M	W	41.1	7/4/73	4/10/86	13	10/19/2009
M	W	41.1	6/14/68	2/24/94	26	9/20/2037
M	W	41.1	12/23/63	12/27/84	21	12/4/2028
M	W	41.1	2/28/46	10/24/88	42	10/23/2054
M	W	41.1	11/3/71	12/18/92	21	12/18/2058
M	W	41.1	6/29/55	1/24/90	35	1/24/2056
M	W	41.1	2/1/61	3/10/84	23	5/25/2050
M	W	41.1	11/20/51	11/15/91	40	3/16/2035
M	W	41.1	9/9/44	12/24/82	38	6/4/2049

Department of Corrections  
Inmates Incarcerated for Murder - 1st

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SEX	RACE	OFFENSE	DATE OF BIRTH	DATE OF ARREST	AGE AT ARREST	DATE OF RELEASE
M	W	41.1	9/15/50	11/16/92	42	11/15/2032
M	W	41.1	6/18/65	6/28/88	23	11/11/2092
M	W	41.1	12/1/58	5/14/84	25	11/25/2002
M	W	41.1	8/31/62	3/5/87	25	3/4/2053
M	W	41.1	2/14/59	1/13/89	30	1/30/2029
M	W	41.1	3/8/41	1/15/83	42	5/25/2050
M	W	41.1	9/10/60	11/12/95	35	11/15/2061
M	W	41.1	10/22/49	5/19/86	37	5/18/2052
M	W	41.1	4/21/60	7/27/84	24	6/4/2011
M	W	41.1	10/1/47	5/7/82	35	10/13/2246
M	W	41.1	8/26/59	1/17/86	27	1/17/2052
M	W	41.1	10/30/24	12/10/81	57	6/3/2022
M	W	41.1	11/13/77	10/4/94	17	6/4/2031
M	W	T70-15.010	4/28/52	9/8/75	23	Life
M	W	41.1	12/28/51	6/12/92	41	6/11/2058
M	W	41.1	10/31/58	2/25/84	26	5/22/2024
M	W	41.1	1/17/69	8/5/90	21	08/05/2122
M	W	41.1	8/23/68	7/23/92	24	1/18/2061
M	W	41.1	11/21/47	2/18/93	48	10/18/2029
M	W	41.1	8/23/74	6/18/96	22	4/8/2064
M	W	T70-15.010	7/23/56	12/15/76	20	Life
M	W	41.1	8/18/77	10/4/94	17	2/1/2038
M	W	41.1	9/18/67	8/2/94	27	10/13/2005
M	W	41.1	5/3/61	12/3/81	20	6/19/2002
M	W	41.1	8/21/72	1/8/89	17	1/7/2065
M	W	41.1	12/24/62	8/6/95	33	8/5/2041
M	W	41.1	12/28/63	8/22/82	19	9/16/2055
M	W	41.1	8/2/57	1/8/96	39	1/7/2062
M	W	41.1	7/24/67	7/3/84	17	9/11/2004
M	W	41.1	11/21/76	5/27/94	18	5/25/2024
M	W	41.1	5/5/62	12/13/87	25	12/12/2053
M	W	41.1	3/25/66	8/22/82	16	3/9/2049
M	W	41.1	9/22/61	2/16/95	34	2/15/2039
M	W	41.1	4/2/55	3/22/86	31	7/20/2053
M	W	41.1	4/14/45	11/11/82	38	10/9/2001
M	W	41.1	2/5/53	1/9/80	27	12/31/2099
M	W	41.1	12/21/73	9/20/91	18	9/19/2057
M	W	41.1	8/12/58	5/26/82	24	10/29/2048
M	W	41.1	1/9/53	2/15/87	34	2/14/2053
M	W	41.1	1/15/47	2/17/83	36	11/27/2049
M	W	41.1	2/7/57	9/15/86	29	1/12/2053
M	W	41.1	9/13/48	6/2/89	41	6/1/2043
M	W	41.1	10/10/46	8/7/85	39	1/2/2009
M	W	41.1	12/31/58	7/17/86	28	11/20/2099
M	W	41.1	1/11/31	11/9/93	62	11/9/2059
M	W	41.1	7/13/43	11/16/81	38	9/27/2047

# Alaska State Legislature

*Chairman,*  
Judiciary Committee

*Member,*  
Resources Committee  
Rules Committee  
Committee on Committees



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*Senator Robin L. Taylor*  
*Senate Majority Leader*

## Sponsor Statement

### Death Penalty Vote - The Ultimate Poll

by Senator Robin L. Taylor

Senate Bill 60 is intended to seek the advice of the voters of Alaska on the controversial issue of capital punishment.

Passage of SB 60 will not impose the death penalty in Alaska. It simply places on the ballot the question: "Shall the Alaska State Legislature enact a law providing for capital punishment for murder in the first degree and establishing procedures for the imposition of capital punishment that are consistent with the United States Constitution as interpreted by the United States Supreme Court?".

For years opinion poll after opinion poll have reflected the desire of the people of Alaska to have the death penalty available as an option in this state. SB 60 seeks to employ the ultimate poll, that of the ballot box, in a non-binding vote.

There are those who argue that the people of Alaska are somehow unqualified to render advice on this issue. They argue that the ballot question itself is too "simplistic". They argue that the ballot question should offer a choice between the death penalty and life without parole. What they fail to acknowledge is that the life in prison without parole option already exists in Alaska.

District A:

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

Given the option of a death penalty or life in prison without parole, 555 Alaskans polled statewide in March, 1996, favored the death penalty by a 62% margin, with 35% choosing life without parole. It is especially significant that only 5% of the respondents said they were undecided.

Support for the death penalty crossed all demographics, including location, gender, age, party affiliation, employment status and length of time in the community.

Alaska has one of the youngest, best educated and well read populations in the nation. Judging from the campaign already being mounted against SB 60, the organized groups opposed to capital punishment will most certainly conduct a vigorous campaign when this issue reaches the ballot. Alaskans will cast votes based in information, not emotion.

Issues such as the cost and effectiveness of capital punishment will be part of any campaign on the ballot question and will also need to be explored again at great length if the voters advise the 21st Alaska State Legislature to pursue this issue.

For now, we are talking about placing an advisory vote on the ballot, at a cost of about \$3,000.

<http://essential.org/dpic/>



There are currently 38 states with the death penalty: (in chart above, states in green do not have the death penalty; states in red have the death penalty, but have no one on death row; states in white have the death penalty and have people on death row)

- |             |                |                |
|-------------|----------------|----------------|
| Alabama     | Kentucky       | Ohio           |
| Arizona     | Louisiana      | Oklahoma       |
| Arkansas    | Maryland       | Oregon         |
| California  | Mississippi    | Pennsylvania   |
| Colorado    | Missouri       | South Carolina |
| Connecticut | Montana        | South Dakota   |
| Delaware    | Nebraska       | Tennessee      |
| Florida     | Nevada         | Texas          |
| Georgia     | New Hampshire* | Utah           |
| Idaho       | New Jersey     | Virginia       |
| Illinois    | New Mexico     | Washington     |
| Indiana     | New York*      | Wyoming*       |
| Kansas*     | North Carolina |                |

Plus: U.S. Government and U.S. Military

\*Indicates jurisdictions with no one on death row.  
 -New York's law became effective Sept. 1, 1995.

There are currently 12 states without the death penalty:

- Alaska
- Hawaii
- Iowa

Maine  
Massachusetts  
Michigan  
Minnesota  
North Dakota  
Rhode Island  
Vermont  
West Virginia  
Wisconsin

Plus: the District of Columbia

WHICH PUNISHMENT DO YOU SUPPORT THE MOST FOR CRIMINALS CONVICTED OF PARTICULARLY TERRIBLE CRIMES AGAINST PEOPLE, INCLUDING FIRST DEGREE MURDER...

DEMOGRAPHICS	UNSURE	DEATH PENALTY	LIFE W-O PAROLE
TOTAL.....	5%	62%	33%
LOCATION			
RURAL.....	8%	59%	32%
CENTRAL.....	2%	56%	42%
SOUTH CENTRAL....	4%	63%	32%
ANCHORAGE.....	4%	66%	30%
SOUTH EAST.....	6%	59%	35%
GENDER			
MALE.....	4%	69%	27%
FEMALE.....	5%	55%	40%
RESPONDENT AGE			
18-29 YRS OF AGE.	4%	57%	39%
30-44 YRS.....	2%	68%	30%
45-59 YRS.....	7%	57%	36%
60+ YEARS OF AGE.	6%	65%	29%
DENOCRAT.....	6%	47%	47%
REPUBLICAN.....	6%	77%	17%
NON-PARTISAN.....	4%	62%	34%
OTHER.....	0%	55%	45%
NOT REGISTERED...	0%	61%	39%
EMPLOYMENT			
FEDERAL.....	0%	82%	18%
STATE.....	5%	53%	42%
LOCAL.....	7%	60%	32%
PRIVATE.....	4%	63%	33%
NOT IN WORKFORCE.	7%	59%	35%
TIME IN COMMUNITY			
TO 4 YEARS.....	6%	61%	33%
5-9 YEARS.....	0%	70%	30%
10-14 YEARS.....	1%	62%	37%
MORE THAN 15 YEARS.....	6%	61%	33%



# Bureau of Justice Statistics Bulletin

December 1996, NCJ-162043

# Capital Punishment 1995

By Tracy L. Snell  
BJS Statistician

Sixteen States executed 56 prisoners during 1995. The number of persons executed was 25 greater than in 1994 and was the largest annual number since the 56 executed during 1960 and the 65 in 1957. The prisoners executed during 1995 had been under sentence of death an average of 11 years and 2 months, about 12 months more than the average for inmates executed the previous year.

At yearend 1995, 3,054 prisoners were under sentence of death. California held the largest number of death row inmates (420), followed by Texas (404), Florida (362), and Pennsylvania (196). Eight prisoners were in Federal custody under a death sentence on December 31, 1995.

Between January 1 and December 31, 1995, 26 State prison systems and the Federal prison system received 310 prisoners under sentence of death. Texas (40 admissions), California (36), North Carolina (34), and Florida (31) accounted for 45% of the inmates entering prison under a death sentence in 1995.

During 1995, 56 persons in 16 States were executed — 19 in Texas; 6 in Missouri; 5 each in Illinois and Virginia; 3 each in Florida and Oklahoma; 2 each in Alabama, Arkansas, Georgia, North Carolina, and Pennsylvania; and 1 each in Arizona, Delaware, Louisiana, Montana, and

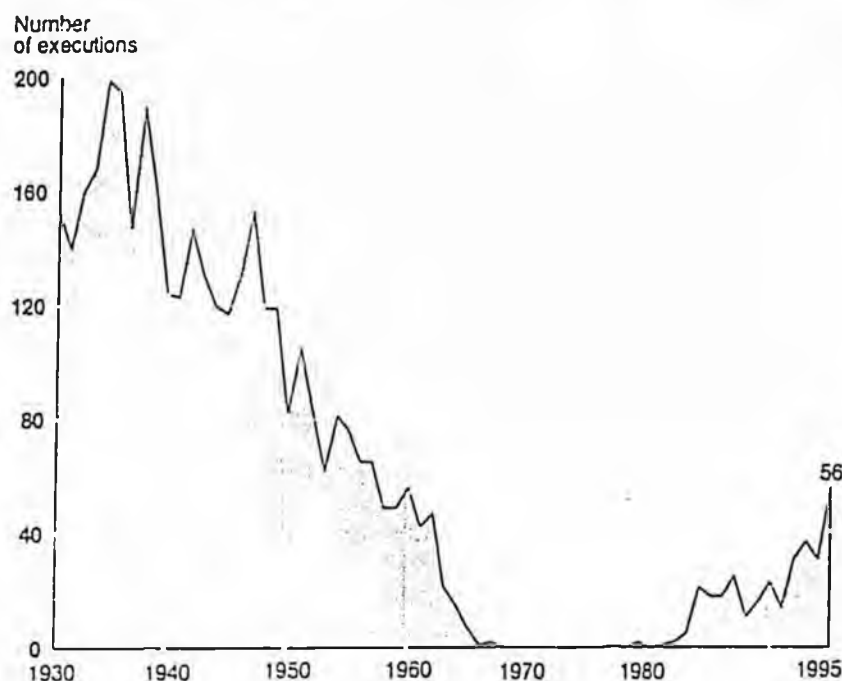
## Highlights

### Status of the death penalty, December 31, 1995

Executions during 1995		Number of prisoners under sentence of death		Jurisdictions without a death penalty
Texas	19	California	420	Alaska
Missouri	6	Texas	404	District of Columbia
Illinois	5	Florida	362	Hawaii
Virginia	5	Pennsylvania	196	Iowa
Florida	3	Ohio	155	Maine
Oklahoma	3	Illinois	154	Massachusetts
Alabama	2	Alabama	143	Michigan
Arkansas	2	North Carolina	139	Minnesota
Georgia	2	Oklahoma	129	North Dakota
North Carolina	2	Arizona	117	Rhode Island
Pennsylvania	2	Georgia	98	Vermont
Arizona	1	Tennessee	96	West Virginia
Delaware	1	Missouri	92	Wisconsin
Louisiana	1	22 other jurisdictions	549	
Montana	1			
South Carolina	1			
<b>Total</b>	<b>56</b>	<b>Total</b>	<b>3,054</b>	

- In 1995, 56 men were executed:  
33 were white  
22 were black  
1 was Asian.
- The persons executed in 1995 were under sentence of death an average of 11 years and 2 months.
- At yearend 1995, 34 States and the Federal prison system held 3,054 prisoners under sentence of death, 5.1% more than at yearend 1994. All had committed murder.
- Of persons under sentence of death —  
1,730 were white  
1,275 were black  
22 were Native American  
19 were Asian  
8 were classified as "other race."
- Forty-eight women were under a sentence of death.
- The 237 Hispanic inmates under sentence of death accounted for 8.5% of inmates with a known ethnicity.
- Among inmates under sentence of death and with available criminal histories, 2 in 3 had a prior felony conviction; 1 in 12 had a prior homicide conviction.
- Among persons for whom arrest information was available, the average age at time of arrest was 28; about 2% of inmates were age 17 or younger.
- At yearend, the youngest inmate was 18; the oldest was 80.

Persons executed, 1930-95



South Carolina. All were men. Thirty of the executed prisoners were non-Hispanic whites; 22 were non-Hispanic blacks; 2, white Hispanics; 1, Asian; and 1, white with unknown Hispanic origin. Forty-nine of the executions were carried out by lethal injection and 7 by electrocution.

From January 1, 1977, to December 31, 1995, a total of 4,857 persons entered State and Federal prisons under sentences of death, among whom 51% were white, 41% were black, 7% were Hispanic, and 1% were of other races.

During this 19-year period, a total of 313 executions took place in 26 States. Of the inmates executed, 171 were white, 120 were black, 19 were Hispanic, 2 were Native American, and 1 was Asian.

Also during 1977-95, 1,870 prisoners were removed from a death sentence as a result of dispositions other than execution (resentencing, retrial, commutation, or death while awaiting execution). Of all persons removed from under a death sentence, 52% were white, 41% were black, 1% were Native American, 0.5% were Asian, and 5% were Hispanic.

#### Statutory changes

During 1995, 19 States revised statutory provisions relating to the death penalty (table 1). Most of the changes involved additional aggravating circumstances, procedural amendments addressing the rights of victims and their families, and changes in methods of execution.

By State, these statutory changes were as follows:

Arkansas — Added to its definition of capital murder purposely discharging a firearm from a vehicle resulting in the death of another person (Ark. Code Ann. § 51-10-101(a)(10)), effective 7/27/95.

Colorado — Amended its code of criminal procedure establishing appellate review at the sentencing phase of a capital case. Upon conviction of a defendant, a sentencing hearing will be conducted by a three-judge panel; previously, a jury considered evidence and recommended punishment. The amendment also outlines the process by which panel members will be selected (CRS 16-11-103(1)(a)). These revisions became effective 7/1/95.

Connecticut — Revised its penal code to change the method of execution from electrocution to lethal injection; to remove the requirement that the State supreme court review the proportionality of a death sentence compared to penalties imposed in similar cases; and to add to its list of capital felonies murder of a person under age 16 (See P.A. 95-16). These changes became effective 10/1/95.

Delaware — Revised a statute limiting the number of witnesses at the execution to 10 and allowing one adult, either an immediate family member of the victim or the "victim's designee", to be present as one of those witnesses (11 Del. c. § 4209(f)), effective 5/15/95.

Delaware lawmakers also added as an aggravating circumstance murder committed to interfere with the victim's First Amendment rights or as a response to the victim's exercise of those rights or to the victim's race, religion, color, disability, national origin or ancestry (11 Del. c. § 4209(e)(1)(v)), effective 7/6/95.

Idaho — Revised and added sections to its penal code relating to the death penalty. These changes became effective 7/1/95.

Idaho amended its code of criminal procedure to require that, upon conviction of a defendant, the court hold a hearing to weigh aggravating and mitigating factors in the case to determine the appropriateness of a death sentence (19-2515, Idaho Code).

Another procedural amendment set guidelines regarding requests for stays of execution based on petitions to hear new evidence that was not known prior to the deadline for filing of an appeal on such grounds. The statute narrowed the availability of successive post-conviction proceedings (19-2719, Idaho Code).

The Idaho legislature also added new sections to its code of criminal procedure in capital cases: one providing for an inquiry into a convicted defendant's

need for a new attorney upon showing of ineffectiveness of the trial lawyer (19-2719A, Idaho Code); another providing for review of a case by the Idaho supreme court, upon remand from a Federal court, to decide whether legal or factual errors can be addressed without remanding the case back to the State district court (19-2818, Idaho Code).

Illinois — Added to its penal code as an aggravating factor murder by discharging a firearm from a motor vehicle when the victim was outside of the motor vehicle (720-ILCS 5/9-1(b)(15)), effective 1/1/95.

Indiana — Amended the code of criminal procedure to specify time limits within which the execution must be carried out, time limits and procedures for addressing petitions for post-conviction relief, and issues for consideration by Indiana's supreme court in conducting automatic review of death sentences (Indiana Code § 35-50-2-9(h), (i), and (j)). Indiana also changed the method of execution from electrocution to lethal injection (Indiana Code § 35-38-6-1). These changes became effective 7/1/95.

Maryland — Amended its code of criminal procedure to modify when an execution can be stayed by a trial judge; to change the time limit for filing an initial post-conviction appeal from 240 days to 180 days; to impose time limits on holding a hearing upon filing of a post-conviction petition; and to allow a convicted inmate to waive the statutory stay of execution imposed during the 180-day period set aside for filing of any post-conviction petitions (1995 Md. Laws ch. 110). These changes became effective 10/1/95.

Montana — Revised the code of criminal procedure to allow evidence to be presented during the sentencing hearing in regard to the harm the offense caused to the victim and his family (46-18-302 MCA), applicable to crimes committed on or after 10/1/95.

Nevada — Added to its penal code as aggravating factors murder of a department of prisons employee who doesn't exercise control over but comes into regular contact with the offender; murder of a person under age 14; and murder of a person because of their race, religion, national

origin, physical or mental disability, or sexual orientation (NRS 200.033), effective 10/1/95.

New Jersey — Amended its penal code to allow evidence during the sentencing proceeding pertaining to the victim's character and impact of the

**Table 1. Capital offenses, by State, 1995**

Alabama. Intentional murder with 18 aggravating factors (13A-5-40).

Arizona. First-degree murder accompanied by at least 1 of 10 aggravating factors.

Arkansas. Capital murder with a finding of at least 1 of 9 aggravating circumstances (Ark. Code Ann. 5-10-101); treason.

California. First-degree murder with special circumstances; train-wrecking; treason; perjury causing execution.

Colorado. First-degree murder with at least 1 of 13 aggravating factors; treason. Capital sentencing excludes persons determined to be mentally retarded.

Connecticut. Capital felony with 9 categories of aggravated homicide (C.G.S. 53a-54b).

Delaware. First-degree murder with aggravating circumstances.

Florida. First-degree murder; felony murder; capital drug-trafficking.

Georgia. Murder; kidnaping with bodily injury or ransom where the victim dies; aircraft hijacking; treason.

Idaho. First-degree murder; aggravated kidnaping.

Illinois. First-degree murder with 1 of 15 aggravating circumstances.

Indiana. Murder with 14 aggravating circumstances. Capital sentencing excludes persons determined to be mentally retarded.

Kansas. Capital murder with 7 aggravating circumstances. Capital sentencing excludes persons determined to be mentally retarded.

Kentucky. Murder with aggravating factors; kidnaping with aggravating factors.

Louisiana. First-degree murder; aggravated rape of victim under age 12; treason (La. R.S. 14:30, 14:42, and 14:113).

Maryland. First-degree murder, either premeditated or during the commission of a felony, provided that certain death eligibility requirements are satisfied.

Mississippi. Capital murder; capital rape; aircraft piracy.

Missouri. First-degree murder (565.020 RSMO).

Montana. Capital murder with aggravating circumstances.

Nebraska. First-degree murder.

Nevada. First-degree murder with 10 aggravating circumstances.

New Hampshire. Capital murder.

New Jersey. Purposeful or knowing murder; contract murder; murder or solicitation thereof by a leader of a narcotics trafficking network.

New Mexico. First-degree murder (Section 30-2-1 A, NMSA).

New York. First-degree murder with 1 of 10 aggravating factors. Capital sentencing excludes persons determined to be mentally retarded.

North Carolina. First-degree murder (N.C.G.S. 14-17).

Ohio. Aggravated murder with 1 of 8 aggravating circumstances. (O.R.C. secs. 2929.01, 2903.01, and 2929.04).

Oklahoma. First-degree murder in conjunction with a finding of at least 1 of 8 statutorily defined aggravating circumstances.

Oregon. Aggravated murder (ORS 163.095).

Pennsylvania. First-degree murder with 16 aggravating circumstances.

South Carolina. Murder with 1 of 10 aggravating circumstances.

South Dakota. First-degree murder with 1 of 10 aggravating circumstances.

Tennessee. First-degree murder.

Texas. Criminal homicide with 1 of 8 aggravating circumstances.

Utah. Aggravated murder; aggravated assault by a prisoner serving a life sentence if serious bodily injury is intentionally caused (76-5-202, Utah Code annotated).

Virginia. First-degree murder with 1 of 9 aggravating circumstances.

Washington. Aggravated first-degree murder.

Wyoming. First-degree murder.

crime on the victim's family (NJSA 2C:11-3c(6)), effective 6/19/95.

New York — Enacted a law creating the crime of capital murder and providing for a sentence of death for persons over age 18 if any of 10 aggravating circumstances exists. The new law prohibits sentencing mentally retarded persons to death (Ch. 1, 1995 session), effective 9/1/95.

Ohio — Amended its code of criminal procedure to establish responsibility of the Ohio supreme court for automatic review of all death sentences and guidelines to be followed in the course of such review. The review includes weighing of all facts and evidence submitted in the case, deciding if aggravating factors outweighed mitigating factors in the case, and consideration of the proportionality of the death sentence compared to similar cases (O.R.C. § 2929.05), effective 9/21/95.

Oregon — Amended its penal code to allow evidence regarding the victim's personal characteristics and the impact of the offense on the victim's family to be entered during the sentencing phase of capital proceedings (ORS 163.150), effective 7/7/95.

Pennsylvania — Added new sections to its capital statute relating to sentencing and execution procedures. One amendment permitted evidence concerning the victim and the effect of the crime on the victim's family to be heard and considered during the sentencing hearing (42 Pa.C.S. § 9711(a)(2), (b), and (c)(2)), effective 3/16/95.

Pennsylvania lawmakers also added provisions which specified time limits for transmission of court records to the governor and issuance of death warrants, terms of confinement upon receipt of the warrant, persons allowed to witness the execution, and certification and postmortem examination procedures following the execution (42 Pa.C.S. § 9711(i), (j), (k), (l), (m), (n), and (o)), effective 12/11/95.

South Carolina — Revised its penal code to allow persons sentenced to death to elect as their method of execution either electrocution or lethal injection. Election of method by the inmate must be made in writing 14 days before the date of execution; if this right is waived, persons will be executed by lethal injection (§ 24-3-540), effective 6/8/95.

South Dakota — Amended an aggravating circumstance allowing for prosecution as a capital offense, stipulating that a crime is considered to be "wantonily vile" if the victim is under age 13 (SDCL 23A-27A-1(6)), effective 7/1/95.

Tennessee — Revised an aggravating circumstance from simple involvement in the commission of certain felony offenses to participating "knowingly" (Tenn. Code Ann. § 39-13-204(i)(7)), effective 5/30/95; and added as an aggravating circumstance intentional mutilation of the victim's body after death (Tenn. Code Ann. § 39-13-204(i)(13)), effective 7/1/95.

Tennessee lawmakers also added to its definition of first degree murder killing during the commission of aggravated child abuse as defined by § 39-15-402 (Tenn. Code Ann. § 39-13-202), effective 7/1/95.

Virginia — Revised its penal code to allow persons sentenced to death to elect as their method of execution either electrocution or lethal injection. The inmate must choose a method at least 15 days before the scheduled date of execution; if this option is waived, persons will be executed by lethal injection (Va. Code § 53.1-233, 234), effective 1/1/95.

Virginia legislators also amended the definition of capital murder to include among enumerated sexual offenses "object sexual penetration" (Va. Code § 18.2-31(5)), effective 7/1/95.

#### Method of execution

As of December 31, 1995, lethal injection was the predominant method of

execution (32 States) (table 2). Eleven States authorized electrocution; 7 States, lethal gas; 4 States, hanging; and 3 States, a firing squad.

Sixteen States authorized more than one method — lethal injection and an alternative method — generally at the election of the condemned prisoner; however, 5 of these 16 stipulated which method must be used, depending on the date of sentencing; 1 authorized hanging only if lethal injection could not be given; and, if lethal injection is ever ruled unconstitutional, 1 authorized lethal gas and 1 authorized electrocution.

#### Automatic review

Of the 38 States with capital punishment statutes at yearend 1995, 37 provided for review of all death sentences regardless of the defendant's wishes.

Arkansas had no specific provisions for automatic review. The Federal death penalty procedures did not provide for automatic review after a sentence of death had been imposed. While most of the 37 States authorized an automatic review of both the conviction and sentence, Idaho, Indiana, Oklahoma, and Tennessee required review of the sentence only. In Idaho, review of the conviction had to be filed through appeal or forfeited. In Indiana, a defendant could waive review of the conviction.

The review is usually conducted by the State's highest appellate court regardless of the defendant's wishes. In South Carolina, the defendant's right to waive appeal was in litigation; in Mississippi the question of whether a defendant could waive the right to automatic review of the sentence had not been addressed; and in Wyoming neither statute nor case law clearly precluded a waiver of appeal. If either the conviction or the sentence was vacated, the case could be remanded to the trial court for additional proceedings or for retrial. As a result of retrial or resentencing, the death sentence could be reimposed.

**Table 2. Method of execution, by State, 1995**

Lethal injection		Electrocution	Lethal gas	Hanging	Firing squad
Arizona <sup>a,b</sup>	New Hampshire <sup>a</sup>	Alabama	Arizona <sup>a,b</sup>	Delaware <sup>a,c</sup>	Idaho <sup>a</sup>
Arkansas <sup>a,d</sup>	New Jersey	Arkansas <sup>a,d</sup>	California <sup>a,e</sup>	Montana <sup>a</sup>	Oklahoma <sup>f</sup>
California <sup>a,e</sup>	New Mexico	Florida	Maryland <sup>g</sup>	New Hampshire <sup>a,h</sup>	Utah <sup>a</sup>
Colorado	New York	Georgia	Mississippi <sup>i,j</sup>	Washington <sup>a</sup>	
Connecticut	North Carolina <sup>a</sup>	Kentucky	Missouri <sup>k</sup>		
Delaware <sup>a,c</sup>	Ohio <sup>a</sup>	Nebraska	North Carolina <sup>l</sup>		
Idaho <sup>a</sup>	Oklahoma	Ohio <sup>a</sup>	Wyoming <sup>l</sup>		
Illinois	Oregon	Oklahoma <sup>f</sup>			
Indiana	Pennsylvania	South Carolina <sup>a</sup>			
Kansas	South Carolina <sup>a</sup>	Tennessee			
Louisiana	South Dakota	Virginia			
Maryland <sup>g</sup>	Texas				
Mississippi <sup>i,j</sup>	Utah <sup>a</sup>				
Missouri <sup>k</sup>	Virginia <sup>a</sup>				
Montana <sup>a</sup>	Washington <sup>a</sup>				
Nevada	Wyoming <sup>a</sup>				

Note: The method of execution of Federal prisoners is lethal injection, pursuant to 28 CFR, Part 26. For offenses under the Violent Crime Control and Law Enforcement Act of 1994, the method is that of the State in which the conviction took place, pursuant to 18 USC 3595.

<sup>a</sup>Authorizes 2 methods of execution.

<sup>b</sup>Arizona authorizes lethal injection for persons sentenced after 1/15/92; those sentenced before that date may select lethal injection or lethal gas.

<sup>c</sup>Delaware authorizes lethal injection for those whose capital offense occurred after 6/13/86; those who committed the offense before that date may select lethal injection or hanging.

<sup>d</sup>Arkansas authorizes lethal injection for persons committing a capital offense after 7/4/83; those who committed the offense before that date may select lethal injection or electrocution.

<sup>e</sup>Use of lethal gas is currently prohibited in California pending a legal challenge in Federal court.

<sup>f</sup>Oklahoma authorizes electrocution if lethal injection is ever held to be unconstitutional and firing squad if both lethal injection and electrocution are held unconstitutional.

<sup>g</sup>Maryland authorizes lethal injection for all inmates, as of 3/25/94. One inmate, convicted prior to that date, has selected lethal gas for method of execution.

<sup>h</sup>New Hampshire authorizes hanging only if lethal injection cannot be given.

<sup>i</sup>Mississippi authorizes lethal injection for those convicted after 7/1/84 and lethal gas for those convicted earlier.

<sup>j</sup>Wyoming authorizes lethal gas if lethal injection is ever held to be unconstitutional.

**Table 3. Minimum age authorized for capital punishment, 1995**

Age 15 or less	Age 17	Age 18	Age 19	None specified
Alabama (15)	Georgia	California	New York	Arizona
Arkansas (14) <sup>a</sup>	New Hampshire	Colorado		Idaho
Delaware (16)	North Carolina <sup>b</sup>	Connecticut <sup>c</sup>		Montana
Indiana (16)	Texas	Federal system		Louisiana
Kentucky (16)		Illinois		Pennsylvania
Mississippi (16) <sup>d</sup>		Kansas		South Carolina
Missouri (15)		Maryland		South Dakota <sup>e</sup>
Nevada (16)		Nebraska		Utah
Oklahoma (16)		New Jersey		
Virginia (14) <sup>f</sup>		New Mexico		
Wyoming (15)		Ohio		
Florida (15)		Oregon		
		Tennessee		
		Washington		

Note: Reporting by States reflects interpretations by State attorney general offices and may differ from previously reported ages.

<sup>a</sup>See Arkansas Code Ann.9-27-318(b)(1)(Repl. 1991).

<sup>b</sup>The age required is 17 unless the murderer was incarcerated for murder when a subsequent murder occurred; then the age may be 14.

<sup>c</sup>See Conn. Gen. Stat. 53a-46a(g)(1).

<sup>d</sup>The minimum age defined by statute is 13, but the effective age is 16 based on interpretation of a U.S. Supreme Court decision by the State attorney general's office.

<sup>e</sup>Juveniles may be transferred to adult court. Age can be a mitigating factor.

<sup>f</sup>The minimum age for transfer to adult court is 14 by statute, but the effective age for a capital sentence is 16 based on interpretation of a U.S. Supreme Court decision by the State attorney general's office.

### Minimum age

In 1995 eight jurisdictions did not specify a minimum age for which the death penalty could be imposed (table 3). In some States the minimum age was set forth in the statutory provisions that determine the age at which a juvenile may be transferred to criminal court for trial as an adult. Thirteen States and the Federal system required a minimum age of 18; one State age 19. Sixteen States indicated an age of eligibility between 14 and 17.

### Characteristics of prisoners under sentence of death at yearend 1995

Thirty-four States and the Federal prison system held a total of 3,054 prisoners under sentence of death on December 31, 1995, a gain of 149 or 5.1% more than at the end of 1994 (table 4). The Federal prison system count rose from 6 at yearend 1994 to 8

**Table 4. Prisoners under sentence of death, by region, State, and race, 1994 and 1995**

Region and State	Prisoners under sentence of death, 12/31/94			Received under sentence of death			Removed from death row (excluding executions) <sup>a</sup>			Executed			Prisoners under sentence of death, 12/31/95		
	Total <sup>b</sup>	White <sup>c</sup>	Black <sup>c</sup>	Total <sup>b</sup>	White	Black	Total <sup>b</sup>	White	Black	Total <sup>b</sup>	White	Black	Total <sup>b</sup>	White	Black
<b>U.S. total</b>	<b>2,905</b>	<b>1,653</b>	<b>1,203</b>	<b>310</b>	<b>168</b>	<b>138</b>	<b>105</b>	<b>58</b>	<b>44</b>	<b>56</b>	<b>33</b>	<b>22</b>	<b>3,054</b>	<b>1,730</b>	<b>1,275</b>
Federal <sup>d</sup>	6	3	3	2	0	2	0	0	0	0	0	0	8	3	5
State	2,899	1,650	1,200	308	168	136	105	58	44	56	33	22	3,046	1,727	1,270
<b>Northeast</b>	<b>194</b>	<b>71</b>	<b>116</b>	<b>23</b>	<b>6</b>	<b>17</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>211</b>	<b>73</b>	<b>131</b>
Connecticut	4	2	2	1	0	1	0	0	0	0	0	0	5	2	3
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New Jersey	9	4	5	2	1	1	1	1	0	0	0	0	10	4	6
Pennsylvania	181	65	109	20	5	15	3	1	2	2	2	0	196	67	122
<b>Midwest</b>	<b>443</b>	<b>217</b>	<b>224</b>	<b>43</b>	<b>21</b>	<b>22</b>	<b>16</b>	<b>9</b>	<b>7</b>	<b>11</b>	<b>6</b>	<b>5</b>	<b>459</b>	<b>223</b>	<b>234</b>
Illinois	155	57	98	13	6	7	9	4	5	5	3	2	154	56	98
Indiana	47	31	16	3	3	0	4	3	1	0	0	0	46	31	15
Kansas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Missouri	88	51	37	10	3	7	0	0	0	6	3	3	92	51	41
Nebraska	10	7	2	0	0	0	0	0	0	0	0	0	10	7	2
Ohio	141	69	71	17	9	8	3	2	1	0	0	0	155	76	78
South Dakota	2	2	0	0	0	0	0	0	0	0	0	0	2	2	0
<b>South</b>	<b>1,621</b>	<b>926</b>	<b>672</b>	<b>184</b>	<b>105</b>	<b>78</b>	<b>71</b>	<b>37</b>	<b>33</b>	<b>41</b>	<b>23</b>	<b>17</b>	<b>1,693</b>	<b>971</b>	<b>700</b>
Alabama	136	74	60	17	10	7	8	2	6	2	0	2	143	82	59
Arkansas	37	21	16	4	3	1	1	0	1	2	1	1	38	23	15
Delaware	14	7	7	1	1	0	0	0	0	1	1	0	14	7	7
Florida	353	223	130	31	19	12	19	12	7	3	2	1	362	228	134
Georgia	96	53	43	7	5	2	3	1	2	2	2	0	98	55	43
Kentucky	29	23	6	0	0	0	1	1	0	0	0	0	28	22	6
Louisiana	47	16	31	12	4	8	1	0	1	1	0	1	57	20	37
Maryland	13	2	11	0	0	0	0	0	0	0	0	0	13	2	11
Mississippi	50	20	30	3	0	3	4	0	4	0	0	0	49	20	29
North Carolina	111	55	54	34	19	15	4	4	0	2	2	0	139	68	69
Oklahoma	130	79	40	15	10	4	13	8	4	3	3	0	129	78	40
South Carolina	59	31	28	10	2	8	1	0	1	1	0	1	67	33	34
Tennessee	100	66	32	4	1	3	8	3	5	0	0	0	96	64	30
Texas	391	230	155	40	27	13	8	6	2	19	10	8	404	241	158
Virginia	55	26	29	6	4	2	0	0	0	5	2	3	56	28	28
<b>West</b>	<b>641</b>	<b>436</b>	<b>188</b>	<b>58</b>	<b>36</b>	<b>19</b>	<b>14</b>	<b>10</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>683</b>	<b>460</b>	<b>205</b>
Arizona	121	101	14	5	5	0	8	8	0	1	1	0	117	97	14
California <sup>e</sup>	386	230	148	36	22	13	2	1	1	0	0	0	420	251	160
Colorado	3	3	0	1	0	1	0	0	0	0	0	0	4	3	1
Idaho	20	20	0	0	0	0	1	1	0	0	0	0	19	19	0
Montana	8	6	0	0	0	0	1	0	0	1	1	0	6	5	0
Nevada <sup>f</sup>	65	44	21	11	4	5	1	0	0	0	0	0	75	48	26
New Mexico	1	1	0	2	2	0	0	0	0	0	0	0	3	3	0
Oregon	18	16	1	2	2	0	0	0	0	0	0	0	20	18	1
Utah	10	8	2	0	0	0	0	0	0	0	0	0	10	8	2
Washington	9	7	2	1	1	0	1	0	1	0	0	0	9	8	1
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Note: States not listed and the District of Columbia did not authorize the death penalty as of 12/31/94. New York enacted a death penalty statute during 1995 and reported no one under sentence of death as of 12/31/95. Some figures shown for year end 1994 are revised from those reported in *Capital Punishment 1994*, NCJ-158023. The revised figures include 25 inmates who were either reported late to the National Prisoner Statistics Program or were not in custody of State correctional authorities on 12/31/94 (12 in California; 4 in Florida; 2 in Texas; and 1 each in Alabama, Arizona, Arkansas,

Ohio, Oklahoma, Oregon, and Tennessee), and exclude 18 inmates who were relieved of the death sentence on or before 12/31/94 (8 in California; 5 in Texas; and 1 each in Arizona, New Mexico, Pennsylvania, Tennessee, and Washington). The data for 12/31/94 also include 7 inmates in Florida who were listed erroneously as being removed from death row.  
<sup>a</sup>Includes 9 deaths from natural causes (3 in Alabama, and 1 each in Arizona, Illinois, Kentucky, North Carolina, Oklahoma, and Texas) 2 suicides (in California and Nevada), and 2 inmates

murdered by other inmates (in Florida and Texas).  
<sup>b</sup>Totals include persons of other races.  
<sup>c</sup>The accounting of race and Hispanic origin differs from that presented in tables 8, 9, and 11. In this table white and black inmates include Hispanics.  
<sup>d</sup>Excludes persons held under Armed Forces jurisdiction with a military death sentence for murder.  
<sup>e</sup>One inmate who was previously in the custody of Nevada has been transferred to California where he is being held under a separate sentence of death.

at yearend 1995. Three States reported 39% of the Nation's death row population: California (420), Texas (404), and Florida (362). Of the 38 jurisdictions with statutes authorizing the death penalty during 1995, New Hampshire, Kansas, and Wyoming had no one under a capital sentence, and South Dakota, New Mexico, and Colorado had 4 or fewer. New York enacted a new death penalty statute, effective September 1, 1995, and reported no one under sentence of death as of December 1, 1995.

Among the 35 jurisdictions with prisoners under sentence of death at yearend 1995, 20 had more inmates than a year earlier, 9 had fewer inmates, and 6 had the same number. California had an increase of 34, followed by North Carolina (28), Pennsylvania (15), Ohio (14), Texas (13), and Louisiana and Nevada (10 each). Arizona and Tennessee had the largest decrease (4 each).

During 1995 the number of black inmates under sentence of death increased by 72; the number of whites increased by 77; and the number of persons of other races (American Indians, Alaska Natives, Asians, or Pacific Islanders) remained constant at 49.

The number of Hispanics sentenced to death rose from 224 to 237 during 1995 (table 5). Twenty-six Hispanics were received under sentence of death, 11 were removed from death row, and 2 were executed. Three-fourths of the Hispanics were incarcerated in 4 States: Texas (68), California (61), Florida (35), and Arizona (18).

During 1995 the number of women sentenced to be executed increased from 43 to 48. Six women were received under sentence of death, one was removed from death row, and none were executed. Women were under sentence of death in 14 States. Almost two-thirds of all women on death row at yearend were in California, Florida, Texas, Oklahoma, and Illinois.

Table 5. Hispanics and women under sentence of death, by State, 1994 and 1995

Region and State	Under sentence of death, 12/31/94		Received under sentence of death		Death sentence removed*	Under sentence of death, 12/31/95	
	Hispanics	Women	Hispanics	Women	Hispanics	Hispanics	Women
U.S. total	224	43	26	6	11	237	48
Alabama	0	5	0	0	0	0	4
Arizona	20	1	1	0	3	18	1
Arkansas	1	0	1	0	0	2	0
California	57	6	4	2	0	61	8
Colorado	1	0	0	0	0	1	0
Florida	33	6	4	0	2	35	6
Georgia	1	0	0	0	0	1	0
Idaho	2	1	0	0	1	1	1
Illinois	8	5	0	0	1	7	5
Indiana	2	0	0	0	0	2	0
Louisiana	0	0	1	0	0	1	0
Mississippi	1	1	0	1	0	1	2
Missouri	0	2	0	0	0	0	2
Nevada	8	1	2	0	0	10	1
New Jersey	1	0	0	0	1	0	0
New Mexico	1	0	1	0	0	2	0
North Carolina	0	2	1	0	0	1	2
Ohio	5	0	0	0	0	5	0
Oklahoma	6	4	0	1	2	4	5
Oregon	1	0	0	0	0	1	0
Pennsylvania	11	4	0	0	0	11	4
Tennessee	1	1	0	0	0	1	1
Texas	60	4	11	2	1	68	6
Utah	2	0	0	0	0	2	0
Virginia	2	0	0	0	0	2	0

\*One woman was removed from under sentence of death in Alabama, and no women were executed during 1995. Two Hispanic men were executed in Texas in 1995.

State	Women under sentence of death, 12/31/95		
	Total	White	Black
Total	48	32	16
California	8	6	2
Florida	6	4	2
Texas	6	4	2
Oklahoma	5	4	1
Illinois	5	2	3
Alabama	4	3	1
Pennsylvania	4	1	3
Missouri	2	2	0
North Carolina	2	2	0
Mississippi	2	1	1
Arizona	1	1	0
Idaho	1	1	0
Tennessee	1	1	0
Nevada	1	0	1

Men were 98% (3,006) of all prisoners under sentence of death (table 6). Whites predominated (57%); blacks comprised 42%; and other races (1.6%) included 22 Native Americans, 19 Asians, and 8 persons of unknown race. Among those for whom ethnicity was known, 8% were Hispanic.

The sex, race, and Hispanic origin of those under sentence of death at yearend 1995 were as follows:

State	Persons under sentence of death, by sex, race, and Hispanic origin, 12/31/95		
	White	Black	Other
Male	1,698	1,259	49
Hispanic	215	12	7
Female	32	16	0
Hispanic	2	1	0

Among inmates under sentence of death on December 31, 1995, for whom information on education was available, three-fourths had either completed high school (38%) or finished 9th, 10th, or 11th grade (37%). The percentage who had not gone beyond eighth grade (15%) was over 40% larger than that of inmates who had attended some college (10%). The median level of education was the 11th grade.

Of inmates under a capital sentence and with reported marital status, half had never married; a fourth were married at the time of sentencing; and nearly a fourth were divorced, separated, or widowed.

Among all inmates under sentence of death for whom date of arrest information was available, more than half were age 20 to 29 at the time of arrest for their capital offense; 12% were age 19 or younger; and less than 1% were age 55 or older (table 7). The average age at time of arrest was 28 years. On December 31, 1995, 43% of these inmates were age 30 to 39 and 71% were age 25 to 44. The youngest offender under sentence of death was age 18; the oldest was 80.

#### Entries and removals of persons under sentence of death

Between January 1 and December 31, 1995, 27 State prison systems reported receiving 308 prisoners under sentence of death; the Federal Bureau of Prisons received 2 inmates. Forty-five percent of the inmates were received in 4 States: Texas (40), California (36), North Carolina (34), and Florida (31).

All 310 prisoners who had been received under sentence of death had been convicted of murder. By sex and race, 164 were white men, 136 were black men, 4 were Asian men, 4 were white women, and 2 were black women. Of the 310 new admissions, 26 were Hispanic men. No Hispanic women were admitted under sentence of death in 1995.

**Table 6. Demographic characteristics of prisoners under sentence of death, 1995**

Characteristic	Prisoners under sentence of death, 1995		
	Yearend	Admissions	Removals
Number of prisoners	3,054	310	161
<b>Sex</b>			
Male	98.4%	98.1%	99.4%
Female	1.6	1.9	.6
<b>Race</b>			
White	56.6%	54.2%	56.5%
Black	41.7	44.5	41.0
Other*	1.6	1.3	2.5
<b>Hispanic origin</b>			
Hispanic	8.5%	9.3%	8.6%
Non-Hispanic	91.5	90.7	91.4
<b>Education</b>			
8th grade or less	14.7%	12.1%	21.8%
9th-11th	37.2	41.5	42.3
High school graduate/GED	37.8	35.5	26.8
Any college	10.3	10.9	9.2
Median	11th grade	11th grade	11th grade
<b>Marital status</b>			
Married	25.0%	20.4%	31.5%
Divorced/separated	21.6	22.6	19.2
Widowed	2.5	2.6	2.1
Never married	50.3	54.4	47.3

Note: Calculations are based on those cases for which data were reported. Missing data by category were as follows:

	Yearend	Admissions	Removals
Hispanic origin	257	29	10
Education	422	62	19
Marital status	247	36	15

\*At yearend 1994 "other" consisted of 24 Native Americans, 17 Asians, and 8 self-identified Hispanics. During 1995, 4 Asians were admitted; 2 Native Americans and 2 Asians were removed.

**Table 7. Age at time of arrest for capital offense and age of prisoners under sentence of death at yearend 1995**

Age	Prisoners under sentence of death			
	At time of arrest		On December 31, 1995	
	Number*	Percent	Number*	Percent
Number of prisoners	2,661	100.0%	2,661	100.0%
17 or younger	51	1.9	0	
18-19	262	9.8	20	.8
20-24	741	27.8	257	9.7
25-29	626	23.5	428	16.1
30-34	441	16.6	556	20.9
35-39	272	10.2	575	21.6
40-44	137	5.1	343	12.9
45-49	77	2.9	261	9.8
50-54	34	1.3	125	4.7
55-59	13	.5	56	2.1
60 or older	7	.3	40	1.5
Mean age	28 yrs		36 yrs	
Median age	27 yrs		35 yrs	

Note: The youngest person under sentence of death was a white male in Nevada, born in January 1977 and sentenced to death in November 1994. The oldest person under sentence of death was a

white male in Arizona, born in September 1915 and sentenced to death in June 1983. \*Excludes 393 inmates for whom the date of arrest for the capital offense was not available.

Twenty-one States reported a total of 92 persons whose sentence of death was overturned or removed. Appeals courts vacated 55 sentences while upholding the convictions and vacated 30 sentences while overturning the convictions. Florida (18 exits) had the largest number of vacated capital sentences. Arizona reported three commutations of a death sentence; Idaho, Oklahoma, and Pennsylvania each reported one. Mississippi removed 1 inmate when an appellate court struck the capital sentence due to a violation of the inmate's constitutional right to a speedy trial.

As of December 31, 1995, 56 of the 92 persons who were formerly under sentence of death were serving a reduced sentence, 14 were awaiting a new trial, 17 were awaiting resentencing, 2 had all capital charges dropped, and 1 had no action taken after being removed from under sentence of death. No information was available on the current status of 2 inmates.

In addition, 13 persons died while under sentence of death in 1995. Nine of these deaths were from natural causes — three in Alabama, and one each in Arizona, Illinois, Kentucky, North Carolina, Oklahoma, and Texas. Two suicides occurred — one each in California and Nevada. Two inmates were killed by other inmates — one in Florida and one in Texas.

From 1977, the year after the Supreme Court upheld the constitutionality of revised State capital punishment laws, to 1995, a total of 4,857 persons entered prison under sentence of death. During these 19 years, 313 persons were executed, and 1,870 were removed from under a death sentence by appellate court decisions and reviews, commutations, or death.<sup>1</sup>

Among individuals who received a death sentence between 1977 and 1995, 2,468 (51%) were white, 1,975 (41%) were black, 342 (7%) were Hispanic, and 72 (1%) were of other

racess. The distribution by race and Hispanic origin of the 1,870 inmates who were removed from death row between 1977 and 1995 was as follows: 969 whites (52%), 773 blacks (41%), 101 Hispanics (5%), and 27 persons of other races (2%). Of the 313 who were executed, 171 (55%) were white, 120 (38%) were black, 19 (6%) were Hispanic, and 3 (1%) were other races.

#### Criminal history of inmates under sentence of death in 1995

Among inmates under a death sentence on December 31, 1995, for whom criminal history information was available, 66% had past felony convictions, including 8% with at least one previous homicide conviction (table 8).

Among those for whom legal status at the time of the capital offense was reported, 42% had an active criminal

justice status. Nearly half of these were on parole and about a fourth were on probation. The others had charges pending, were in prison, had escaped from incarceration, or had some other criminal justice status.

Criminal history patterns differed by race and Hispanic origin. More blacks (70%) than whites (65%) or Hispanics (59%) had a prior felony conviction. About the same percentage of blacks (9%), whites (8%), or Hispanics (7%) had a prior homicide conviction. A slightly higher percentage of Hispanics (25%) or blacks (24%) than whites (17%) were on parole when arrested for their capital offense.

Since 1988 data have been collected on the number of death sentences imposed on entering inmates. Among the 2,299 individuals received under

Table 8. Criminal history profile of prisoners under sentence of death, by race and Hispanic origin, 1995

	Prisoners under sentence of death							
	Number				Percent <sup>a</sup>			
	All <sup>b</sup>	White	Black	Hispanic	All <sup>b</sup>	White	Black	Hispanic
U.S. total	3,054	1,513	1,252	237	100.0%	100.0%	100.0%	100.0%
<b>Prior felony convictions</b>								
Yes	1,887	914	825	130	66.3%	64.9%	70.1%	58.6%
No	959	494	352	92	33.7	35.1	29.9	41.4
Not reported	208	105	84	15				
<b>Prior homicide convictions</b>								
Yes	254	125	110	17	8.5%	8.4%	8.9%	7.4%
No	2,728	1,357	1,120	212	91.5	91.6	91.1	92.6
Not reported	72	31	32	8				
<b>Legal status at time of capital offense<sup>11</sup></b>								
Charges pending	189	106	68	13	6.9%	7.8%	6.0%	6.1%
Probation	275	134	117	21	10.0	9.8	10.4	9.9
Parole	558	235	266	53	20.4	17.2	23.6	24.9
Prison escapee	44	26	14	3	1.6	1.9	1.2	1.4
Prison inmate	66	32	31	3	2.4	2.3	2.8	1.4
Other status	33	17	14	1	1.2	1.2	1.2	.5
None	1,575	813	616	119	57.5	59.6	54.7	55.9
Not reported	314	150	136	24				

<sup>a</sup>Percentages are based on those offenders for whom data were reported.

<sup>b</sup>Includes whites, blacks, Hispanics, and persons of other races.

<sup>1</sup>An individual may have received and been removed from under a sentence of death more than once. Data are based on the most recent sentence.

sentence of death during that time, about 1 in every 7 entered with two or more death sentences.

Number of death sentences received	Inmates
Total	100 %
1	85.3
2	10.3
3 or more	4.4
Number admitted under sentence of death, 1988-95	2,299

The proportions of whites, blacks, and Hispanics with two or more death sentences were nearly identical.

### Executions

According to data collected by the Federal Government, from 1930 to 1995, 4,172 persons were executed under civil authority (table 9).<sup>2</sup>

After the Supreme Court reinstated the death penalty in 1976, 26 States executed 313 prisoners:

1977	1
1979	2
1981	1
1982	2
1983	5
1984	21
1985	13
1986	13
1987	25
1988	11
1989	15
1990	23
1991	14
1992	31
1993	33
1994	31
1995	56

During this 19-year period, 5 States executed 211 prisoners: Texas (104), Florida (36), Virginia (29), Louisiana (22), and Georgia (20). These States accounted for two-thirds of all executions. Between 1977 and 1995, 170 white non-Hispanic men, 120 black non-Hispanic men, 19 Hispanic men, 2 Native American men, 1 Asian man, and 1 white non-Hispanic woman were executed.

During 1995 Texas carried out 19 executions; Missouri executed 6 persons; Illinois and Virginia, 5 each;

<sup>2</sup>Military authorities carried out an additional 160 executions, 1930-95.

Florida and Oklahoma, 3 each; Pennsylvania, Alabama, Arkansas, Georgia, and North Carolina, 2 each; and Delaware, Louisiana, South Carolina, Arizona, and Montana 1 each. All persons executed in 1995 were male. Thirty-one were non-Hispanic whites; 22 were non-Hispanic blacks; 1 was Asian; and 2 were Hispanic.

**Table 9. Number of persons executed, by jurisdiction, 1930-95**

State	Number executed	
	Since 1930	Since 1977
U.S. total	4,172	313
Texas	401	104
Georgia	386	20
New York	329	
California	294	2
North Carolina	271	8
Florida	206	36
Ohio	172	
South Carolina	167	5
Mississippi	158	4
Louisiana	155	22
Pennsylvania	154	2
Alabama	147	12
Arkansas	129	11
Virginia	121	29
Kentucky	103	
Illinois	97	7
Tennessee	93	
Missouri	79	17
New Jersey	74	
Maryland	59	1
Oklahoma	56	6
Washington	49	2
Colorado	47	
Indiana	44	3
Arizona	42	4
District of Columbia	40	
West Virginia	40	
Nevada	34	5
Federal system	33	
Massachusetts	27	
Connecticut	21	
Oregon	19	
Iowa	18	
Utah	17	4
Delaware	17	5
Kansas	15	
New Mexico	8	
Wyoming	8	1
Montana	7	1
Nebraska	5	1
Idaho	4	1
Vermont	4	
New Hampshire	1	
South Dakota	1	
Minnesota	0	
Rhode Island	0	
North Dakota	0	
Hawaii	0	
Michigan	0	
Maine	0	
Alaska	0	
Wisconsin	0	

From 1977 to 1995, 5,237 prisoners were under death sentences for varying lengths of time (table 10). The 313 executions accounted for 6% of those at risk. A total of 1,870 prisoners (36% of those at risk) received other dispositions. About the same percentage of whites (6%), blacks (6%), and Hispanics (5%) were executed. Somewhat larger percentages of whites (36%) and blacks (36%) than Hispanics (28%) were removed from under a death sentence by means other than execution.

Among prisoners executed between 1977 and 1995, the average time spent between the imposition of the most recent sentence received and execution was more than 8 years (table 11). White prisoners had spent an average of 8 years and 2 months, and black prisoners, 9 years and 5 months. The 56 prisoners executed in 1995 were under sentence of death an average of 11 years and 2 months.

For the 313 prisoners executed between 1977 and 1995, the most common method of execution was lethal injection (180). Other methods were electrocution (121), lethal gas (9), hanging (2), and firing squad (1).

Method of execution	Executions, 1977-95				
	White	Black	Hispanic	American Indian	Asian
Total	171	120	19	2	1
Lethal injection	100	59	18	2	1
Electrocution	62	58	1	0	0
Lethal gas	6	3	0	0	0
Hanging	2	0	0	0	0
Firing squad	1	0	0	0	0

Among prisoners under sentence of death at yearend 1995, the average time spent in prison was 6 years and 6 months.

The median time between the imposition of a death sentence and yearend 1995 was 69 months. Overall, the average time for women was 4.8 years — about three-fourths as long as for men (6.5 years). On average,

whites, blacks, and Hispanics had spent from 75 to 80 months under a sentence of death.

	Elapsed time since sentencing	
	Mean	Median
Total	78 mos	69 mos
Male	78	70
Female	58	46
White	80	73
Black	75	64
Hispanic	76	69

**Appendix. Federal laws providing for the death penalty**

8 U.S.C. 1342 - Murder related to the smuggling of aliens.

18 U.S.C. 32-34 - Destruction of aircraft, motor vehicles, or related facilities resulting in death.

18 U.S.C. 36 - Murder committed during a drug-related drive-by shooting.

18 U.S.C. 37 - Murder committed at an airport serving international civil aviation.

18 U.S.C. 115(b)(3)[by cross-reference to 18 U.S.C. 1111] - Retaliatory murder of a member of the immediate family of law enforcement officials.

18 U.S.C. 241, 242, 245, 247 - Civil rights offenses resulting in death.

18 U.S.C. 351 [by cross-reference to 18 U.S.C. 1111] - Murder of a member of Congress, an important executive official, or a Supreme Court Justice.

18 U.S.C. 794 - Espionage

18 U.S.C. 844(d), (f), (i) - Death resulting from offenses involving transportation of explosives, destruction of government property, or destruction of property related to foreign or interstate commerce.

18 U.S.C. 924(i) - Murder committed by the use of a firearm during a crime of violence or a drug trafficking crime.

18 U.S.C. 930 - Murder committed in a Federal Government facility.

18 U.S.C. 1091 - Genocide.

18 U.S.C. 1111 - First-degree murder.

18 U.S.C. 1114 - Murder of a Federal judge or law enforcement official.

18 U.S.C. 1116 - Murder of a foreign official.

18 U.S.C. 1118 - Murder by a Federal prisoner.

18 U.S.C. 1119 - Murder of a U.S. national in a foreign country.

18 U.S.C. 1120 - Murder by an escaped Federal prisoner already sentenced to life imprisonment.

18 U.S.C. 1121 - Murder of a State or local law enforcement official or other person aiding in a Federal investigation; murder of a State correctional officer.

18 U.S.C. 1201 - Murder during a kidnaping.

18 U.S.C. 1203 - Murder during a hostage-taking.

18 U.S.C. 1503 - Murder of a court officer or juror.

**Table 10. Prisoners under sentence of death who were executed or received other dispositions, by race and Hispanic origin, 1977-95**

Race/Hispanic origin <sup>b</sup>	Total under sentence of death, 1977-95 <sup>a</sup>	Prisoners executed		Prisoners who received other dispositions <sup>a</sup>	
		Number	Percent of total	Number	Percent of total
Total	5,237	313	6.0%	1,870	35.7%
White	2,653	171	6.4%	959	36.5%
Black	2,155	120	5.6	773	35.9
Hispanic	357	19	5.3	101	28.3
Other	72	3	4.2	27	37.5

<sup>a</sup>Includes persons removed from a sentence of death because of statutes struck down on appeal, sentences or convictions vacated, commutations, or death other than by execution.

<sup>b</sup>White, black, and other categories exclude Hispanics.

<sup>a</sup>Includes persons sentenced to death prior to 1977 who were still under sentence of death 12/31/95 (14), persons sentenced to death prior to 1977 whose death sentence was removed between 1977 and 12/31/95 (366), and persons sentenced to death between 1977 and 12/31/95 (4,857).

**Table 11. Time under sentence of death sentence and execution, by race, 1977-95**

Year of execution	Number executed			Average elapsed time from sentence to execution for:		
	All <sup>a</sup>	White	Black	All <sup>a</sup>	White	Black
Total	313	189	121	104 mos	98 mos	113 mos
1977-83	11	9	2	51 mos	49 mos	58 mos
1984	21	13	8	74	76	71
1985	18	11	7	71	65	80
1986	18	11	7	87	78	102
1987	25	13	12	86	78	96
1988	11	6	5	80	72	89
1989	16	8	8	95	78	112
1990	23	16	7	95	97	91
1991	14	7	7	116	124	107
1992	31	19	11	114	104	135
1993	38	23	14	113	112	121
1994	31	20	11	122	117	132
1995	56	33	22	134	128	144

Note: Average time was calculated from the most recent sentencing date. Some

numbers have been revised from those previously reported.

<sup>a</sup>Includes Native Americans and Asians.

18 U.S.C. 1512 - Murder with the intent of preventing testimony by a witness, victim, or informant.

18 U.S.C. 1513 - Retaliatory murder of a witness, victim or informant.

18 U.S.C. 1716 - Mailing of injurious articles with intent to kill or resulting in death.

18 U.S.C. 1751 [by cross-reference to 18 U.S.C. 1111] - Assassination or kidnaping resulting in the death of the President or Vice President.

18 U.S.C. 1958 - Murder for hire.

16 U.S.C. 1959 - Murder involved in a racketeering offense.

18 U.S.C. 1992 - Willful wrecking of a train resulting in death.

18 U.S.C. 2113 - Bank-robbery-related murder or kidnaping.

18 U.S.C. 2119 - Murder related to a carjacking.

18 U.S.C. 2245 - Murder related to rape or child molestation.

18 U.S.C. 2251 - Murder related to sexual exploitation of children.

18 U.S.C. 2280 - Murder committed during an offense against maritime navigation.

18 U.S.C. 2281 - Murder committed during an offense against a maritime fixed platform.

18 U.S.C. 2332 - Terrorist murder of a U.S. national in another country.

18 U.S.C. 2332a - Murder by the use of a weapon of mass destruction.

18 U.S.C. 2340 - Murder involving torture.

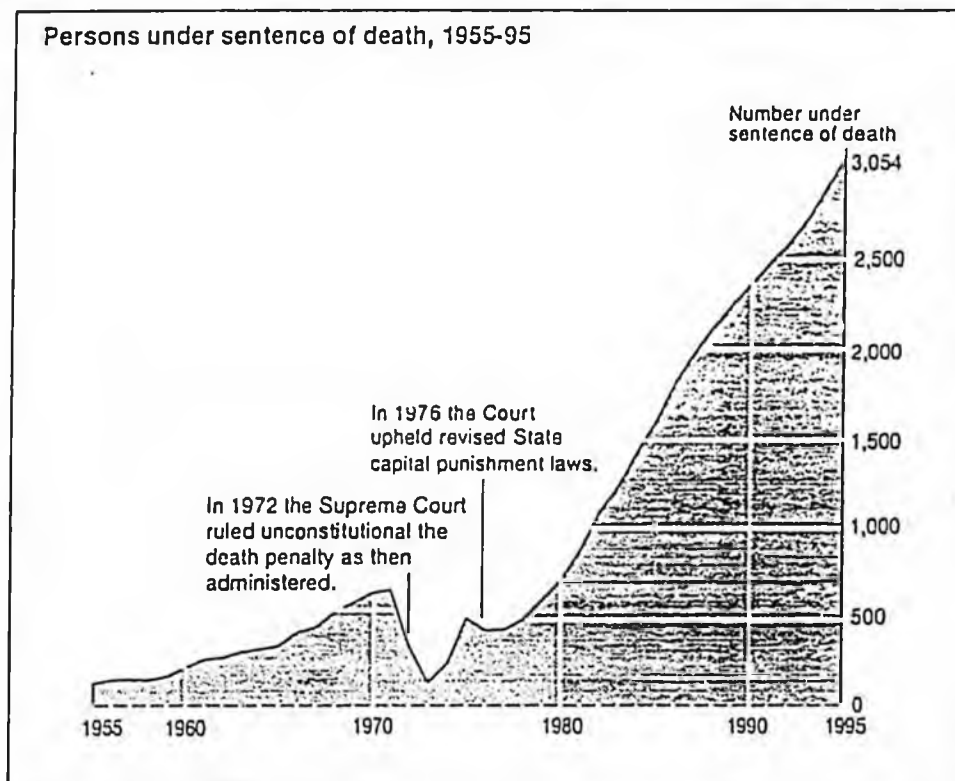
18 U.S.C. 2381 - Treason.

21 U.S.C. 848(e) - Murder related to a continuing criminal enterprise or related murder of a Federal, State, or local law enforcement officer.

49 U.S.C. 1472-1473 - Death resulting from aircraft hijacking.

### Methodological note

The statistics reported in this Bulletin may differ from data collected by other organizations for a variety of reasons: (1) National Prisoner Statistics (NPS) adds inmates to the number under sentence of death not at sentencing but at the time they are admitted to a State or Federal correctional facility. (2) If in one year inmates entered prison under a death sentence or were reported as being relieved of a death sentence but the court had acted in the previous year, the counts are adjusted to reflect the dates of court decisions. (See the note on table 4 for the affected jurisdictions.) (3) NPS counts for capital punishment are always for the last day of the calendar year and will differ from counts for more recent periods.



Appendix table 1. Prisoners sentenced to death, and the outcome of their sentence, by year of sentencing, 1973-95

Year of sentence	Number sentenced to death	Number of prisoners removed from under sentence of death						Other or unknown reasons	Under sentence of death, 12/31/95
		Execution	Other death	Appeal or higher courts overturned			Sentence commuted		
				Death penalty statute	Conviction	Sentence			
1973	42	2	0	14	9	8	9	0	0
1974	149	9	4	65	15	30	22	1	3
1975	298	6	4	171	24	66	21	2	4
1976	234	11	5	137	16	43	15	0	7
1977	138	16	2	40	26	33	7	0	14
1978	186	31	4	21	34	60	8	0	28
1979	154	19	9	2	28	58	6	1	31
1980	175	27	11	3	27	46	7	0	54
1981	229	37	12	0	39	71	4	1	65
1982	269	39	13	0	29	63	6	0	119
1983	254	31	12	1	22	54	4	2	128
1984	287	25	10	2	33	57	6	8	146
1985	271	10	3	1	37	63	3	3	151
1986	305	12	13	0	39	49	4	5	183
1987	290	8	8	3	33	54	1	6	177
1988	295	10	6	0	28	44	2	0	205
1989	254	3	6	0	25	47	3	0	180
1990	252	4	4	0	28	27	0	0	189
1991	271	2	5	0	22	16	3	0	223
1992	293	5	1	0	14	19	2	0	252
1993	295	4	4	0	4	8	1	0	274
1994	319	2	1	0	0	3	1	0	312
1995	310	0	1	0	0	0	0	0	309
Total, 1973-95	5,580	313	138	460	532	919	135	29	3,054

Note: Table based upon most recent death sentence received.

Appendix table 2. Prisoners under sentence of death on December 31, 1995, by State and year of sentencing

State	Year of sentence for prisoners sentenced to and remaining on death row, 12/31/95													Under sentence of death 12/31/95	Average number of years under sentence of death as of 12/31/95
	1974-79	1980-81	1982-83	1984-85	1986-87	1988	1989	1990	1991	1992	1993	1994	1995		
Florida	26	14	24	34	34	25	17	19	36	31	30	41	31	362	6.9
Texas	16	16	20	34	58	28	28	24	27	37	31	45	40	404	6.5
California	10	18	50	38	48	34	33	32	24	41	33	23	36	420	7.0
Georgia	9	3	6	6	18	4	8	9	6	7	7	8	7	98	7.6
Arizona	6	8	12	11	7	10	4	10	10	9	14	11	5	117	7.2
Tennessee	6	7	9	14	17	6	3	7	9	7	2	5	4	96	8.5
Nebraska	3	2		2	1	1						1		10	12.2
Arkansas	2	1	1		4	1	4	3		4	7	7	4	38	5.1
Nevada	2	4	10	9	5	5	8	7	4	1	2	8	10	75	7.1
South Carolina	2	3	7	7	7	2	4	2	7	2	7	7	10	67	6.6
Alabama	1	4	18	14	16	7	13	7	4	9	8	25	17	143	6.3
Illinois	1	14	16	14	18	11	8	16	7	14	12	10	13	154	7.1
Kentucky	1	2	8	2	4	1			2	3	2	3		28	8.8
North Carolina	1	3	5	5	1	1		6	10	16	31	26	34	139	3.3
Oklahoma	1	1	8	17	24	10	11	7	11	4	8	12	15	129	6.4
Indiana		5	6	10	6	4		3	2	3	2	2	3	46	8.4
Mississippi		4	4	1	3	3		7	5	2	12	5	3	49	5.7
Pennsylvania		4	16	20	26	20	15	6	17	16	15	21	20	196	6.1
Delaware		2	1			1				4	5		1	14	5.6
Missouri		2	4	12	14	12	2	4	11	6	6	9	10	92	6.1
Idaho		1	3	4	1	3	2	1	1	1	1	1		19	8.5
Maryland		1	1	2	1	1	3	1	1	1	1			13	8.0
Ohio			11	30	21	9	9	3	12	14	10	13	17	155	6.3
Louisiana			4	8	8	1		1	4	6	7	6	12	57	5.0
Montana			1		1	1	1			2				6	*
Utah			1	2	1	2	2		1		1			10	7.6
Washington			1		1			1	1	1	1	2	1	9	*
Virginia				1	12	2	3	5	5	6	6	10	6	56	4.5
Colorado					2				1					4	*
New Jersey					1			2			2	3	2	10	3.0
Connecticut							1		2		1		1	5	*
Oregon							1		2	4	4	7	2	20	2.5
Federal									1		5		2	8	*
South Dakota										1	1			2	*
New Mexico												1	2	3	*
Total	37	119	247	297	360	205	180	189	223	252	274	312	309	3,054	6.5

Note: For those persons sentenced to death more than once, the numbers are based on the most recent sentence to death.  
 \*Averages not calculated for fewer than 10 inmates.

Appendix table 3. Number sentenced to death and number of removals, by jurisdiction and reason for removal, 1973-95

State	Total sentenced to death, 1973-95	Number of removals, 1973-95					Under sentence of death, 12/31/95
		Executed	Died	Sentence or conviction overturned	Sentence commuted	Other removals	
U.S. total	5,520	313	138	1,911	135	30	3,054
Federal	9	0	0	1	0	0	8
Alabama	245	12	7	82	1	0	143
Arizona	195	4	6	63	5	1	117
Arkansas	77	11	1	27	0	0	38
California	573	2	22	113	15	1	420
Colorado	15	0	1	9	1	0	4
Connecticut	6	0	0	1	0	0	5
Delaware	32	5	0	13	0	0	14
Florida	734	35	19	297	18	2	362
Georgia	252	20	7	121	5	1	98
Idaho	33	1	1	11	1	0	19
Illinois	234	7	7	59	0	7	154
Indiana	53	3	1	31	0	2	46
Kentucky	58	0	2	27	1	0	28
Louisiana	153	22	3	64	6	1	57
Maryland	37	1	1	20	2	0	13
Massachusetts	4	0	0	2	2	0	0
Mississippi	135	4	1	78	0	3	49
Missouri	125	17	4	12	1	0	92
Montana	13	1	0	5	1	0	8
Nebraska	21	1	2	6	2	0	10
Nevada	105	5	4	18	3	0	75
New Jersey	40	0	1	21	0	8	10
New Mexico	25	0	0	17	5	0	3
New York	3	0	0	3	0	0	0
North Carolina	389	8	5	233	4	0	139
Ohio	298	0	5	129	9	0	155
Oklahoma	251	6	5	110	1	0	129
Oregon	37	0	0	17	0	0	20
Pennsylvania	252	2	7	55	2	0	196
Rhode Island	2	0	0	2	0	0	0
South Carolina	138	5	3	63	0	0	87
South Dakota	2	0	0	0	0	0	2
Tennessee	157	0	4	65	0	2	96
Texas	565	104	14	100	43	0	404
Utah	23	4	0	8	1	0	10
Virginia	102	29	3	7	6	1	56
Washington	25	2	1	14	0	0	9
Wyoming	9	1	1	7	0	0	0
Percent	100%	5.6	2.5	34.2	2.4	0.5	54.7

Note: For those persons sentenced to death more than once, the numbers are based on the most recent sentence to death.

Appendix table 4. Executions, by State and method, 1977-95

State	Number executed	Lethal injection	Electro-cution	Lethal gas	Firing squad	Hanging
Total	313	180	121	9	1	2
Texas	104	104	0	0	0	0
Florida	36	0	36	0	0	0
Virginia	29	5	24	0	0	0
Louisiana	22	2	20	0	0	0
Georgia	20	0	20	0	0	0
Missouri	17	17	0	0	0	0
Alabama	12	0	12	0	0	0
Arkansas	11	10	1	0	0	0
North Carolina	8	7	0	1	0	0
Illinois	7	7	0	0	0	0
Oklahoma	6	6	0	0	0	0
Delaware	5	5	0	0	0	0
Nevada	5	4	0	1	0	0
South Carolina	5	1	4	0	0	0
Arizona	4	3	0	1	0	0
Mississippi	4	0	0	4	0	0
Utah	4	3	0	0	1	0
Indiana	3	0	3	0	0	0
California	2	0	0	2	0	0
Pennsylvania	2	2	0	0	0	0
Washington	2	0	0	0	0	2
Idaho	1	1	0	0	0	0
Maryland	1	1	0	0	0	0
Montana	1	1	0	0	0	0
Nebraska	1	0	1	0	0	0
Wyoming	1	1	0	0	0	0

Note: Data are based on execution methods used since 1977. Lethal injection was used in 58% of the executions carried out.

Eight States — Arizona, Arkansas, Louisiana, Nevada, North Carolina, South Carolina, Virginia, and Utah — have employed two methods.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jan M. Chaiken, Ph.D., is director.

BJS Bulletins present the first release of findings from permanent data collection programs.

This Bulletin was written by Tracy L. Snell under the supervision of Allen J. Beck. James J. Stephan and Jodi M. Brown provided statistical review. Tom Hester and Tina Dorsey edited the report. Marilyn Marbrook administered production.

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Data may be obtained from the National Archive of Criminal Justice Data at the University of Michigan, 1-800-999-0960. The data sets are archived as Capital Punishment, 1973-95.

The data and the report, as well as others from the Bureau of Justice Statistics, are also available through the Internet:

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Bulletin

# DEATH PENALTY AND SENTENCING INFORMATION

In the United States

3/ 97

1. Imposition of the death penalty is extraordinarily rare. Since 1967, there has been one execution for every 1600 murders, or 0.06%. There have been approximately 560,000 murders and 350 executions from 1967-1996 (FBI's Uniform Crime Report (UCR) & Bureau of Justice Statistics (BJS)).
2. Approximately 5900 persons have been sentenced to death and 358 executed (from 1973-96). An average of 0.2% of those were executed every year during that time. 56 murderers were executed in 1995, a record number for the modern death penalty. This represented 1.8% of those on death row. The average time on death row for those 56 executed - 11 years, 2 months ("Capital Punishment 1995", BJS, 1996), an all time record of longevity, breaking the 1994 record of 10 years, 2 months.
3. Death penalty opponents ("opponents") state that "Those who support the death penalty see it as a solution to violent crime." Opponents, hereby, present one of many fabrications. In reality, executions are seen as the appropriate punishment for certain criminals committing specific crimes. So says the U.S. Supreme Court and so say most death penalty supporters ("advocates").

Many opponents say that execution is the same as murder because both end a human life. Opponents have reached the bizarre conclusion that if two acts have the same ending or result, i.e. execution and murder, then those two acts are morally equivalent. Is the legal taking of property to satisfy a debt the same as auto theft? Are kidnaping and legal incarceration the same because both involve imprisonment against one's will? Truly, "any culture that fails to distinguish between the criminal (act) and the punitive act is a culture that cannot survive." (D.6.) Is killing in self defense the same as capital murder because both end in taking human life? Are rape and making love the same because both may result in sexual intercourse? Opponents' logic often mirrors opponents' "factual" arguments - there is, often, an absence of reality.

Great effort has been made in pretrial, trial, appeals, writ and clemency procedures to minimize the chance of an innocent being convicted, sentenced to death or executed. Indeed, since 1973, the due process protections in capital cases have been so extraordinary that 37% of all death row cases, or 2046, have been overturned for due process reasons or commuted. ("Capital Punishment 1995", BJS, 1996). Many of those cases were overturned based on post conviction new laws, established by legislative or judicial decisions in other cases. Possibly as many as 15-30 of post Furman cases (0.25-0.51%) were overturned or commuted based on credible claims of innocence. This means that from 99.49%-99.75% of all capital convictions resulted in the guilty being convicted. Predictably, opponents falsely claim that 65 death row inmates have been released since 1973, after having been proven

innocent. There is no evidence to support that claim. Also, contrary to the false claims of opponents, clemency is used generously to grant mercy to death row murderers and to spare inmates whose guilt has come into question. In fact, 135 death row inmates have been spared by clemency or commutation from 1973-1995 (ibid). This represents 43% of the total of those executed during that time - a remarkable record of consideration and mercy.

The greatest fear, by advocates and opponents, is that an innocent person will be executed. The most significant study conducted to evaluate the evidence of that threat is the Bedau-Radelet Study ("Miscarriages of Justice in Potentially Capital Cases", 40, 1 Stanford Law Review, 11/87). The study concluded that 23 innocent persons had been executed since 1900. However, the study's methodology was so flawed that at least 12 of those cases had no evidence of innocence but substantial evidence of guilt. Bedau & Radelet, both opponents, "consistently presented incomplete and misleading accounts of the evidence." (Markman, Stephen J. & Cassell, Paul G., "Protecting the Innocent: A Response to the Bedau-Radelet Study" 41, 1 Stanford Law Review, 11/88). The remaining 11 cases represent 0.14% of the 7,800 executions which have taken place since 1900. And, there is, in fact, no proof that those 11 executed were innocent. In addition, the "innocents executed" group was extracted from a Bedau & Radelet imagined pool of 350 persons who were, supposedly, wrongly convicted of capital or "potentially" capital crimes. Not only were they at least 50% in error with their 23 "innocents executed" claim, but 211 of those 350 cases, or 60%, were not sentenced to death. Bedau & Radelet already knew that plea bargains, the juries, the prosecutors, judicial review or the legal statutes had already put these crimes in the "no capital punishment" category. Indeed, their claims of innocence, regarding the remaining 139 of those 350 cases, should be suspect, given this study's poor level of accuracy. Calling their work misleading hardly does this "academic" study justice. Had any high school student presented such an inaccurate and misleading report, a grade of F would be a likely result.

Indeed, Michigan Court of Appeals Judge Stephen Markman finds that "... the Bedau-Radelet study is remarkable not (as retired Supreme Court Judge Harry Blackman seems to believe) for demonstrating that mistakes involving the death penalty are common, but rather for demonstrating how uncommon they are... This study - the most thorough and painstaking analysis ever on the subject - fails to prove that a single such mistake has occurred in the United States during the twentieth century." Presumably, Bedau and Radelet would have selected the most compelling 23 cases of the innocent executed to prove their proposition. "Yet, in each of these cases, where there is a record to review, there are eyewitnesses, confessions, physical evidence and circumstantial evidence in support of the defendant's guilt. Bedau has written elsewhere that it is 'false sentimentality to argue that the death penalty ought to be abolished because of the abstract possibility that an innocent person might be executed when the record fails to disclose that such cases exist.' ... (T)he Bedau and Radelet study... speaks eloquently about the extraordinary rarity of error in capital punishment." ("Innocents on Death Row?", National Review, September 12, 1994).

Another significant oversight by that study was not differentiating between the risk of executing innocent persons before and after *Furman v Georgia* (1972). There is, in fact, no proof that an innocent has been executed since 1900, and the probability of such a tragedy occurring has been lowered significantly more since *Furman*. In the context that hundreds of thousands of innocents have been murdered or seriously injured, since 1900, by criminals improperly released by the U.S. criminal justice system, the relevant question is: Is the risk of executing the innocent, however slight, worth the justifications for the death penalty - those being retribution, rehabilitation, incapacitation, required punishment, deterrence, escalating punishments, religious mandates, cost savings, the moral imperative, just punishment and the saving of innocent lives?

Predictably, opponents still continue to claim, even today, that a study has proven that 23 innocent people have been executed, even though Bedau and Radelet, the authors of that study, conceded - in 1988 - that neither they nor any previous researchers have proved that any of those executed was innocent: "We agree with our critics that we have not proved these executed defendants to be innocent; we never claimed that we had." (41, 1 *Stanford Law Review*, 11/1988).

## B. THE INCAPACITATION AND THE DETERRENT EFFECTS

1. The argument that murderers are the least likely of all criminals to repeat their crimes is not only irrelevant, but also increasingly false. 6% of young adults paroled in 1978 after having been convicted of murder were arrested for murder again within 6 years of release. ("Recidivism of Young Parolees", 4, 1987, BJS). Murderers have so violated the human rights of their victims and of society that it should be a moral imperative that they never again have that opportunity.
2. Obviously, those executed can't murder again. "Of the roughly 52,000 state prison inmates serving time for murder in 1984, an estimated 810 had previously been convicted of murder and had killed 821 persons following their previous murder convictions. Executing each of these inmates would have saved 821 lives." (41, 1 *Stanford Law Review*, 11/88, pg. 153) Using a 75% murder clearance rate, it is most probable that the actual number of lives saved would have been 1026, or fifty times the number legally executed that year. This would suggest that some 5000 persons have been murdered, since 1971, by those who had previously committed additional murders (JFA). See B.5.
3. FBI crime reports reveal that in 1993, 7,700 persons were murdered by criminals released on parole, probation or pretrial release. (*The American Enterprise*, May/June 1995.) Death penalty opponents spend millions of dollars and countless man hours fighting the legal execution of, at most, 56 murderers per year, when they do nothing to fight for the end of those inhumane release policies which, every year, result in 7,000-10,000 additional murders and 3 million additional violent crime victims. (*The State of Violent Crime in America*, 1/96, i, ii & *Criminal Victimization 1993*, BJS 1995 & JFA). Incredibly, this does not include those violent crimes committed by repeat offenders who are released and not on "supervision". Where is the compassion in honoring the previous victim's suffering

and in protecting the human rights of future victims? Opponents' actions show virtually no compassion for the victims of violent crime or concern for future victims, yet, they exhibit overwhelming support for those who violate our human rights and murder our loved ones.

4. 9-15% of those on death row committed, at least one additional murder, prior to that murder (or those murders) which has currently put them on death row; 67% had a prior felony conviction; 42% had an active criminal justice status when they committed their capital offense; 14% of those sentenced to death from 1988-94, had received two or more death sentences ("Capital Punishment 1994", BJS 1995 & JFA). Should we err on the side of caution and protect the innocent and honor the memories of those murdered or should we give murderers the opportunity to harm again? Should we put prison personnel and other prisoners at any additional risk from known murderers? Prisoners on death row are 250% more likely to murder, in prison, than are prisoners in the general population. Lester, D., "Suicide and Homicide on Death Row", American Journal of Psychiatry, 143, 559, 1986.
5. Murderers released in 1992 had "served" an average of 5.9 years in prison (The State Of Violent Crime in America, 1/96). Taking into account those murderers that were never caught, those that were not sentenced to prison and "good time" and other "credits" counted as "time served", the average time served for all murders is closer to 3 years (JFA). See B.2. Why have we chosen to be so generous to murderers and so contemptuous of the human rights and suffering of the victims? For a criminal justice system to have credibility and deterrent value, two factors are required: (1) a high rate of arrest and (2) punishment which reflects the severity of the crime, the criminal's record and the demand for justice. The U.S. system has neither. Of the 10.3 million violent crimes in 1993, only 100,000 of those victimizations, or 1%, resulted in an actual jail sentence. Only 6.2% of all violent crimes result in arrest. (Prof. John J. DiIulio, Jr., Princeton Univ. 1995, The State of Violent Crime in America, 1/96 and Criminal Victimization 1993, BJS, 1995.) The human rights of victims and future victims are consistently ignored.
6. With no death penalty and only life without parole (LWOP), there is no deterrent for LWOP inmates killing others while in prison or after escape. Indeed, there is actually a positive incentive to murder if a criminal has committed a LWOP offense and had not yet been captured. Currently, there are a number of inmates who have killed numerous people in prison or after escape. Their punishment could not be increased because there is no death penalty in those states. Therefore, they will never be punished for those crimes. Never. Not surprisingly, death penalty opponents believe that LWOP is more severe than the death penalty. Hamilton, V., & Rakin, L.: "Interpreting the 8th Amendment", Bedau, H., & Pierce, C., ed., Capital Punishment in the United States, New York, AMS, 1976. This absurd belief, which has now become the newest mantra of opponents, is contradicted by all other surveyed groups, including prisoners (B.12 & 15).
7. Death Penalty opponents claim that there is a "brutalization effect" with executions, meaning, that executions show a low regard for human life and do, thereby, cause an increase in the murder rate. If the brutalization effect is real, it would be the only

known legal sanction to cause an increase in wrongful behavior. Why would criminals become more likely to engage in illegal activities because the punishments for those activities become more severe? How absurd. Have dramatic increases in the rates of incarceration resulted in dramatic increases in kidnappings? Just the opposite. Further denouncing the brutalization effect is the fact that many respected studies show that executions do produce an individual and a general deterrent effect. (B.13 & 15)

8. Assume all murderers would instantly die upon murdering. Murderers would then kill only if they wished to die themselves. Murder/suicide is an extremely small component of all murders. Therefore, if a swift and sure death penalty was universally applied to our worst criminals, it is logically conclusive that the death penalty would be a significant deterrent and that many innocent lives would be saved. In fact, swift and sure executions do result in deterrence: (A) The greater the publicity surrounding executions, the greater the deterrent effect. Phillips, D. "The Deterrent Effect of Capital Punishment". *American Journal of Sociology*, 86:139-158, 1980; Phillips, D. & Hensley, J., "When Violence is Rewarded or Punished". *J. Commun.*, 34(3); 101-116, 1984; and the various studies by Prof. Steven Stack, Wayne St. U. (1988-1995) and (B) The higher the rate of execution, the greater the deterrent effect. Lester, D. "Executions As A Deterrent To Homicide", 44:562, 1979a and "Detering Effect of Executions on Murder as a Function of Number and Proportion of Executions", 45:598, 1979b, both from *Psychol. Rep.* and Wasserman, L.: "Non-deterrent Effect of Executions on Homicide Rates", *Psychol. Rep.*, 58:137-138, 1981. The State of Delaware has the highest execution rate per capita and the lowest homicide rates. See B. 13, 15 and 17.
9. There are two rational conclusions one can make regarding deterrence. One, if the death penalty is not a deterrent, then we are executing our worst human rights violators. Two, if the death penalty is a deterrent, then we are executing those criminals and saving innocent lives. Regarding deterrence, it is necessary to err on the side of saving innocent life.
10. There are two mistakes we can make with those convicted of violent crimes. First, we can misjudge their character and keep them incarcerated too long, when they could have become constructive free persons, repaying even more their debt to society and to their victim(s). Secondly, we can misjudge their character and release them too soon, so that they further destroy the lives of our children, our brothers and sisters, our spouses and our parents, creating additional economic, physical, emotional and spiritual loss. For far too long, the U.S. has chosen to err on the side of those who have violated our human rights and has, thereby, expanded the river of blood and tears for victims and their survivors (See B.3). No more. Not in our name. We demand that the memories and suffering of crime victims be honored by justice - that is by a just punishment which reflects the severity of the crime. And, we must always err on the side of caution and compassion for those not yet harmed.
11. Opponents proclaim that the death penalty is a cruel and medieval policy, reflecting horrors that conflict with human dignity - a barbaric act so dreadful in its implications that we can hardly bear to contemplate its terrible character. On the

other hand, they also assert that potential murderers, when confronted with the horrors of execution, will not be deterred by its infliction upon them. That proposition is, of course, absurd on the face of it. Revised from M. Stanton Evans, *Clear and Present Danger*. Indeed, prisoners rate the death penalty as the most feared punishment, much more so than life without parole. Sehba, L. & Nathan, G., "Further Explorations in the Scale of Penalties," *British Journal of Criminology*, 24:221-249, 1984. See B.15.30 years c<sup>f</sup> studies suggest that the death penalty is a general, or systemic, deterrent. (See works by Profs. D. Cloninger, S. Cameron, I. Ehrlich, W. Bailey, D. Lester, S. Layson, K. I. Wolpin, L. Phillips, S. C. Ray, S. Stack, etc.) Examples: a) A 1967-68 study revealed 27 states showed a deterrent effect (Bailey, W., 1974); b) The 1960's showed a rapid rise in all crimes, including murder, while both prison terms and executions declined (Passell, P. & Taylor, T., 1977; Bowers, W. & Pierce, G., 1975); c) Murder increased 100% during the U.S.'s moratorium on executions (Carrington, F., *Neither Cruel Nor Unusual*); d) 14 nations that abolished the death penalty showed that murder rates increased 7% from the 5 year pre-abolition period to the 5 year post abolition period (Archer, et al, 1977); e) A 37 state study showed that 24 states showed a deterrent effect, 8 states showed a brutalization effect and 5 states showed no effect (Bailey, W., 1979-80); and f) econometric studies indicate that each execution may deter 8 or more murders (Cameron, S., 1994). Although these studies have been produced by respected social scientists, there are also studies which show no general deterrent effect. Indeed, with the complexity of these studies and the number of variables required to accurately measure the absolute general effect of executions on murder rates, it is arguable if there ever will be a consensus on a cause and effect connection. Furthermore, with so few executions and so many murders, the general deterrent effect will likely remain statistically elusive. However, since the general deterrent effect is inconclusive, we must choose to use executions because they may save innocent life. Whereas, if we choose not to use executions we may be sacrificing innocent lives.

12. Regarding the deterrent affect of the death penalty, poet Hyam Barshay made the following observation, "The death penalty is a warning, just like a lighthouse throwing beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships it saves, but we do not tear the lighthouse down." Prof. Ernest van den Haag, "On Deterrence and The Death Penalty", *Journal of Criminal Law, Criminology and Police Science*, vol. 60, no.2 (1969).
13. The individual deterrent effect is proven by hundreds, if not many thousands, of individual, fully documented cases where criminals have admitted that the death penalty was the specific threat which deterred them and/or others from committing murder. Indeed, one study showed that criminals, by a 5:1 ratio, believed that capital punishment was a significant enough deterrent to prevent them and/or others from murdering their victims (*People vs Love*, 56 Cal 2d 720 (1961), McComb, J. dissenting. see also: (A) "Controversy Over Capital Punishment", *Congressional Digest*, Jan., 73, p. 13; (B) L.A.P.D. study within *Aikens vs Ca.*, No. 68-5027, Oct.

Term, 1971, U.S. Supreme Court; ( C ) Carol Vance, "The Death Penalty After Furman", The Prosecutor, vol. 9, no. 4 (1973), p. 703; (D) Carrington, F., Neither Cruel Nor Unusual, Pgs. 92-100(1978); (E) Don Hooloschultz, "Gunman Slain, Hostages O.K.", Washington Star News, 8/23/73, p.A-1; (F) Jim Landers, "4 Guilty in Holdup Sentence", Washington Post, 12/8/73,p.B-1; (G) Larry Derryberry, "It Is The Fear That Death May Be The Punishment That Deters", Police Digest, Spring/Summer 1973, p.27, col.2. ; (H) "Langley says Texas death penalty affected his actions during escape", by Stephen Martin, The Daily Democrat (Ft. Madison, Iowa), 1/8/97, pg 1. Indeed, prisoners rate the death penalty as a much more severe penalty than they do life without parole (B.12). While it is difficult to prove a negative, i.e. "How many murders does the death penalty cause not to occur?", there is absolute evidence that the individual deterrent effect of executions saves innocent lives. Extensive worldwide research on individual deterrence would, undoubtedly, reveal significant systemic deterrence. See B.9

14. Opponents state that if the death penalty was a deterrent then states that have the death penalty would have a reduced homicide rate. Delaware, which executes more murderers per capita than any other state in the U.S.A., also has the lowest homicide rates. Furthermore, general or systemic deterrence is not necessarily measured by low or reduced homicide rates, but by rates that are lower than they otherwise would be if the death penalty was not present. Additionally, some countries, such as Saudi Arabia, have swift and sure executions and very low violent crime rates. It is not surprising that the U.S., which executes only 0.06% of its murderers, does not overtly show a general deterrent effect. While most in the U.S. would not advocate criminal justice systems like that of Saudi Arabia, it is also very clear that our criminal justice system fosters the additional slaughter of its own innocent citizens.
15. The highest murder rate in Houston (Harris County), Texas occurred in 1981, with 701 murders. Texas reinstated the death penalty in 1982. Since that time, Houston (Harris County) has executed more murderers than any other city or state AND has seen the greatest reduction in murder, 701 in 1981 down to 261 in 1996 - a 63% reduction, representing a 270% differential! (FBI, UCR, 1982 & Houston Chronicle, 2/1/97, pg. 31A).

## CONCLUSION

The test for deterrence is not whether executions produce lower murder rates, but that executions produce fewer murders than if the death penalty did not exist. For example, the fact that Delaware executes more people per capita (1/74,000) than any other state and has the lowest murder rate in the country (.5/100,000), a rate lower than virtually all European nations, is not proof, per se, of deterrence. Nor is the fact that Washington, D.C. has the highest murder rates (50/100,000) and highest violent crime rates (1,000/100,000) evidence, per se, that the lack of the death penalty increases all violence, including murder. Be careful how you explain and understand deterrence.

At worst, the general deterrent effect is inconclusive (B. 9, 13 & 16). There are 30 years

of respected academic studies which reveal a general deterrent effect. However, such general deterrence is inconclusive because there are also studies that find no general deterrent effect. Because this matter is inconclusive, we must choose the option that may save innocent lives. For, if there is a general deterrent effect and we don't execute murderers, we are sacrificing innocent lives. If there is not a general deterrent effect, and we continue to execute, then we are executing our worst human rights violators. If our judgment is in error regarding general deterrence, then such error must be made on the side of saving innocent lives and not on the side of sacrificing innocent lives. This is a moral imperative. Therefore, regarding general deterrence, we must execute. Additionally, there is no contradicting that the incapacitation effect saves lives - that is, that by executing murderers you prevent them from murdering again and, thereby, save innocent life. The evidence of this is conclusive and incontrovertible (B.1-4 & 7). Additionally, the individual deterrent effect absolutely saves innocent life (B. 9, 12 & 15). The individual effect represents those potential murderers, and/or their accomplices in crime, who state that they, and/or others, did not murder under specific circumstances because of their fear of execution. There are hundreds, if not thousands, of such documented cases, representing many innocent lives saved by the fear of execution. Circumstances dictate that the majority of these cases will never be documented and that the number of innocent lives saved by individual deterrence will be, and has been, much greater than we will ever be able to calculate.

### C. RACE, SENTENCING AND THE DEATH PENALTY

One of opponents's most popular false claims is that it is the race of the victim which determines who is on death row. 82% of the murder victims in death penalty cases are white. 13% are black, or a 6:1 ratio (NAACP Legal Defense Fund (LDF), 1996). Opponents, such as Kica Matos, NAACP LDF, Steven Hawkins, Executive Director, National Coalition to Abolish the Death Penalty (NCADP) and Sr. Helen Prejean, longtime Chairperson of the NCADP and author (Dead Man Walking), present this fact as evidence that the "system" values white lives more than black lives. If true, then we must wonder why whites represent 56% of those executed, and blacks 38% (NAACP LDF, Summer 1996) when blacks have committed 47% of all murders, and whites 38% (Special run of 1980-1984 BJS data, 1/13/97, for non Hispanic whites and non Hispanic blacks. JFA calculations for known race/ethnicity.). From 1991-94, 34% of murderers have been white, 54% black (ibid).

Should we conclude that the "system" focuses its benevolence toward black murderers, but its racism against black victims? How absurd. Such false conclusions, by opponents, are expected and serve only to further undermine their quickly eroding credibility. Successful capital prosecutions have nothing to do with the race of the victim and everything to do with the nature of the crimes. The most thorough evaluation of this subject was presented in *McClesky vs Georgia* (Zant/Kemp), wherein Federal District Judge Owen Forester accurately found that "the best models which (McClesky expert) Baldus was able to devise... produce no statistically significant evidence that race (of the victim or of the

defendant) plays a part in either (the prosecution's or the jury's capital decisions).ä (580 Federal Supplement 338, p 368, 2/1/84).

Could it be that whites are, overwhelmingly, the victims in death row cases because whites are, overwhelmingly, the victims in capital crimes? The 8 most common capital crimes, by statute and by occurrence, are (1) murder of a police officer; (2) multiple victim murders; and murder combined with (3) rape; (4) sexual assault; (5) robbery; (6) burglary; (7) auto theft/car jacking; and (8) kidnaping. (BJS, 1996). What is the ratio of white to black victims under the relevant, but non-homicide circumstances, which, when combined with homicide, become capital crimes? (A) The most relevant economic violent crime is robbery with injury, which shows a 4:1 ratio of white victims to black victims (C.4.); (B) By a 5:1 ratio, whites are more likely to be victims of rape/sexual assault than are blacks (BJS, 1977-1984); (C) For all property crimes (theft, burglary, auto theft), there is a 7:1 ratio of white to black victims (äSourcebook, 1994", BJS 1995, tables 3.21,3.25); (D) White victims make up 5 times the number of violent crime victims as black victims, or 5:1 (C.2); and, for homicides, which by themselves, qualify for the death penalty: (E) In death penalty states, police victim murders are capital crimes. From 1985-1994, 87% of murdered officers were white, 12% black, or 7:1 (Law Enforcement Officers Killed and Assaulted, FBI:UCR, 1994); (F) Whites make up a dominant percentage of multiple/serial murderers, whose victims are overwhelmingly white, thereby disproportionately and correctly raising the number of white victims in execution cases. In such death row cases, 87% of the victims are white, 13% black, or 7:1 (NAACP LDF data, 1996); (G) Many death row cases involve stranger murders. Whites make up 74% of all strangers, blacks 12%, or 6:1 (US Census); and (H) Research and appellate courts have confirmed that white victim murders are the most aggravated, thus, by statute, enhancing the likelihood of a death sentence in those cases (C.13, 15, & 17). These factors, and those below, within this paragraph 1, appear to be entirely consistent with the 6:1 ratio of white to black victims in capital cases.

But, wait, don't blacks and whites represent about an equal number of murder victims? Yes. However, capital crimes are very unique, combining murder with specific circumstance, such as subsets 1-8 and A-H., IF homicide rates are statistically consistent within subsets A-D, as McClesky vs Georgia and additional studies indicate (C. 10, 13, 14, 15, & 16; hereinafter McClesky et al), then it is subsets 1-8 and A-H, with additional required factors such as the murderer's criminal history and capital procedures (see F), which are confirmed to dictate the distribution of victims in these cases. Make no mistake, murder victims and capital murder victims are two very distinct groups. Capital statutes, crime statistics, aggravating factors and criminal history appear to accurately dictate the racial variation of murder victims in capital cases. See bold section of C.4.

Should we balance the scales of justice by changing the statutes so that we can execute equally the killers of blacks and whites? Only if you wish to dramatically increase the number of black murderers executed. 93% of all black murder victims are killed by blacks. On a case by case basis, black on black murders show significant enough mitigating factors,

that, by current statutes, this reduces the numbers of blacks who might otherwise be executed (BJS, 1976-94, *McCleskey vs. Georgia* (Zant/Kemp), Dr. Joseph Katz (Georgia State U.), etc.).

2) A comparison of only black or white perpetrators and victims reveals that whites are 5 times more likely to be the victims of a violent crime than are blacks, or 7.5 million vs 1.5 million ("Criminal Victimization, 1993", BJS, 1995.).

3) In 1994, death row inmates median level of education was the 12th grade. Of the 87 executed in 1994 and 1995, 50(57%) were white and 33(38%) were black. ("Cap. Pun." 94 & 95", BJS. 195-96).

4) From 1976-1995, 5 white murderers have been put to death for the murder of black persons and 101 black murderers have been put to death for the murder of white persons (NAACP LDF, 1996). Of course, opponents contend that this is evidence of racism in the "system". Equally predictable, that contention appears to be entirely false. That 101:5 ratio, or 20:1, is consistent with statistics that show aggravated crimes (those crimes committed prior to a murder which may make a crime eligible for the death penalty) are committed by blacks against whites in far greater numbers than by whites against blacks. For all violent crimes, there are ten times as many black offenders (2,016,939) involved in white victim violent crimes as there are white offenders (210,869) involved in black victim violent crimes, or a 10:1 ratio. (The State of Violent Crime in America, pg. 12, 1/96, data derived from Criminal Victimization in the U.S., 1993, BJS forthcoming, tables 42 and 48. JFA has assumed multiple offenders to be two offenders for calculation purposes.) In addition, blacks are nearly three times as likely to murder whites (849), as whites are to murder blacks (304), or 3:1 (Sourcebook 1994, BJS 1995, table 3.123). If murder rates are statistically consistent within the violent crime category, as *McCleskey et al* indicate, then blacks are, statistically, by a 30:1 (10:1 X 3:1) ratio, more likely to murder whites, than whites are to murder blacks, in those circumstances where an additional aggravating factor is present (see C.1.). These are those crimes most eligible for the death penalty. That statistically projected ratio of 30:1 is hardly inconsistent with the 20:1 ratio for black offender(s)/white victim vs white offender(s)/black victim executions. The most relevant aggravated crime is robbery with injury. Black offenders are 21 times more likely to be involved in such crimes as white offenders. This 21:1 ratio represents 1.4 million black offender(s)/white victim vs. 68,000 white offender(s)/black victim for robbery with injury crimes (JFA, using BJS, 1977-84 data). If overall murder statistics are consistent, within this crime category, as *McCleskey et al* suggests, then there is a 30-60:1 ratio of black on white vs white on black murders within this robbery/murder category. (From 1977-1984). A thorough evaluation of the data, in death penalty states, from 1973-84, of the 8 most prevalent capital crimes and statutes, the aggravated nature of those murders, and the criminal background of those murderers (as per Katz's evaluation in *McCleskey vs Georgia* and as per C.1.) is needed to present the most relevant and the most accurate analysis. Crimes committed in 1973-1984 are the most relevant to those executed from 1977-1995. Non-Hispanic whites and non-Hispanic blacks are the requested categories of offender/victim. See C.1, 13, 15 and 17.

5) 75% of blacks and 35% of whites believe that blacks are treated more harshly than whites by the criminal justice system. This is a deserved reputation, particularly in the South. Blacks have suffered some 400 years of slavery and blatantly racist criminal justice practices. From the practices of punishing blacks, who rape whites, with death and whites, who rape blacks, with a slap on the wrist, to the three trials needed to convict Byron de la Beckwith for the murder of civil rights leader Medgar Evers, generations of black Americans cannot and must not forget.

6) In 1994, in northeastern states, 36% of those on death row were white, 59% black. In southern states, 57% were white, 41% black (Capital Punishment 1994 ,BJS, 1995).

7) After examining 42,500 criminal files in the nations 75 largest counties, Patrick Langan (BJS) concluded that there was no evidence "...that, in the places where blacks in the U. S. have most of their contacts with the judicial system, that (the) system treats them more harshly than whites." (John DiIulio, Jr., "White Lies About Black Crime", The Public Interest, 1995. See also "Research on Sentencing", National Research Council, 1983.)

8) 93% of blacks are murdered by blacks; 83% of whites are murdered by whites (BJS, 1995).

9) No evidence of system wide discrimination in the imposition of the death penalty exists beyond the 1950's. From 1929-66, white murderers were more likely to be executed than black murderers (10.4 vs 9.7/1000). This trend continues today.(C.I.) (Gary Kleck, "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty", American Sociological Review, 12/81.)

10) A study of the death penalty, as imposed by Harris County (Houston, Texas, USA) juries, since 1982, found that the death penalty was imposed on white and black murderers in proportion to the capital offenses committed by those race classifications(The Houston Post, 10/16/94).

11) Although blacks make up 12% of the US population, they comprise 44% of the prison population. (BJS, Prisoners in 1994). Researchers find a close relationship between the racial distribution in arrest and prison statistics and the race of offenders as described by crime victims. In other words, according to the reports from victims, racial groups are represented in prison according to their involvement in criminal activity. Although sentencing studies show that the offenders prior criminal record and the aggravated nature of the crime are the key factors in making imprisonment decisions, the racial aspects of crime and punishment should be continuously scrutinized. For example, Langan finds that in 1979 and 1982, blacks were over represented in prison by 16% and 15%, respectively. (Patrick Langan, Racism on Trial; New Evidence to Explain the Racial Composition of Prisons in the U.S. (1985). Also see Texas Crim. Jus. Policy Council, A Source Book of Arrest and Sentencing By Race, 1994; Al Blumstein, On The Racial Disproportionality of

U.S. Prison Populations, (1982); M. Hindelang, Crime Victimization (1976) and Race and Involvement (1978); U.S. General Accounting Office, Racial Differences in Arrests, 1/20/94.)

12) Whites are executed an average of 15 months quicker than blacks. ("Capital Punishment, 1995", BJS, 1996)

13) Legal variables, such as prior criminal history and the aggravated nature of the murder, are the proven basis for imposition of the death penalty. The black/white variation in sentencing has generally been reduced to zero when such legal variables are introduced as controls. ("Execution by Quota", The Public Interest, Sum. 1994; Also see Dr. Katz, "Statement to the Senate Subcommittee on the Judiciary Concerning the Relationship Between Race and the Death Penalty" 10/2/89).

14) In *McCleskey vs Georgia*, McCleskey's attorneys argued that the death penalty was racist in its application. The basis for that view was a study conducted by Profs. Baldus, Woodward and Pulaski. In August, 1983 Fed. District Court Judge J. Owen Forester found that the study's conclusions of racial bias were without merit. In 1985, the 11th Circuit Court of Appeals, by a 9-3 vote, stated "Viewed broadly, it would seem that the statistical evidence presented here, assuming its validity, confirms rather than condemns the (death penalty) system." In April 1987, the U.S. Supreme Court upheld that decision in a 5-4 vote, stating that the referenced study did not establish that capital punishment discriminates against black defendants or killers of white victims. The courts concluded that statistical evidence could not be used to determine prejudice. Each individual case must be judged on its own case facts. A thorough critique of the Baldus study was conclusive--the death penalty was not racist in application and that, for whatever reasons, white victim cases presented the most aggravating murders thus, by statute, increasing the likelihood of a death sentence (*McCleskey vs Georgia* (Zant/Keirap) & Dr. Joseph Katz, Georgia State U.).

15) The single, most vile strategy of death penalty opponents is their use of propaganda to nurture hatreds and mistrust between race and class. Bryan Stevenson, a well known opposition attorney with Equal Justice Initiative (Montgomery, Alabama) gives us an example of that strategy. He finds that the death penalty reflects the middle class's desire to strike out at the poor and racial minorities ("A Matter of Life and Death", Christianity Today, 8/14/95). Sister Helen Prejean joins this hideous chorus, proclaiming that "(m)iddle-class and upper middle-class white people...are so much for the death penalty (to) 'Keep those dangerous people (the poor and minorities) in their place.'" ("Opposing the Death Penalty", AMERICA, 11/9/96, pg. 12.) Clearly, these vile statements reveal only their prejudice. Prejean continues "It didn't take long to see that for poor people, especially poor black people, there was a greased track to prison and death row." (The Progressive, 1/96, p. 32(4) vol. 60, no. 1). These statements are grossly insulting to both the poor and to minorities. They are also completely false. Indeed, Sister Prejean is really saying that the

poor, especially poor black people, can't help themselves from committing capital murder! What a grotesque conclusion. Based on their active involvement in the death penalty debate, both Stevenson and Prejean should (must?) be aware that (1) the majority of those executed are white (C.1.); (2) Whites are executed in a disproportionately high number and blacks in a disproportionately low number, in relation to their perpetrating murder (C.1.); (3) since 1929, white murderers have been more likely to have been executed than black murderers (C.9.); (4) the majority of those on death row are white (NAACP LDF, 1996); (5) A study of the economic status of death row inmates showed that only 38% of those on Georgia's death row were poor (C.17).; (6) there is no evidence that capital murderers of different economic classes are over or under represented on death row (C.17); (7) whites are executed 15 months quicker than blacks. (C.12.); and (8) There appears to be no "race of the victim" effect. Capital murderers are executed primarily because of the aggravated nature of the crime(s). Period. (C.1. & C.4.) Both Stevenson and Prejean do hereby reflect either their unbelievable ignorance or their willful and foul deception. The reality is that over 99% of all persons, including poor minorities, do not commit capital crimes. And, there is, of course, no excuse for anyone that does.

16) Murderers are put to death, not based on the race or economic status of the victim or the murderer, but based upon the death penalty statutes, the aggravated nature of the crime, the criminal background of the murderer and the other specific factors mandated by the Furman and Gregg vs. Georgia cases, and by subsequent Supreme Court decisions. Since 1973, there is absolutely no credible evidence to support any other conclusion.

17) THE WEALTHY AND DEATH ROW - Contrary to opponents claims, there is no systemic evidence that wealthy capital murderers are less likely than their poorer ilk to receive the death penalty. Drawing only on personal knowledge, we found that since 1973, in Texas, alone, at least seven middle class to wealthy murderers have been put on death row. Four, Markum Duff Smith, George Lott, Robert Black, Jr., and Ronald O'Bryan have been executed. Three additional await execution. Don't forget John Wayne Gacy and Ted Bundy. Extensive, objective research would, undoubtedly, reveal many more. Furthermore, Dr. Joseph Katz found that, while 74% of all Georgia murder defendants were poor, only 38% of those on death row were poor (McCleskey vs. Georgia). Speculation: 10% of the U.S. population (23 million) can afford to pay the \$400,000\* cost for their capital trial and appeals. Because financial need can be excluded, the category of wealthy capital murderer can be assumed to murder at a rate 10 times less than their poorer ilk. Fact: 0.20% of the U.S. population commits murder. 1.3% of those are sentenced to death. Only 5.9% of those have been executed. Therefore, the projected number of wealthy executed from 1976-1996 is 4, or  $23 \text{ million} \times .1 \times .0020 \times .013 \times .059$ . Using 1973-1996 data. Must see C. 1, 4, 13, 14 and 16.

\*estimate based on opponents's cost claims (see E)

18) SEXISM AND THE DEATH PENALTY - Some claim that the death penalty is sexist. The ratio of men to women on death row (and executed) is 68:1, or 3400:50 (NAACP LDF, Spring 1996). Men committed 476,937 rapes, robberies and burglaries, women

47,357 or a 10:1 ratio. From 1976-94, men committed 7 times as many murders as women, or 7:1. (Sourcebook 194, BJS 195, tb.4.9 and 3.22). Therefore, it may be statistically predictable that men are, by a 70:1 ratio (10:1 X 7:1), more likely to be on death row than are women. Women appear to be on death row in numbers that would be expected. However, one would expect that 5 women would have been executed since 1976, when only 1 has been executed. Must see C. 1, 4, 13, 14 and 16.

#### D. CHRISTIANITY AND THE DEATH PENALTY

NOTE: Although not relevant to the legal application of the death penalty in the United States, religious issues are a significant thread within the moral debate. Biblical text is most relevant within a theocracy or a secular government which has laws that are consistent with biblical text. The United States does not, of course, fall within either category. This section is included only to counter the false claim that there is no New Testament support for capital punishment.

1) Virtually all religious scholars agree that the correctly translated commandment "Thou shalt not murder" is a prohibition against individual cases of murder. There is no biblical prohibition against the government imposition of the death penalty in deserving cases. Indeed, the government imposition of capital punishment is required for deliberate murder. (Dr. Charles Ryrie, *Biblical Answers to Contemporary Issues & The Ryrie Study Bible*, Exodus 20:13).

2) As the Hebrew Bible was consistent in prescribing death as a proper punishment for certain crimes, so too is the New Testament consistent with these earlier pronouncements. As Jesus described in the Sermon on the Mount, obedience to the law will be rewarded with life, disobedience with destruction. A God who rewards with life and punishes with death is One whose laws provide for death as a judicial punishment. Prof. Baruch Levine, "Capital Punishment," p31, *What the Bible Really Says*, ed. Smith & Hoffman, 1993.

3) "If no crime deserves the death penalty, then it is hard to see why it was fitting that Christ be put to death for our sins and crucified among thieves. St. Thomas Aquinas quotes a gloss of St. Jerome on Matthew 27: "As Christ became accursed of the cross for us, for our salvation He was crucified as a guilty one among the guilty." That Christ be put to death as a guilty person, presupposes that death is a fitting punishment for those who are guilty." Prof. Michael Pakaluk, *The Death Penalty: An Opposing Viewpoints Series Book*, 1991.

4) "The same divine law which forbids the killing of a human being allows certain exceptions. Since the agent of authority is but a sword in the hand, and is not responsible for the killing, it is in no way contrary to the commandment "Thou shalt not kill," for the representative of the State's authority to put criminals to death, according to the Law or the rule of rational justice." St. Augustine, *The City of God*, Book 1, Chapter 21.