

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 80/2

9566 SENATE JUDICIARY

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## ABA: Resolution from nation's lawyers urges halt to executions

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said New York City attorney Ronald Tabak, who has represented death row inmates in several states on a pro bono basis.

The resolution stated that the death penalty unfairly discriminates against minorities. It also called for a ban on the execution of mentally retarded persons or individuals who were under 18 when they committed their crimes — reiterating earlier ABA positions.

In addition, the report said that

neither the capital punishment procedures of the federal government or any of the 38 states comport with what the ABA believes is necessary to guarantee fairness.

However, the measure specifically did not take a position on the morality of the death penalty.

A report presented with the resolution vigorously criticized new federal laws that dramatically reduced the power of federal courts to review capital cases from state courts and eliminated federal funding for lawyers assisting

death row inmates with appeals.

"These two recently enacted laws, together with other federal and state actions taken since the ABA adopted its (prior) policies on capital punishment, have resulted in a situation in which fundamental due process is now systematically lacking in capital cases," the report by the ABA's section of individual rights and responsibilities said.

"Individual lawyers differ in their views on the death penalty in principle and on its constitutional-

ity," according to the report. "However, it should now be apparent to all of us that the administration of the death penalty has become so seriously flawed that capital punishment should not be implemented without adherence to the various applicable ABA policies."

Over the past two decades, the organization has called for policies that would ensure competent counsel in capital cases; ensure proper processes for adjudicating claims in capital cases — including the avail-

ability of federal habeas corpus; and strive to eliminate racial discrimination in the administration of capital punishment.

But the report stressed that "the time has now come for the ABA to take additional decisive action with regard to capital punishment," because "in case after case, decisions about who will die and who will live turn not on the nature of the offense the defendant is charged with committing, but rather on the nature of the legal representation the defendant receives."

## Nation's lawyers call for end to executions

By HENRY WEINSTEIN  
Los Angeles Times

In a ground-breaking move, the American Bar Association on Monday called for an immediate halt to executions in the United States until the federal government and the 38 states that impose the death penalty change the system to ensure greater fairness.

Declaring that the current im-

plementation of capital punishment is subject to "a haphazard maze of unfair practices," the ABA's House of Delegates adopted the resolution, 280 to 119, at its midwinter conference in San Antonio, Texas, despite the opposition of the group's president, N. Lee Cooper, and U.S. Deputy Attorney General Jamie Gorelick. Former Attorney General Benjamin Civiletti spoke in favor of

the measure.

Passage of the resolution means officials of the 370,000-member organization can lobby members of Congress and state legislatures to change procedures, conduct a broad educational campaign issue and file friend-of-the-court briefs in death penalty cases where they have determined that an individual's constitutional rights were violated.

"The significance of this action is that the group that is the most knowledgeable about how our legal system is implementing the death penalty has now concluded that the way it is being implemented is extremely unfair and that executions should not go forward until substantial changes to provide due process are made,"

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## DNA tests back Sheppard's claim

Doctor likely innocent in '54 killing

By PETER FINN  
The Washington Post

An enduring mystery in the history of crime — the 1954 Sam Sheppard murder case that inspired the TV series "The Fugitive" — may have been resolved Tuesday. New DNA testing of 42-year-old evidence from the Ohio slaying suggests Sheppard was telling the truth when he said that an intruder, and not he, bludgeoned his pregnant wife to death.

The intruder became the mythical "one-armed man" on TV and in the popular

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The Associated Press

Dr. Sam Sheppard returns to his jail cell in Cleveland on Dec. 21, 1954, after he was convicted of killing his wife.

# SHEPPARD: After 43 years, new DNA evidence backs doctor's claim of innocence

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imagination.

The DNA test results, presented to the Cuyahoga County prosecutor's office in Cleveland on Tuesday, found the blood and semen of a third person on crime scene items. The findings supported the physician's much-scorned story that a shadowy, "bushy-haired" figure had attacked his wife, Marilyn, in her bed as Sheppard snoozed nearby on a couch in the early morning of July 4, 1954.

Largely because of circumstantial evidence, and because no credible evidence of an intruder ever surfaced, Sheppard, then 30, was found guilty of the murder. The conviction was overturned 10 years later in a key U.S. Supreme Court ruling that prejudicial publicity had made the trial a "carnival."

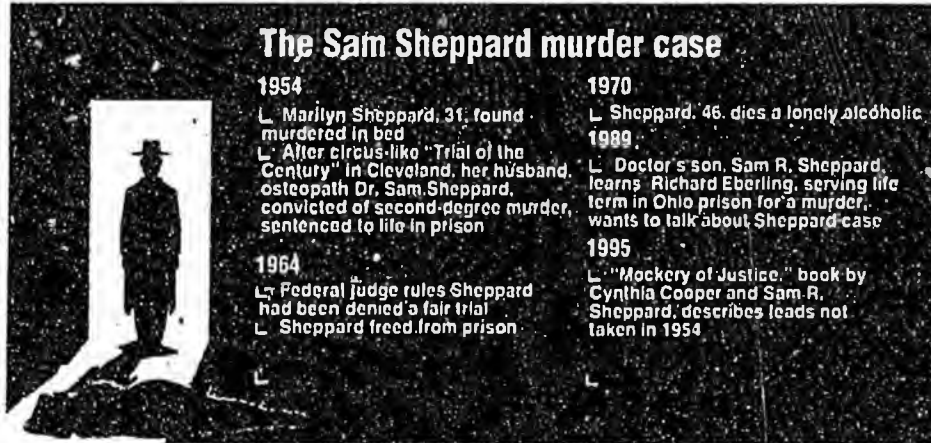
At a second trial in 1966, in which he was defended by a young F. Lee Bailey, Sheppard was acquitted. But doubts about his innocence persisted. He died an alcoholic in 1970, guilty of murder in the eyes of many.

"I feel Dad is definitely exonerated," said Sam Reese Sheppard, the Sheppards' only son, in a phone interview from San Francisco. "The truth has finally prevailed. Since I heard the results, I've bounced back and forth between anger and relief."

Exactly who the killer was, however, DNA can't say — at least with any certainty.

Earlier this year an Ohio judge, hearing a civil case in which Sheppard's son is seeking a declaration of innocence for his father, ordered that a blood sample be drawn from Richard Eberling, who had washed the windows in the Sheppards' suburban Cleveland home around the time of the murder. Eberling, 67, is serving a life sentence in Ohio for murder in another case.

Eberling, who denies killing Marilyn Sheppard, was identified as a suspect through a six-year private investigation of the murder by lawyers and investigators working with Sam



## The Sam Sheppard murder case

1954

↳ Marilyn Sheppard, 31, found murdered in bed  
↳ After circus-like "Trial of the Century" in Cleveland, her husband, osteopath Dr. Sam Sheppard, convicted of second-degree murder, sentenced to life in prison

1964

↳ Federal judge rules Sheppard had been denied a fair trial  
↳ Sheppard freed from prison

1970

↳ Sheppard, 46, dies a lonely alcoholic

1989

↳ Doctor's son, Sam R. Sheppard, learns Richard Eberling, serving life term in Ohio prison for a murder, wants to talk about Sheppard case

1995

↳ "Mockery of Justice," book by Cynthia Cooper and Sam R. Sheppard, describes leads not taken in 1954

DAVID ARSHEM / Knight-Ridder Tribune

Reese Sheppard. The allegation was contained in a 1995 book, "Mockery of Justice: The True Story of the Sheppard Murder Case" by Sam Reese Sheppard and writer Cynthia Cooper.

The DNA tests found that Eberling could not be ruled out as the source of blood from the crime scene because he shared a key genetic marker with blood and semen taken from it. But the DNA analysis falls short of declaring a match between Eberling's DNA and that extracted from evidence.

The testing was conducted by Mohammad Tahir, DNA technical manager at the Indianapolis-Marion County Forensic Services Agency. Tahir extracted DNA from a bloodstain on Sam Sheppard's pants, from a blood drop on a wood chip taken from the basement stairs in the Sheppard home and from vaginal swabs taken from Marilyn Sheppard. Testing of the swabs indicated the presence of semen.

DNA analysis shows that the blood and the semen come from the same person, Tahir said. And those samples, in turn, are consistent with

a key DNA marker in Eberling's blood, Tahir said. But there are also unaccounted-for markers in the crime-scene samples, which makes it impossible to tie them directly to Eberling, Tahir said.

At the time of the murder, police postulated that the blood leading away from the crime scene was Marilyn Sheppard's and fell from a dripping weapon carried by Sam Sheppard. But blood testing was in its infancy, and the blood was never positively identified.

The test results released Tuesday conclude that the blood from the wood chip and the pants are inconsistent with Marilyn's. This is significant because they could not have been Sam Sheppard's blood, either. According to all contemporaneous reports, including physical examinations on the morning of the murder by doctors hostile to his position, Sheppard had no cuts or wounds on his body that could have bled. And if the blood was not his, the semen could not have been his, either.

The Sheppard investigative team believes

that Marilyn, two of whose teeth were chipped, bit her assailant. The blood trail, they say, was consistent with droplets from an open wound, possibly on the assailant's hand.

"I can say with 100 percent confidence that the blood was not Marilyn Sheppard's, and Mr. Eberling cannot be excluded as the source of the blood and the sperm," Tahir said.

Sheppard's story, never wavering but not very convincing, was that he awoke during the early hours of July 4 to the sound of his wife screaming. He said he was sleeping on a daybed in the couple's lakefront home. He said he rushed upstairs and was knocked unconscious by a blow to the head.

Sheppard's attorneys argue that this is when blood must have gotten on Sheppard's pants — blood that was the assailant's and not Marilyn's, as police assumed at the time.

When Sheppard came to, he found his wife dead in a bedroom, her pajamas pulled down below her knees and up above her breasts. Marilyn, four months pregnant, had suffered 35 blows to the head and blood was splattered across the bed and onto the walls.

After not finding his wife's pulse, Sheppard said he heard a noise downstairs and chased a man down to the beach, where the two wrestled before Sheppard was overpowered and knocked out again. He described the assailant as a tall man with a big head and bushy hair.

The police never believed Sheppard. A man of arrogance, he was an immediate suspect. He lied to police about his marital problems — he'd had an affair with a lab technician who worked for him. The house showed no sign of forced entry. Police questioned what Sheppard claimed was a spinal contusion.

And those in Cleveland who have long been convinced of Sheppard's guilt also said they were unswayed by the new findings.

"The basic problem here is that they do not have Sam Sheppard's DNA," said Michael Corrigan, a common pleas court judge in Cleveland whose father prosecuted Sheppard.

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# Vogler's killer not allowed to alter plea

By SHEILA TOOMEY  
Daily News reporter

The man who killed Joe Vogler can't take back his no-contest plea just because he thinks he can get a better deal, the Alaska Court of Appeals ruled Friday.

Manfried West was sentenced to 80 years in prison for second-degree murder and tampering with evidence in the 1993 death of Vogler, 80, a long-time Fairbanks resident and leader of the Alaskan Independence Party.

West argued to the appeals court that he should be allowed to withdraw his plea and that the sentence is too long.

The court rejected both requests.

A defendant can withdraw from a plea bargain only if he has "a fair and just reason" for doing so, said Judge Robert Coats, writing for the three-member court. "A fair and just reason requires more than proof that the defendant changed his mind."

When he agreed in 1995 to plead to second-degree murder, West was under indictment and facing trial for first-degree murder, second-degree murder, robbery, burglary, theft and tampering. And he already was serving 15 years on unrelated arson and other charges.

In his appeal, he said he was forced to make a quick decision about the plea offer from the Fairbanks district attorney, and had not seen all the evidence against him. Shortly after entering his no-contest plea, West tried to get out of the deal after concluding he

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## COURT: Appeals panel won't allow withdrawal of West plea

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might be able to convince a jury he killed Vogler in self-defense.

But the Superior and Appeals Courts judges all concluded he'd had plenty of time to discuss his options with his lawyer, and had seen most of the evidence ahead of time.

The Court of Appeals acknowledged that West's sentence of 75 years on the second-degree murder charge was

longer than normally handed out. Guidelines suggest a sentence of 20 to 30 years.

However, the sentencing judge concluded that West, 40, was a career criminal who had been in and out of trouble for years and had resisted all previous efforts to rehabilitate him. West targeted Vogler after concluding the old man "would be easy prey and a ready source of funds," the judge said.

He found that that West "had a per-

manently ingrained criminal attitude and was a danger to society and would be a danger to society for the foreseeable future," justifying the exceptionally long sentence, the Court of Appeals concluded.

West was sentenced to an additional five years for tampering with evidence for burying Vogel's body in a gravel pit where it remained hidden for more than a year. Investigators found it after West told a jail mate where it was located.

## hunt for 3 sailors

Directing two helicopters  
three airplanes in the  
1 for the missing crew  
members of the trawler Pa-  
Alliance.

nston said the search  
wind down if no one  
was found Friday.

100-foot trawler sank  
day about 60 miles off  
north end of Vancouver

The company identified  
the one crew member whose  
body was recovered Thurs-  
day as Curtis Miller, 34, of  
Poulsbo, Wash. The other  
three crew members aboard  
were identified as Stephen  
Brooks, 42, of Oak Harbor,  
Wash.; Scott Carlson, 40, of  
Brookings, Ore.; and John  
Ferry, 36, of Olympia, Wash.

By DANIELLE STANTON  
Daily News reporter

At his sentencing Friday,  
Nathaniel Carter listened for  
nearly 30 minutes to an angry  
family mourn for the woman  
he killed.

Carter was sentenced to  
nine years in prison for  
manslaughter and tampering  
with evidence in the fatal  
shooting of Jackie Simard in  
March 1995.

"I wish you, Nathaniel, and  
our family could feel one-  
tenth of the pain you put my  
family through for just one



Carter  
sister."

Carter sat with his head  
bent forward, once wiping a  
tear from his cheek, as

Please see Page B-3, KILLER

second," a  
family mem-  
ber of Simard  
said in a  
videotape  
played in the  
courtroom.

"I never  
knew what  
hate was until  
I found out  
you killed my

## ily plays at sentencing

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Simard's family, taped at their home in  
Massachusetts, addressed the court.

Pictures of Simard, 20, flashed on the  
screen as the voices of her mother, fa-  
ther, grandparents and aunts told how  
their lives have been destroyed by her  
death. From the back of the courtroom,  
Carter's family watched in silence.

"I feel such hate for the man who  
pointed the gun at her head and pulled  
the trigger," Simard's grandmother  
said. "I will never feel the same after  
losing my granddaughter."

"Why should you see your family  
when we'll never see our Jackie again,"  
one aunt said to Carter. "I hope you rot  
in hell."

Simard's family created the video-  
tape on their own, said Janice Leinhart,  
executive director of Victims for Jus-  
tice.

The family — except for Simard's  
mother — could not afford to fly to An-  
chorage for the trial, Leinhart said.

Carter was convicted of manslaughter

ter and tampering with evidence in Oc-  
tober.

A manslaughter charge typically  
brings a five-year sentence.

The prosecution had pushed for con-  
viction on a more serious charge, argu-  
ing Carter had intentionally shot Simard  
in the course of trying to steal \$28,000  
worth of cocaine from her home.

"We argued that this was the most se-  
rious manslaughter and the court didn't  
agree with that," assistant district attor-  
ney John Novak said outside the court-  
room Friday.

Public defender Mike Dieni said he is  
not satisfied with the sentence and plans  
to appeal.

Dienu argued Carter had been playing  
with Simard's .22-caliber handgun and it  
accidentally fired.

"This was an act of foolishness, not  
viciousness," Dieni said.

Superior Court Judge Donald Hop-  
wood said he considered Carter's past  
criminal history.

Carter was convicted of raping a 5-  
year-old girl when he was 15 and served

two years at McLaughlin Youth Center,  
Hopwood said.

Carter's record began about 13 years  
ago. When he was about 7, he burned  
part of a trailer home. In junior high, he  
was expelled for misbehavior.

Later, he dropped out of school, sold  
cocaine at one point, and was convicted  
of several misdemeanors, Hopwood  
said.

Evaluations done at McLaughlin de-  
scribed Carter as manipulative and ego-  
centric, with little empathy for his vic-  
tims, Hopwood said.

"He tells people what they want to  
hear," Hopwood said before he read the  
sentence.

"It's difficult to trust what he has to  
say. He's not a naive youth. He's smart.  
He's been through the system and  
knows a lot about people. He can manip-  
ulate the system."

On the positive side, Hopwood said,  
Carter completed his GED and shows  
genuine concern for his 17-month-old  
daughter. But his chances for rehabilita-  
tion are poor to fair, he added.

# METRO

SATURDAY, January 25, 1997

ANCHORAGE DAILY NEWS

SECTION D

## Taylor seeks death penalty vote

By DAVID GERMAIN  
The Associated Press

JUNEAU — A proposal to ask voters their opinion about bringing back the death penalty to Alaska for the most serious murders was revived Friday in the Legislature.

Sen. Robin Taylor, R-Wrangell, introduced a bill calling for a vote on capital punishment in the 1998 election. Taylor proposed the same legislation last year.

The Legislature would not be bound by the results, but Taylor said the vote would give lawmakers guidance on the death penalty, which was

abolished by the Territorial Legislature in 1957.

The ballot question would ask voters if they want the Legislature to legalize capital punishment for the worst murders, such as killing a police officer.

Taylor has been pushing to restore the death penalty for years, saying it is a fitting punishment for murderers that prevents them from getting paroled and killing again.

"How as a society can we look a murderer's second group of victims in the eye and say, yeah, we had our hands on this guy, but we let him go

because capital punishment wasn't deemed politically correct?" Taylor said.

Opponents say the death penalty is inhumane and would cost more in court-appeal costs than keeping killers locked up for life. Dale Kelley, who heads the group Alaskans Against the Death Penalty, said death-penalty cases have cost other states an average of \$5 million.

"There are alternatives to the death penalty," Kelley said. "We feel this is not the way a civilized society should treat its citizens. Our whole theme is why continue to kill people

to teach people that killing is wrong?"

Kelley also said Taylor's bill is too simplistic because it offers voters only a yes-or-no choice on capital punishment. A ballot question on the death penalty also should let voters choose life imprisonment without parole, a punishment Alaska already has for the most serious murders, she said.

Rep. Jerry Sanders, R-Anchorage, who also sponsored death-penalty legislation last session, said he might introduce a version of Taylor's bill in



Sen. Robin Taylor

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### DEATH: Taylor wants vote on issue

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the House.

"A lifetime of shooting pool and watching color television in prison is not justice for the taking of a life," Sanders said.

"The fact that the death penalty might cost more, I

think it's money well spent. If it ever stops one murder, what's that worth?"

The legislation passed the Senate last year but got hung up in the House. Taylor and Sanders said the proposal stands a better chance over the next two years because of Republican election gains in

the Legislature.

Democratic Gov. Tony Knowles opposes the death penalty. Knowles also opposes Taylor's bill for a statewide vote because the phrasing "drastically oversimplifies a complicated issue," said Knowles spokesman Bob King.

## Fairbanks man has day in court in 1988 gun battle

The Associated Press

**FAIRBANKS** — Eight years after squaring off in a point-blank gun battle with a Fairbanks police officer, Carlos DeJesus is being tried on a charge of first-degree attempted murder.

DeJesus pleaded no contest to first-degree attempted murder in December 1988, three months after he allegedly shot officer Margaret

Sullivan. But the state Court of Appeals granted him a new trial in 1995 because his lawyer at the time, Charles Easaw, underestimated the possible sentence by 79 years.

Sullivan was attempting to arrest DeJesus on Sept. 1, 1988, for carrying a knife with a 10-inch blade, according to court records. DeJesus tried to take her gun during a

struggle and was handed a weapon by his girlfriend, Carrie Sumpter.

DeJesus shot seven times at the officer, striking her once in the arm. Sullivan fired a .357-caliber Magnum four times and hit DeJesus in the abdomen, pelvis and leg.

A jury will now decide whether DeJesus is guilty or innocent of first-degree attempted murder, escape,

second-degree assault and fourth-degree misconduct involving a controlled substance.

Neither DeJesus's lawyer, James Hackett, nor District Attorney Harry Davis would discuss the case.

Jury selection continued Wednesday before Superior Court Judge Niesje Steinkruger, who accepted DeJesus' no contest plea in

1988. She told DeJesus at the time that he could be sentenced to up to 99 years in prison.

DeJesus thought he was facing a maximum sentence of 20 years by pleading no contest to attempted murder and escape. That decision was based on information provided by Easaw. DeJesus still entered the plea before Steinkruger.

Three months later he

tried to change the plea. Steinkruger denied the request and subsequently sentenced DeJesus to 68 years in prison. The appeals court decided that Easaw failed to discuss the steeper sentence with DeJesus and DeJesus a new trial.

DeJesus has spent the past eight years in prison. Sullivan is still a Fairbanks police officer.

# DEATH PENALTY AND SENTENCING INFORMATION In the United States

12/96

1) Imposition of the death penalty in the United States is extraordinarily rare. Since 1966, there has been one execution for every 1900 murders, or 0.053%. There have been approximately 570,000 murders and 300 executions from 1966 -1995(Justice Department and FBI's Uniform Crime Report or "UCR").

2) Approximately 5700 persons have been on death row, and 320 have been executed (from 1973-96, JFA). 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.

3) Death penalty opponents ("opponents") state that "Those who support the death penalty see it as a solution to violent crime." Opponents, hereby, present a complete fabrication. 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").

4) Most opponents say that execution is the same as murder because both involve taking human life. Is the legal taking of property to satisfy a debt the same as auto theft? Are kidnapping 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."(see D.6. for source) In addition: Is killing in self defense the same as capital murder because both involve taking human life? Are rape and making love the same because both involve sexual intercourse?

## A. THE RISK OF EXECUTING THE INNOCENT

Extreme efforts have been made in the pretrial, trial and appeals process 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 35% of all death row cases, or 1861, have been overturned for due process reasons (Capital Punishment 1994, BJS, 1995). Possibly as many as 20-52 of those cases(0.35-1.0%) were overturned based on some credible claims of innocence. Many of those cases were overturned based on post conviction new laws, established by legislative or judicial decisions in unrelated cases. See F., for the extraordinary protections given by the USA to the defendant and to the inmate.

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, (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 and substantial evidence of guilt. Bedau & Radelet, both opponents, "consistently presented incomplete and misleading accounts of the evidence." (Markman & Cassell, 41, 1 Stanford Law Review, 11/88). The remaining 11 cases represent 0.15% of the 7,200 executions which have taken place since 1900. 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 Bedau and Radelet at least 50% in error with their 23 "innocents" claim, but 211 of those 350 cases, or 60%, were not sentenced to death. Bedau & Radelet already knew that plea bargains, the juries, judicial review and/or the legal statutes had already put these crimes in the "no capital punishment" category.

Furthermore, many claims of innocence, regarding the remaining 139 of those 350 cases, or regarding the remaining 11 executed, 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 a report, where at least 50% and 60% of the data was incorrect and misleading, a grade of F would be a likely result.

An additional, significant oversight in the study is not differentiating between the risk of executing innocent persons before and after *Furman vs Georgia* (1972). Even if the death penalty has been 100% accurate since 1950, the execution of only one innocent person represents a terrible tragedy. Placed 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 question society must answer is: Is the risk of executing the innocent, however slight, worth the benefits of the death penalty - those being cost savings, rehabilitation, incarceration, deterrence, just punishment and the saving of innocent lives?.

Michigan Court of Appeals Judge Stephan Markman finds: "Indeed, 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.â ... (T)he Bedau and Radelet study...speaks eloquently about the extraordinary rarity of error in capital punishment.â ("Innocents on Death Row?", National Review, September 12, 1994).

Bedau and Radelet have conceded 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, 11/1938).

## B. INCAPACITATION AND THE DETERRENT EFFECT

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. (Bureau of Justice Statistics, "BJS", Recidivism of Young Parolees 4, 1987). That percentage is now much higher. Murderers have so violated the human rights of their victims 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, every year, 700,000 persons, including 7,700 murder victims, are the victims of violence perpetrated by those on parole, probation or pretrial release. (The American Enterprise, May/June 1995.) How can opponents spend millions of dollars and 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 result in 7,000-10,000 additional murders and 3 million additional violent crime victims every year. (The State of Violent Crime in America, 1/96, i, ii and Criminal Victimization 1993, BJS, 1995 and JFA). This does not include those violent crimes committed by repeat offenders not on "supervision". Where is the compassion in honoring the previous victims' suffering and in protecting the human rights of future victims?

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% of death row inmates 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 (BJS, Capital Punishment, 1994 & JFA). We have totally failed to protect our citizens from known violent offenders. 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?

5) Murderers released in 1992 had served an average of 5.9 years in prison. 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 murder is closer to 3 years. (BJS, UCR & The State Of Violent Crime in America, 1995 and 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?

6) 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 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.

7) Without the death penalty there is no deterrent to inmates killing others while in prison. 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 many of those states.

8) 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. This would open up a new arena for sociological and psychological study: Why do 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 the majority of academic studies do show that executions do produce a general deterrent effect and that, to a much lesser extent, a brutalization effect is observed.(B.13.) In addition, the evidence is compelling that there is a significant individual deterrent effect caused by executions. (B.15.).

9) 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 the death penalty was universally applied to our worst criminals, if it were swift and sure, it is logically conclusive that the death penalty would be a significant deterrent and that many innocent lives would be saved.

10) There are two rational conclusions one can make regarding deterrence. One, if the

death penalty is not a deterrent then we are executing death penalty eligible criminals. 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(B.8.). Who will honor the human rights of victims and protect future victims?

11) 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 men, 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 United States 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. 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.

12) 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 Dangers*.

13) 30 years of studies suggest that the death penalty is a 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) A review of 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). With so few executions and so many murders, the general deterrent effect will likely never be conclusive.

14) 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." Ernest van den Haag, "On Deterrence and The Death Penalty", Journal of Criminal Law, Criminology and Police Science, vol. 60, no.2 (1969).

15) There are 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 of deterrence over non-deterrence, believed that capital punishment was a significant enough deterrent to prevent them and/or others from murdering their victims. Some of the references: a) People vs Love, 56 Cal 2d 720 (1961), McComb, J. dissenting; b) "Controversy Over Capital Punishment", Congressional Digest, Jan., 1973, p. 13; c) L.A.P.D. study within Aikens vs Ca., No. 68-5027, Oct. Term, 1971, U.S. Supreme Court; d) Carol Vance, "The Death Penalty After Furman", The Prosecutor, vol. 9, no. 4 (1973), p. 703; e) Carrington, F., Neither Cruel Nor Unusual, Pgs. 92-100(1978); f) Don Hooloschultz, "Gunman Slain, Hostages O.K.", Washington Star News, 8/23/73, p.A-1; g) Jim Landers, "4 Guilty in Holdup Sentence", Washington Post, 12/8/73, p.B-1; h) Larry Derryberry, "It Is The Fear That Death May Be The Punishment That Deters", Police Digest, Spring/Summer 1973, p.27, col.2. Note that 1978 is the latest reference cited. Extensive worldwide research on individual deterrence would, undoubtedly, reveal significant systemic deterrence. NOTE: It is almost impossible to prove a negative, i.e. How many murders does the death penalty cause not to occur? While the statistical evidence of systemic deterrence may always be problematic, there are hundreds, if not many thousands, who state that the death penalty did or would deter them and others, from committing murder.

16) Death Penalty opponents state that if the death penalty was a deterrent then states that have the death penalty would have a reduced homicide rate. Some countries, such as Saudi Arabia, that use the death penalty, consistently and swiftly, have incredibly low homicide and crime rates. It is not surprising that the U.S. does not overtly show any deterrent effect. We execute only 0.053% of our murderers. While most of us 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.

17) Since 1990, Harris County (Houston), Texas has executed more death row inmates than any other county or state in the USA. During that time, the county saw a 48% reduction in murder (Houston Chronicle, 7/28/95), the most significant decrease in the U.S.A. If the 1996 murder rate in Harris County concludes as it has begun(1/1/96-6/31/96), the murder rate in Harris County will have fallen nearly 60% since 1990. The highest murder rate in Harris County occurred in 1981. Texas reinstated the death penalty in 1982.

## C. RACE, SENTENCING AND THE DEATH PENALTY

1) Opponents' newest false claim is that it is the race of the victim which determines the successful prosecution of capital cases. 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 Sister Helen Prejean, longtime Chairperson of the NCADP and author of *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 55% of those executed, and blacks 39%, when blacks have committed 49% of all murders, and whites 39%, from 1976-94 (BJS, 1995).

How patently and logically absurd it is to conclude that the "system" would overlook the race of the murderers and focus on the race of the victim. 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*, wherein Federal District Judge Owen Forester accurately found that "the best models which (appellant 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)." (580 Federal Supplement 338, pg. 368, 2/1/94).

The evidence appears to be conclusive. The reason that whites are, overwhelmingly, the victims in death row cases is that 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 relevant circumstances? (a) Overwhelmingly, death row cases involve stranger murders. 12% of all strangers are black, 74% white, or 6:1 (U.S. Census); (b) Economic, violent crimes show a high percentage of white victims. The most relevant crime is robbery with injury, which shows a 4:1 ratio of white victims to black victims (C.4.); (c) By a 5:1 ratio, whites are more likely to be victims of rape/sexual assault than are blacks (BJS, 1977-94); (d) White victims make up 5 times the number of violent crime victims as black victims, or 5:1 (C.2); (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); and (g) Research and appellate courts have confirmed that white victim murders represent the most aggravated murders, thus, by statute, enhancing the likelihood of a death sentence in those cases (C.13, 15, & 17). These factors, and those below, are 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. They are murders combined with specific

circumstance. Therefore, it is the subsets 1-8 and a-g, above, combined with required factors such as the criminal history of the murderer and capital procedures and statutes (see F) which dictate the distribution of victims in capital cases. Make no mistake, murder victims and capital murder victims are two very distinct groups. The racial variation for victims in capital cases should be fairly predictable, and it is. See Para. C.4. for the required analysis.

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. Kemp, Prof. Joseph Katz, 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. (193 Crime Victimization, BJS 1995.) On a per capita basis, blacks are more likely to be the victims of violent crime than are whites.

3) In 1994, death row inmates median level of education was the 12th grade. Of the 31 men executed in 1994, 20(65%) were white, 11(35%) were black. (BJS, Capital Punishment, 1994).

4) From 1976-1994, 4 white murderers have been put to death for the murder of black persons and 96 black murderers have been put to death for the murder of white persons (NAACP LDF, 1995). Of course, opponents contend that this is evidence of racism in the system. Equally predictable, that contention is entirely false. That 96:4 ratio, or 24:1, 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, blacks are eight times more likely to commit violent crimes against whites, than whites are against blacks (BJS, ACVS, 1993). In addition, blacks are nearly three times as likely to murder whites, as whites are to murder blacks (BJS, ACVS, 1993). Statistically, therefore, blacks are approximately twenty-four times 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 24:1 is identical to the actual 24:1 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 offenders vs. 68,000 white offenders for black offender(s)/white victim vs white offender(s)/black victim robbery with injury crimes (JFA, using BJS, 1977-84 data). A thorough evaluation of the data, in death penalty states, from 1973-84, of the 8 most prevalent capital crimes, 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 analysis. Crimes committed in 1973-1984 are the most relevant to those executed from 1977-1994. See C.1, 13, 15 and 17. As of 4/96, that 24:1 execution ratio has become 20:1 (NAACP LDF, 1996).

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 (BJS, 1995). Even though whites in the south are disproportionately executed?

7) After examining 42,500 criminal files in the nation's 75 largest counties, Patrick A. 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." (White Lies About Black Crime, John DiIulio, The Public Interest, 1995 and the National Research Council, Research on Sentencing, 1983.)

8) 93% of black murder victims are killed by blacks; 83% of murdered whites are killed 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. See C.1. (Gary Kleck, "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty", *Am. Sociological Rev.*, 12/81.)

10) A thorough examination of the death penalty, as imposed by Harris County (Houston, Texas) 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) Blacks make up approximately 44% of the prison population (BJS, Prisoners in 1994), but only 12% of the U.S. population. Researchers found that there was a very close relationship between the racial distribution in arrest and prison statistics and the racial distribution of offenders described by crime victims. In other words, according to the victims, who report the crimes, racial groups are represented in prison according to their involvement in criminal activity. Although sentencing studies consistently show that the offenders' prior criminal record and the aggravated nature of the crime are the key factors

in making imprisonment decisions, JFA believes that the racial aspects of crime and punishment must be continuously scrutinized. For example, Langan finds that in 1979 and 1982, blacks were over represented in prison by 16% and 15%, respectively. (Texas Criminal Justice 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); Patrick Langan, Racism on Trial; New Evidence to Explain the Racial Composition of Prisons in the U.S. (1985); U.S. General Accounting Office, Racial Differences in Arrests, 1/20/94.)

12) Whites are executed 14 months quicker than blacks. In 1994, it was 15 months. (BJS, Cap. Pun., 1994)

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, Summer, 1994 and studies by the U.S. Justice Department and by Dr. Joseph Katz (Georgia State Univ.) in his Statement to the Senate Subcommittee on the Judiciary Concerning the Relationship Between Race and the Death Penalty, 10/2/89).

14) There is no evidence that capital murderers are on death row in numbers disproportionate to a particular classes perpetrating capital crimes. Consequently, no evidence exists that wealthy capital murderers are less likely than their poorer ilk to receive the death penalty. Having performed no research study, and drawing only on personal knowledge, we found that since 1982, in just one state, Texas, 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. Ga., & Baldus, Woodward and Pulaski {pro-McCleskey} study.)

15) 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 & Dr. J. Katz, Georgia State U.).

16) 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 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 (Christianity Today, 8/14/95). Sr. Helen Prejean joins this hideous chorus proclaiming that "middle-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. 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) the most thorough study of death row economics showed that only 38% of those on Georgia's death row were poor (C.14.); (6) there is no evidence that capital murderers of different economic classes are over or under represented on death row (C.14.); (7) whites are executed 14 months quicker than blacks (C.12.); and (8) There is 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.

17) Murderers are put to death, not based on the race or economic status of the victim or the murderer, but based upon 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 1976, there is absolutely no credible systemic evidence to support any other conclusion.

## D. CHRISTIANITY AND THE DEATH PENALTY

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, *What the Bible Really Says*.

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." Dr. 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.

5) "Nowhere does the Bible repudiate capital punishment for premeditated murder; not only is the death penalty for deliberate killing of a fellow human being permitted, but it is approved and encouraged, and for any government that attaches at least as much value to the life of an innocent victim as to a deliberate murderer, it is ethically imperative." Prof. Carl F. H. Henry, *Twilight Of A Great Civilization*, 1988.

6) "It is because humans are created in the image of God that capital punishment for premeditated murder was a perpetual obligation. The full range of biblical data weighs in its favor. This is the one crime in the Bible for which no restitution was possible (Num.35:31,33). The Noahic covenant recorded in Genesis 9 antedates Israel and the Mosaic code; it transcends Old Testament Law, per se, and mirrors ethical legislation that is binding for all cultures and eras. The sanctity of human life is rooted in the universal creation ethic and thus retains its force in society. The Christian community is called upon to articulate standards of biblical justice, even when this may be unpopular. Capital justice is part of that non-negotiable standard. There are some cases when no other response is appropriate, no other punishment sufficient for the deliberate savagery of the crime. Society should execute capital offenders to balance the scales of moral judgement." From "Capital Punishment: A Personal Statement", by Charles W. Colson., a former opponent, who is the Founder of Prison Fellowship, the largest Christian ministry serving incarcerated prisoners. Ph. 703-478-0100.

7) St. Thomas Aquinas finds all biblical interpretations against executions "frivolous", citing Exodus 22:18, "wrongdoers thou shalt not suffer to live". Unequivocally, he states,

The civil rulers execute, justly and sinlessly, pestiferous men in order to protect the peace of the state." (Summa Contra Gentiles, III, 146)

8) "God, Himself, instituted the death penalty(Gen. 9:6) and Christ regarded capital punishment as a just penalty for murder(Matt. 26:52). God gave to government the legitimate authority to use capital punishment to restrain murder and to punish murderers. Not to inflict the death penalty is a flagrant disregard for God's divine Law which recognizes the dignity of human life as a product of God's creation. Life is sacred, and that is why God instituted the death penalty. Consequently, whoever takes innocent human life forfeits his own right to live.ä Protestant scholar Rev. Reuben Hahn (Mt. Prospect, Ill.), Human Events, 3/2/85.

9) äThe fact that the evil, as long as they live, can be corrected from their errors does not prohibit the fact that they may be justly executed, for the danger which threatens from their way of life is greater and more certain than the good which may be expected from their improvement. They also have at that critical point of death the opportunity to be converted to God through repentance. And if they are so stubborn that even at the point of death their heart does not draw back from evil, it is possible to make a highly probable judgement that they would never come away from evil to the right use of their powers." (St. Thomas Aquinas, Summa Contra Gentiles, Book III, 146.)

10) The movie Dead Man Walking reveals a perfect Christian example of how just punishment and redemption can work together. Had rapist/murderer Matthew Poncelet not been properly sentenced to death by the civil authority, he would not have met Sister Prejean, he would not have received spiritual instruction, he would not have taken responsibility for his crimes and he would not have reconciled with God. Had Poncelet never been caught or had he only been given a prison sentence, his character makes it very clear that those elements would not have come together. Indeed, for the entire film and up until those last moments prior to his execution, Poncelet was not fully truthful with Sister Prejean. His lying and manipulative nature was fully exposed at that crucial time. It was not at all surprising, then, that it was just prior to his execution that all of the spiritual elements may have come together for his salvation. It was now, or never. Truly, just as St. Aquinas predicted (D.9.), it was his pending execution which finally led to his repentance. For Christians, the most crucial concerns of Dead Man Walking must be and are redemption and eternal salvation. And, for that reason, it may well be, for Christians, the most important pro-death penalty movie ever made.

Of course, we cannot know if the fictitious Poncelet, or the two real murderers from the book, really did repent and receive salvation. But we do know that St. Thomas Aquinas advises us that such murderers should not be given the benefit of the doubt. We should err on the side of caution and not give murderers the opportunity to harm again. Indeed, biblical text finds that it is a violation of God's mandate not to execute premeditated murderers. Nowhere does the text contradict this finding (Dr. William H. Baker, On Capital Punishment, Moody Press, 1985).

11) Christians who speak out against capital punishment in deserving cases "tend to subordinate the justice of God to the love of God." It is established that Peter, by cutting off Malchuâs ear, was most likely trying to kill the soldier (John 18:10), prompting Christâs statement that those who kill by the sword shall die by the sword (Matthew 26:51-52). This implicitly recognizes the governmentâs right to exercise the death penalty. Dr. Carl Henry, Christianity Today, 8/4/95.

12) Paul, in his hearing before Festus, states that "if then I am a wrongdoer, and have committed anything worthy of death, I do not refuse to die." Acts 25:11. St. Paul, clearly one who knew Christâs teachings very well, hereby, confirms that the civil authority may justly execute wrongdoers for certain crimes.

13) "If you do what is evil, be afraid; for [ the civil government ] does not bear the sword for nothing; for it is the minister of God, an avenger who brings wrath upon those who practice evil." Romans 13:4." God has given the state the power of life and death over its subjects in order to maintain order.â Dr. Charles Ryrie, The Ryrie Study Bible (NAS), 1978.

14) It is not uncommon for persons of faith to create a god in their own image, to give to that god their values, instead of accepting those values which are inherent to the deity. For example, celebrated opponent Sister Helen Prejean (Dead Man Walking) states, in reference to the death penalty, that "I couldnât worship a god who is less compassionate than I am."(Progressive, 1/96; bold "I", JFA). She has, thereby, established her standard of compassion as the basis for Godâs being deserving of her devotion. If Godâs level of compassion does not rise to the level of her own, God couldnât receive her worship. Director Tim Robbins (Death Man Walking) follows that same path: â(I) donât believe in that kind of (g)od (that would support capital punishment and, therefore, would be the kind of god who tortures people into their redemption).â (âOpposing The Death Penaltyâ, AMERICA, 11/9/96, p 12). Robbins, hereby, establishes his standard for his godâs deserving of his belief. Godâs standards do not seem to be relevant. His sophomoric comparison of capital punishment and torture are typical of the ignorance (dishonesty?)in this debate and such comments reflect no biblical relevancy. Perhaps they should review Matthew 5:17-22 and 15:1-4. Be cautious, for as the ancient rabbis warned, "Do not seek to be more righteous than your creator."(Ecclesiastes Rabbah 7.33)

15) "The just use of (executions), far from involving the crime of murder, is an act of paramount obedience to this (Fifth/Sixth) Commandment which prohibits murder."Pope(and Saint) Pius V, "The Roman Catechism of the Council of Trent"(1566).

16) âYou have heard the ancients were told, ÎYou SHALL NOT COMMIT MURDERâ and ÎWHOEVER COMMITS MURDER SHALL BE LIABLE TO THE COURTâ. But I say to you that everyone who is angry with his brother shall be guilty before the court; and whoever shall say to his brother, ÎRacaâ, shall be guilty before the supreme court and whoever shall say, ÎYou foolâ, shall be guilty enough to go into fiery hell.â Jesus, Matthew

5:17-22. And, what price does God exact for any and all sin? Death.

17) It is abundantly clear that the Bible depicts murder as a capital crime for which death is considered the appropriate punishment, and one is hard pressed to find a biblical proof text in either the Hebrew Testament or the New Testament which unequivocally refutes this. Even Jesus' admonition "Let him without sin cast the first stone," when He was asked the appropriate punishment for an adulteress (John 8:7) - the Mosaic Law prescribed death - should be read in its proper context. This passage is an "entrapment" story, which sought to show Jesus' wisdom in besting His adversaries. It is not an ethical pronouncement about capital punishment. Sister Helen Prejean, *Dead Man Walking*. From here, The Sister states that "... more and more I find myself steering away from such futile discussions (of Biblical text). Instead, I try to articulate what I personally believe..." As the long term Chairman of the NCADP, the Sister has never shied away from any argument, futile or otherwise, which opposed the death penalty. See C.1, 4, 14, D.14, 21, etc. She has abandoned Biblical text for only one reason: the text conflicts with her personal beliefs.

18) Pontius Pilate said to Jesus, "You do not speak to me? Do You not know that I have authority to release You, and I have authority to crucify You?" Jesus answered, "You would have no authority over Me, unless it had been given you from above." (John 19:10-11). "Jesus reminds Pilate that the implementation of the death penalty is a divinely entrusted responsibility that is to be justly implemented." Prof. Carl F.H. Henry, 45th Annual N.A.E. Convention, "Capital Punishment and The Bible". Jesus confirms that the civil authority has the lawful right to execute Jesus, and others, and that this right has been given to the civil authority by God.

19) Some churches are now espousing a pro-life continuum, a philosophy whereby the taking of any life, under any circumstances, must be condemned. This belief equates the taking of lives through war, self defense suicide, abortion and the death penalty. This is an interesting social philosophy which directly conflicts with the Word of the god. Biblical scholar Father James Reilly, S.J. of Marquette University argues that it is not a contradiction for religious people to oppose abortion and...to support capital punishment. "Abortion is absolutely prohibited. It is always evil. No one can ever abort a "guilty" baby, so the act can never be right. This is not the case, however, with either capital punishment or a just and defensive war. It is only murder, along with its subdivisions suicide and abortion, which God's law absolutely prohibits. The upshot of all this is that trying to put abortion, capital punishment and war in one package makes chaos of Catholic morals and can lead one to misinterpret God's Law..." (Haven Bradford Gow, "Religious Views Support The Death Penalty", *The Death Penalty: Opposing Viewpoints*, Greenhaven Press, 1986).

20) "If a man is a danger to the community, threatening it with disintegration by some wrongdoing of his, then his execution for the healing and preservation of the common good is to be commended. Only the public authority, not private persons, may licitly execute malefactors by public judgement. Men shall be sentenced to death for crimes of irreparable

harm or which are particularly perverted." St. Thomas Aquinas, Summa Theologica, 11; 65-2; 66-6.

21) "If by arming the magistrate, the Lord has also committed him the use of the sword, then, whenever he punishes the guilty by death, he is obeying God's commands by exercising His vengeance. Those, therefore, who consider it is wrong to shed the blood of the guilty are contending against God." John Calvin, "The Epistle of Paul the Apostle to the Romans and to the Thessalonians", in Calvin's Commentaries, trans. Ross McKenzie (Grand Rapids: Eerdmans, 1960) p.283.

22) The leadership councils of many Christian denominations in the U.S. have released statements in opposition to the death penalty. These statements reflect social positions that have no theological basis or they reflect positions which selectively only discuss the mercy of God and improperly avoid the justice of God. Some believe that it would be hypocritical for Christians to support capital punishment, because that would suggest that some people's sins are not forgivable. They argue that support for capital punishment would conflict with Jesus's teachings -- that, if we are not willing to forgive, then we place ourselves outside of God's forgiveness. Such pronouncements seem to reveal the intentional misstatement of Biblical teachings. All death row inmates, no matter how vile and numerous their misdeeds, are subject to the forgiveness of men and of God and, more importantly, they are subject to redemption and eternal salvation. Indeed, God compels us to forgive those who have harmed us. This, in no way, conflicts with the civil government's imposition of the death penalty in deserving cases. Social positions cannot and do not replace biblical instruction.

23) "While the thief on the cross found pardon in the sight of God - 'Today you will be with Me in Paradise' - that pardon did not extend to eliminating the consequences of his crime - 'We are being justly punished, for we are receiving what we deserve for our deeds.' (Luke 23:39-43)". Neither God nor Jesus nor the Prophets nor the Apostles ever spoke out against the civil authorities use of executions in deserving cases - not even at the very time of Jesus's own execution when He pardoned the sins of the thief, who was being crucified along side Him. Jesus never confuses the requirements of civil justice with those of either eternal justice or personal relations. Charles Colson accurately recognizes this fact in stating that "it leads to a perversion of legal justice to confuse the sphere of private relations with that of civil law." All quotations from Charles Colson's "Capital Punishment: A Personal Statement". See D.6. Continuing this thread, Protestant scholar and journalist Rev. G. Aiken Taylor states, "Most Christians tend to confuse the Christian personal ethic with the requirements of social order. In other words, we tend to apply what the Bible teaches us about how we - personally - should behave toward our neighbors with what the Bible teaches about how to preserve order in society. Capital punishment is specifically enjoined in the Bible. 'Who ever sheddeth man's blood, by man shall his blood be shed' (Genesis 9-6). This command is fully agreeable to the Sixth Commandment, 'Thou shalt not kill,' (Exodus 20:13), because the two appear in the same context. Exactly 25 verses after saying 'Thou shalt not kill', the Law says, 'He that smiteth a man so that he may die, shall be surely put to death' (Exodus 21:12)." See also Lev. 24:17 and Num.

35:30-31. (Haven Bradford Gow, "Religious Views Support the Death Penalty", The Death Penalty: Opposing Viewpoints, Greenhaven Press, 1986). Biblical teachings regarding personal conduct, civil government and eternal judgement are often taken out of context, thereby replacing one duty or instruction improperly with another.

24) God, through the power and justice of the Holy Spirit, executed both Ananias and his wife, Saphira. Their crime? Lying to the Holy Spirit - to God - through Peter. Acts 5:1-11. By executing two such devoted Christians for lying to Him, does the Holy Spirit show confirmation of His support for His divinely instituted civil punishment of execution for premeditated murder or does it show His rejection of capital punishment?

25) The Bible clearly asserts, from beginning to end, without any reservation, that righteous judgement includes the execution of a murderer. In the case of murder, the biblical materials offer the clearest and most sustained justification for the death penalty. The purpose of capital punishment is justice - deterrence is irrelevant. A person who takes a human life, without proper sanction, forfeits any right to life - no alternative is allowed and the community must not be swayed by values to the contrary.

Listen carefully to the Bible as the Word of God rather than seek to improve upon it by means of human values. However meritorious mercy may be, however abundantly evident it may be in God's own dealings, murder was an offense for which mercy and pity were not allowed and for which monetary compensation was strictly forbidden. The sentence is set by God's torah and a judge cannot have discretion in this matter. Murder is something utterly on its own, nothing can be compared to it.

It should not be overlooked, in seeking to discover the mind of Jesus Christ on the issue of murder and its punishments, that He goes beyond torah to the statement that even verbal abuse makes one deserving of the hell of fire. Far from releasing believers from prior law, Jesus was a hard liner who made things even tougher, stating that He has come not to abolish the law and the prophets... but to fulfill them, offering even stronger interpretations than in the original (Matthew 5:17-22). Indeed, Jesus admonishes the Pharisees not to misuse torah for their own ends, but to honor God and torah. And of all the text in the Bible, which one does Jesus select to emphasize that crucial point? "HE WHO SPEAKS EVIL OF FATHER OR MOTHER, LET HIM BE PUT TO DEATH." (Matthew 15:1-4).

All interpretations, contrary to the biblical support of capital punishment, are false. Interpreters ought to listen to the Bible's own agenda, rather than to squeeze from it implications for their own agenda. As the ancient rabbis taught, "Do not seek to be more righteous than your Creator." (Ecclesiastes Rabbah 7.33.). Synopsis of Professor Lloyd R. Bailey's book Capital Punishment: What the Bible Says, Abingdon Press, 1987. This is the definitive work on this subject. It is mandatory reading for those who wish to undertake a thorough and accurate look at this often misused and misunderstood area of concern and debate.

NOTE: Biblical text is most relevant within a theocracy or a secular government which has laws that are consistent with that theocracy. The United States does not fall within either category. This section is included only to counter the false claim that there is no New Testament support for capital punishment.

CAUTION: It is common for persons to take biblical quotes out of context and to, thereby, pervert their meaning. Indeed, as Sister Helen Prejean cautions: "Many people sift through the Scriptures and select truth according to their own templates." (Progressive, 1/96)

## E. THE COST OF THE DEATH PENALTY VS LIFE WITHOUT PAROLE

Many have argued that the cost of the death penalty is so expensive (at least \$2 million per case?), that we must choose life without parole ("LWOP") at a cost of \$1 million for 50 years. These estimates may be way off. JFA estimates that the real cost of LWOP will range from \$3.07 - \$5.70 million.

| Cost of Life Without Parole: Cases Equivalent To Death Penalty Cases (1)                                       |                  | Cost of Death Penalty Cases   |                  |
|--|------------------|---|------------------|
| 1. \$34,200/year (1) for 50 years (2), at a 2% (3) annual cost increase, plus \$75,000 (4) for trial & appeals | = \$3.07 million | \$60,000/year (1) for 6 years (5), at a 2% (3) annual cost increase, plus \$1.5 million (4) for trial & appeals | = \$1.98 million |
| 2. Same, except 3% (3)   | = \$4.14 million | Same, except 3% (3)   | = \$2.04 million |
| 3. Same, except 4% (3)   | = \$5.70 million | Same, except 4% (3)   | = \$2.11 million |

Death penalty cases appear to cost \$1.2 million less than equivalent LWOP cases. The 3%-4% annual cost increases may be more realistic, indicating a \$2.1 - \$3.6 million greater cost for LWOP. Death penalty equivalent LWOP cases may cost 155% - 270% more than comparable death penalty cases.

(1) We believe this number to be conservative, if TIME Magazine's (2/7/94) research is accurate. TIME found that, nationwide, the average cell cost is \$24,000/yr. and the cost for maximum security cells is \$75,000/yr. (as of 12/95). Opponents claim that LWOP should replace the DP. Therefore, any cost calculations should be based specifically on cell costs for criminals who have committed the exact same category of offense - in fact, contemplating replacing all DP cases with LWOP. The \$34,200/yr. cell cost assumes that only 20% of DP equivalent LWOP cases would be in maximum security cost cells and that 80% of DP equivalent LWOP cases would be in average cost cells. A very conservative estimate. The \$60,000/yr., for those on death row, assumes that such cells will average a cost equal to 80% of the \$75,000/yr. for maximum security cells. For the exact same category of criminal we are calculating a 75% greater cell cost for the DP. Even so, LWOP cases appear to be significantly more expensive. On Texas's death row, the largest in the nation, those death row cells cost the state \$25,000/yr, to operate.

(2) Justice Department research and the U.S. Vital Statistics Abstract, 1994.

(3) Annual cost increases are based upon: 1) historical increases in prison costs, including judicial decisions regarding prison conditions, and the national inflation rate; 2) medical costs, including the immense cost of geriatric care, associated with real LWOP sentences; 3) injury or death to the inmate by violence; 4) injury or death to others caused by the inmate (3 and 4 anticipate no DP and that prisoners, not fearing additional punishment, other than loss of privileges, may increase the likelihood of violence. One could make the same assumptions regarding those on death row. The difference is that death row inmates will average 6 years incarceration vs. 50 years projected for LWOP; 5) the risk and the perceived risk of escape; and 6) the justifiable lack of confidence by the populace in our legislators, governors, parole boards and judges, i.e. a violent inmate will be released upon society.

(4) \$75,000 trial and appeal cost for LWOP cases, assumes that the DP is not an option.

(5) 6 years on death row, prior to execution, reflects the new habeas corpus reform laws at both the state and federal levels. Some anti-death penalty groups believe that 6 years may be generous, speculating that the time may be shortened to an average of 4 years, or even less. If so, then DP cases would cost even that much less than LWOP cases. However, the average time on death row, for those executed from 1977-1994, was 8 years (Capital Punishment 1994, BJS, 1995). Therefore, 6 years seems more likely. Even using that 8 year average, LWOP is still nearly \$1 million more expensive than the DP (\$2.15 million @ 2% annual increase).

The USA's largest death row is in Texas, with 442 inmates, of which 229, or 52%, have been on death row over 6 years - an incredible 44, or 10%, have been on for over 15 years, 8 for over 20 years.(as of 12/96)

## F. DEATH PENALTY PROCEDURE

There are at least 24 procedures necessary in reaching a death sentence. They are: (1) The crime must be one listed as a capital crime in the penal code; (2) a suspect must be identified and arrested; (3) Beginning with the Miranda warnings and the exclusionary rules, U.S. criminal defendants and those convicted have, by far, the most extensive protections ever devised and implemented; (4) in Harris County (Houston), Texas a panel of district attorneys determines if the case merits the death penalty as prescribed by the Penal Code (See 12-19); (5) a grand jury must indict the suspect for capital murder; (6) the suspect is presumed innocent; (7) the prosecution must prove to the judge that the evidence, upon which the prosecution will rely, is admissible; (8) the defendant is assigned two attorneys. County funds are provided to defense counsel for investigation and trial; (9) it takes 3-12 weeks to select a jury; (10) trial is conducted; (11) burden of proof is on the state; (12) all 12 jury members must find for guilt, beyond a reasonable doubt. In most cases, the jury knows nothing of the defendant's past, at this stage. Then the punishment phase begins; (13) the prosecution presents additional damning evidence against the murderer, i.e., other crimes, victims, victims testimony, police reports, etc; (14) In order to find for death, the issues to be resolved by the jury are {a}(14) did the defendant not only act willfully in causing the death, but act deliberately, as well, {b}(15) does the evidence show, beyond a reasonable doubt, that there is a likelihood that the defendant will be dangerous in the future, {c}(16) if there was provocation on the part of the victim, were the defendant's actions unreasonable in response to the provocations and {d}(17) is there

something about the defendant that diminishes moral responsibility or in some way mitigates against the imposition of death for the defendant in this case, whereby, (18) the defense presents all mitigating circumstances for the murderers actions, i.e., family problems, substance abuse, age, mental disability, parental abuse, poverty, etc. Witnesses are presented to speak on behalf of the defendant; (19) the jury must take into consideration those mitigating circumstances (Penry decision) and, if only 1 juror believes that the perpetrator deserves leniency because of any mitigating circumstances, then the jury cannot impose the death penalty; and (20) when the death sentence is imposed, the perpetrator receives an automatic appeal. (21) the death row inmate is provided an attorney, or attorneys, to handle the direct appeal, at county expense; (22) the state pays attorneys for inmate's habeas corpus appeals; (23) death row inmates may be granted a hearing, in both state and federal court, to present post conviction claims of innocence. The burden of proof for these claims of innocence mirrors that used by the Federal courts; and (24) Convictions are subject to pardon or sentence reduction through the executive branch of government, at both the state level(Governor) and federal level(President).

To punish with death, each one of the 12 jurors must agree with the prosecution in each of five specific areas ( 12, 14, (a)14, (b)15, (c)16, and (d)17 (with 18 & 19). A death sentence requires that the prosecution must prevail in 60 out of those 60 considerations, or 100%. To avoid death, the defendant must prevail in 1 out of those 60 considerations, or 1.67%. If convicted and sentenced to death, the inmate may then begin an appeals process that could extend through 22 years, 60 appeals and over 200 individual judicial and executive reviews. For the 31 executed in 1994, the average time on death row was 10 years and 2 months.

With state and federal habeas corpus reform laws sweeping the country, what is left to protect the rights of the death row inmate? There are at least 16 levels of appellate review; 5 state and 11 federal appeals, comprised of 5 direct appeals, one at the state level and four at the federal level; 9 habeas corpus appeals, three at the state level and six at the federal level; 2 of those habeas appeals are for compelling post conviction claims of innocence, which are subject to a formal hearing, one at the state level and one at the federal level; and the 15th and 16th levels of appeal provide that the inmate's claims are subject to review for executive clemency, at either the state or federal level, and sometimes both. Similar appellate issues are often heard at every appellate level. There is no limit to the number of appellate issues which the inmate may raise. Generally, prosecutors and victim survivors have no right to appeal. Although this section deals specifically with the Texas Death Penalty, the procedures are very similar in all of the death penalty states and at the federal and military levels.

Many seem to be unaware of the true meaning of the habeas corpus process. They may not know that the intent of the "Great Writ", established in pre-Magna Carta England, is to quickly facilitate the release of the innocent or those otherwise wrongfully held or convicted - a process that will finally be honored with these reforms. This is a very positive development, except for the guilty and for those who wish to abuse the habeas corpus process by delaying justice with frivolous, repetitive and prolonged appeals. It is a bitter

irony that it was just such intentional delays of justice that the "Great Writ" was originally created to abolish. Indeed, it was such abuses that caused many of the states and the federal government to enact new habeas corpus reforms. For those who find themselves hysterical over these habeas corpus reform efforts, who believe that speeding up the appeals process will threaten the lives of those convicted and innocent, please contemplate the following question: What innocent or otherwise improperly convicted inmate would wish to linger a bit longer on death row as their attorney, snail-like, labored to prolong their wrongful stay on death row with a series of delayed and frivolous appeals?

The American Death Penalty is, overwhelmingly, the least arbitrary  
and  
the least capricious of all the world's legal sanctions for violent crime.

JUSTICE FOR ALL is a criminal justice reform organization dedicated to protecting the civil and human rights of all citizens from violent crime. Through education and legislation we shall take all necessary measures to reduce the human suffering caused by violent criminals and a failed criminal justice system. Founded in Houston, Texas in 1993, JFA has membership throughout the U.S.A. Please inquire about membership and/or starting a chapter in your state.

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COPY  
for Robin Taylor

Henry T. Munson  
P.O. Box 3391  
Seward, Alaska 99664

5 February 1997

The Honorable Gary Davis  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

RECEIVED FEB 12 1997

RE: Reenactment of the Death Penalty

Dear Sir:

I have obtained copies of the Death Penalty bills from the previous legislature and have read them. I am completely in favor of reinstating the death penalty in Alaska and believe it should just be done without all the pussy-footing around with polls and advisory votes etc. The only poll taken during the last session that I heard about indicated over 70% of Alaskans favored the death penalty. Most, if not all, of my friends and acquaintances do so as well.

I have enclosed several newspaper articles relative to this subject and its various arguments for and against. The first is the most recent and is about attorney opposition to the implementation of the death penalty. I also read another article on this same subject in which attorneys for the Bar Association were quoted as saying they were not opposed to a death penalty per se, but, rather, to the way in which it is carried out. They say more stringent safeguards need to be in place to prevent execution of innocent persons. With that I agree. I have seen in my personal experience, the State falsify evidence and forge documents and have reported these felony crimes against the accused to the Attorney General only to have the Attorney General (AAG) tell me not to tell anybody and continue the case with the tainted evidence. I have also seen District Attorneys and judges "engineer" convictions by allowing or disallowing certain evidence and testimony and by giving specific jury instructions which leave juries with only limited choices of verdict. I have also seen attorneys from Alaska's DA and AG offices knowingly present false information in court in order to prevail in cases. I have absolutely no faith whatsoever in the Alaska Criminal Justice System. I believe it to be as crooked as the crooks. Therefore I have to agree to some, but not completely, extent with the ABA that safeguards need to be in place, which I did not see in the previous bills. Also I would like the death penalty to be established before trial rather than set by the jury upon sentencing. I believe that part of SB No. 52(JUD) that I have should be changed. (See ADN article, "Fairbanks man has day in court..." dated 1/23/97 enclosed.) The accused must know before hand what sentence he faces or appeal grounds may exist. I would like to see the determination as to whether the death penalty applies made by the Grand Jury or the court at a preliminary hearing of some type. That way everybody will know going into the trial just what the stakes are. One other thing I would like to see in a death penalty bill is that it could not apply to any case in which all the evidence is circumstantial.

There is currently at least one person in prison in Alaska who was sentenced to a long prison sentence for murder in which case there has never been any evidence of a concrete nature presented that the alleged victim was murdered and no body has ever been found. (I have also enclosed the Dr. Sam Sheppard ADN article for your information on this subject.) I believe there must be positive, untainted evidence that the accused committed the capitol crime before the death penalty can apply. Often the brutality of a crime (i.e. the Nicole Simpson/Ronald Goldman murders) causes people to forget to be objective in evaluating whether or not the crime was committed by the accused. (Such as in the Lindburg baby kidnapping/murder.) This evidence should be eye witnesses, photographs such as bank or store cameras, fingerprints and other forensic tests which are positive irrefutable evidence not open to interpretation by so called "expert witnesses", being apprehended in the act, etc. The John K. Phillips recent murder of AST Bruce Heck would qualify for the death penalty since he was apprehended at the scene .

I emphatically disagree with the ABA's claim that the death penalty discriminates. I have seen prior such claims and appeals to high courts based on this premise in which it was alleged that the death penalty discriminated against blacks because more blacks were sentenced to death than whites. However I have also seen the crime statistics that showed more blacks (proportionately) committed terrible crimes than whites. For example for the year in question FBI figures indicated 44% of all murders were committed by blacks who comprised only 20% of the population. The death penalties were fixed to crimes that called for the death penalty. The fact that more blacks committed those types of crimes than whites (proportionately) is a social problem that needs to be addressed in some forum other than the death penalty-yes or no-debate.

I believe there are dangers in implementing a death penalty bill that are not fully addressed by safeguards in the current (last year) legislation. As stated earlier, I believe to avoid an appeal point the determination should be made before trial whether the death penalty will apply and that there should also be some type of check list devised where specific criteria are checked off or given some value and if all such criteria or a certain percentage of them are met, the death penalty would apply. Also as stated there should be a stipulation that only hard evidence of the crime would dictate the activation of the death penalty provisions. I don't believe the jury that convicts should be the body to decide whether the death penalty is applicable for psychological reasons in addition to the after the fact application of the penalty. I also believe that in Capitol cases there should be a prohibition on judges instructing the jury that it cannot (as often happens in current murder trials) consider certain defenses such as heat of passion, temporary insanity or self defense. We currently have persons in prison in Alaska who were convicted of murder where judges issued such instructions to the convicting jury. I believe you should contact the ABA for guidance on this matter but that rules of evidence specific to the conduct of trials under the death penalty should be set up. The reason for this is that I have experienced or seen some very creative

manipulation of evidence and or testimony in Alaska courts such as a minor victim's testimony that she was not sexually assaulted being disallowed by the judge at the request of the DA and the supporting Doctor report that the girl had not been sexually assaulted disallowed as well while the testimony of the accuser, which was admitted hearsay was allowed. Put those facts together with the fact that the defendant had a public defender who did not object and you have a conviction. This brings me to a final request.

In all capitol cases ordinary public defender attorneys should not be considered adequate. I have had occasion to have the court fire a public defender for telling a client to go to court without him and report the result to him later. PDs are overworked and under-experienced in many cases and in many others just plain incompetent. In addition, they sometimes lose their jobs if they defeat the DA or AG or work too hard on the defence. Again I suggest that you contact the ABA for advice and suggestions along these lines. You don't necessarily have to follow their suggestions, but they may give you some good ideas that will help in the long run.

Now, as for Capitol Punishment, just do it. Get a good bill together and pass it. Don't get caught up in morality issues. Morality is not the job of government-it is the job of churches. I'm sure that somewhere in someone's budget there are funds to do a survey if you must. (In 1983 a friend and I formed a fisherman's association and surveyed all permit holders in Alaska on the proposed Halibut Moratorium for about \$1500.00 to form the corporation and another \$7,000.00 to conduct the survey of about 25,000 permit holders.)

In a one year plus period including most of 1994 and the first couple months of 1995, six convicts were released from prison in Alaska and one escaped from a halfway house in Anchorage. Those seven prisoners in that one year period KILLED 9 Alaska residents. The Bruce Heck murder at the hands of John K. Phillips in January of this year is not an isolated incident. Let's take it as an example. Phillips is a 39 year old career criminal. Like the other prisoners who got out to kill Alaskans, he was released on Mandatory Parole (i.e. his nominal sentence less one third for "Statutory Good Time".) As in the cases of the other nine murdered Alaskans, if Phillips had served his entire nominal sentence, he would still be in prison and AST Heck would still be alive. The simple fact is that society just doesn't need career criminals who kill police officers or babies or innocent women and children.

Phillips is 39 years old. According to the proponents of the private enterprise prison system, the state will spend approximately two million dollars caring for him to age 79 unless overcrowding and or public apathy in a few years lead to his parole or early release or unless he escapes again which he has done in the past. You may check the record if interested. Alaska recently paroled a double murderer who is now back in prison for assaulting a woman and several murderers have escaped from Alaska prisons over the years. Two escaped from Spring Creek a couple years back. Contract killer Dennis Ray Anthony escaped from Highland Mountain and raped an Eagle River woman before Spring Creek was built. Another such escapee killed an Anchorage police officer in the '70s.

In many ways the opponents of Capitol Punishment remind me of the "Right To Life" proponents who blow up abortion clinics and kill the staff in the name of the right to life. Death penalty opponents are saving the lives of people who will gladly murder innocent citizens without the batting of an eye. (Curiously enough an informal personal survey I have conducted for the past few years reveals that most pro abortion zealots oppose the death penalty and most pro death penalty zealots oppose abortion. It seems that it is either o.k. to kill unborn babies but not adult murderers or it is o.k. to kill the adults but not unborn babies, but not both.) The death penalty opponents don't seem to mind the sometimes staggering loss of life caused by career criminals being turned loose (by statute, decree or escape) on an unsuspecting public. There have even been cases in the lower 48 of which I have read where death row prisoners have had their sentences commuted to "Life" then, according to rules, have become eligible for parole and have been released, whereupon they murdered people within days of their releases. The death penalty may not deter crime, but properly administered, it certainly reduces the recidivism rate.

In Alaska today we are beginning to see the gang killing perpetrators coming into the prison system, and the age of murderers in general tends to be fairly young-20s or less. We have severe prison overcrowding and with life expectancy now in the 70s and climbing, it is entirely probable that these life sentence killers are going to spend (If not let out or escaped.) 50, 60 or even 70 years in a state prison. Each of these killers will take up space and cost the state multimillions of dollars.

A N D G U E S S W H A T ?

THEY ARE ALL GOING TO SPEND UP TO 20 YEARS IN APPEALS COURT !!!!!!

The state is going to pay not only for their room and board and incarceration as well as medical care, but for its own defense of the appeal and for the public defender for the convicts appeal as well. I have enclosed 3 ADN articles on criminal appeals from Alaska convictions and one from the Sam Sheppard case which have appeared just since the new year began. In addition there will be another in tomorrow's paper that was on the TV news tonight. In addition articles have appeared during the past year on appeals of convictions from fraud to murder by Floyd Wortham, Carl Keyser, Kirby Anthony, Robert Abel, Sydney Hertz and numerous others. The pure fact of life in prison is that CONVICTS APPEAL. They also file lawsuits. Some of the appeals are justified as are some of the lawsuits. However many are frivolous and are more or less done simply because they can be.

Arguing against the death penalty on the basis that the appeals will be costly is like arguing that all 1995 model cars should be banned from the highway because they burn gasoline.

The enclosed ADN article, "Taylor seeks death penalty vote" quotes a figure of 5 million dollars as the cost of death penalty appeals on average for other states. Quite frankly, I believe somebody is

feeding the public a crock of bologna there! I have personally filed appeals in Superior Court in Alaska and have paid the costs (about \$18,000.00 for two years on appeal.) After I fired my crooked lawyer (whose fraud necessitated the appeal) I represented myself, so I only had to pay court costs and the other side's attorney fees. I also know of a 16 year old ongoing appeal which has cost a total of less than \$300,000.00. Again this is a murder appeal of a 40 year sentence.

ANYBODY WHO THINKS MURDERERS WILL NOT SPEND THEIR WHOLE SENTENCE IN APPEALS COURT IF NOT SENTENCED TO DEATH IS SERIOUSLY DELUDED!!!!!!!!!!

The figure quoted in the ADN Taylor article is a scare tactic. It does not say whether that is for a year, a case, for all cases since instituting the death penalty in the particular state, etc. Also I bet the figure includes the prisoners' room and board while on appeal, which has to be paid anyway-death sentence or not. In any case the figure quoted in the ADN article is just another example of that paper's irresponsible "reporting". The figure is nonsense.

Let's take the John K Phillips murder of AST Bruce Heck for example. He would qualify for the death penalty. He killed an on duty police officer acting in the line of duty while Phillips was committing a felony. Let's say he gets convicted of capitol murder. The case is pretty cut-and-dried. The jury finds him guilty and, under the new death penalty law where capitol punishment is predetermined, he is sentenced to death. The only evidence is the autopsy(s) the AST reports on the theft and pursuit, photos of the murder scene the arresting officer's report and the tapes of the radio calls.

Appeals do not involve trials unless the conviction is reversed and or remanded. They are paper procedures. The court (several judges) reviews the appeal brief and evidence as applicable and renders a written decision. That can proceed from the state appeals court to supreme court to federal appeals courts to the federal Supreme Court.

Where, do you suppose, is the state going to spend \$5,000,000.00 on Mr. Phillips' appeal? A number of years back I saw figures on the cost of criminal prosecutions in Alaska (about 10 years ago). At that time the average cost of a criminal conviction was about \$50,000.00. Appeals are generally less costly than trials. I would not doubt that the prosecution costs are higher on average at this time, but I submit that the average appeal cost is far less than \$5,000,000.00, and remind you that appeals are a fact of life regardless of the sentence or the crime.

PASS THE CAPITOL PUNISHMENT BILL.



Henry T. Munson

6 incl (ADN articles)  
cc file  
cc Senator Taylor

?S.  
25 years ago I  
was quoted a price  
of \$30,000 to take a  
fisheries case to the  
Supreme Court of the U.S.  
Hrm

National Institute for  
Paralegal Arts and Sciences

Upon the recommendation of the Faculty and by  
virtue of the authority vested in it, confers upon

*Henry Munson*

this

**Diploma**

in recognition of completion of the

**Paralegal Program**

with all rights, privileges and responsibilities thereunto appertaining.

In witness whereof, the seal of

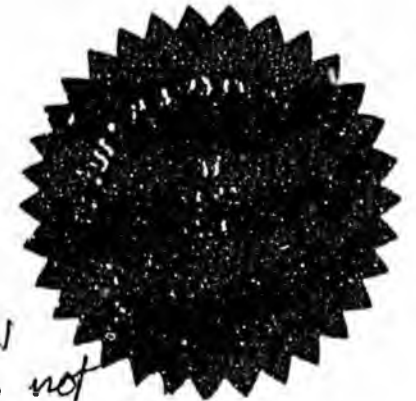
National Institute for Paralegal Arts and Sciences  
is hereunto affixed

Given at Boca Raton, Florida

this 16th day of January, 19 96.

*Richard Carezzoli*  
President

*Kristina Bolanger*  
Director of Education



*I included this  
just to show I'm not  
a complete idiot.  
ATM*

*Honors  
Recognition*

---

**cc:Mail for: Senator Robin Taylor**

---

**Subject:** Capital punishment

**From:** pbsr@Alaska.NET (patrick reiland) at CC2MHS1 1/25/97 4:54 PM

**To:** Senator Robin Taylor at JNU\_CAPITOL

---

Sen. Taylor,

Thanks for your work on getting a vote out on capital punishment

I strongly support your effort. Lets get tough on crime, and make Alaska  
a special place to live

HC85 Box 9381  
Eagle Row 99 577  
(u)

# CORRECTION

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



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

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cc:Mail for: Senator Robin Taylor

---

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---

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HC85 Box 9381  
Eagle Row 99577  
(u)

---

---

**cc:Mail for: Senator Robin Taylor**

---

---

**Subject:** Capitol Punishment

**From:** pacific@ptialaska.net ("Jim") at CC2MHS1 1/24/97 5:39 PM

**To:** Senator Robin Taylor at JNU\_CAPITOL

---

---

Senator Taylor

Your Stand on Capitol Punishment is to be commended.  
The State has long been to Liberal on Crime.  
Keep up the good work.

James Harrigan  
Sitka

P.O. Box 196  
Sitka, 99835  
(D)

Mr. Roger Laber Oppose 262-9797  
319 Riverside Dr

| Date POM Sent | Constituency | Bill Number | Response | Subject | Distribution | Affiliation | Reg Voter |
|---------------|--------------|-------------|----------|---------|--------------|-------------|-----------|
| 01/24/97      | N            | SB 23       |          |         | 60           |             | Y         |

NO NEW TAXES. A HOTEL TAX WOULD DAMAGE THE TOURIST INDUSTRY. CUT STATE EXPENDITURES BY ELIMINATING THE DIVISION OF TOURISM. TOURIST INDUSTRY CAN EFFICIENTLY MANAGE THEIR OWN MARKETING. NO NEW TAXES!

---

Mr. Lon Putnam None 488-7473  
6050 Chena Hot Spgs Rd

| Date POM Sent | Constituency | Bill Number | Response | Subject | Distribution | Affiliation | Reg Voter |
|---------------|--------------|-------------|----------|---------|--------------|-------------|-----------|
| 01/24/97      | N            | 99712       |          | TOBACCO | 60           |             | Y         |

I STRONGLY SUPPORT THE \$1.00 A PACK CIGARETTE TAX AS A WAY OF DECREASING SMOKING AMONG YOUNG PEOPLE. APPLICATION OF THESE FUNDS TO MEDICAL CARE WOULD BE APPROPRIATE BUT NOT DESIGNATED, THAT WAY IT WOULD BE LEGAL. I AM

A MEDICAL CARE PROVIDER, PHYSICIAN'S ASSISTANT AND HAVE SEEN THE CONSEQUENCES OF CIGARETTE SMOKING AND HAD A CLOSE PERSONAL FRIEND DIE OF CIGARETTE RELATED ILLNESS. THE PASSAGE OF THIS BILL HAS SIGNIFICANT APPLICATIONS FOR MY PATIENTS.

---

Mr Marvin Cook None 733-2374  
P O Box 9

| Date POM Sent | Constituency | Bill Number | Response | Subject            | Distribution | Affiliation | Reg Voter |
|---------------|--------------|-------------|----------|--------------------|--------------|-------------|-----------|
| 01/24/97      | N            | 99676       |          | CAPITAL PUNISHMENT | 20           |             | Y         |

MUST PASS! ANY FIRST DEGREE MURDER CONVICTION SHOULD BE SUBJECT TO CAPITAL PUNISHMENT.

---

Ms. Honda

M. Head

None

000-0000

PO Box 20218

Distribution Affiliation Reg Voter

Juneau

AK

99802

60

Y

Date POM Sent

Constituency

Bill Number

Response

Subject

01/24/97

N

CAPITAL PUNISHMENT

REGARDING YOUR CAPITOL PUNISHMENT BILL-YES, YES, YES. IF THERE IS ANY WAY WE CAN HELP PLEASE LET US KNOW.

---

# TEXAS EXCHANGE

opinions • commentary • analysis

## INSIDE

### POWER PRACTICE

**Alternative Dispute Resolution**  
Arbitration is a maze of contract law,  
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### COUNSEL CONNECT DEBATES

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Can a lawyer represent a client  
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### TO THE EDITOR

**A-tax**  
Bush's business activity tax proposal  
must be stopped in its tracks.

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### OFFICE TECH

**Word Up**  
WinWord97 is so loaded with features  
it practically walks the dog, too.

Page 32

## DEATH PENALTY BY DUDLEY SHARP

# ABA's Proposed Moratorium Relies On Flimsy Facts

### THE NATION'S BAR DISCREDITS ITSELF BY CRYING "RACISM" AND "DUE PROCESS" IN DEATH PENALTY PROCEDURES.

On Feb. 3, the American Bar Association called for a moratorium on death penalty executions "unless and until greater fairness and due process prevail." Many media editorials blindly answered the ABA's call with great ignorance and no challenge. Their credibility is questioned. The ABA's is not, because the organization has little.

The ABA's claim that "due process is now systematically lacking in capital cases" would be laughable if not for the serious nature of the charge. What of that claim? For a defendant to be subject to the death penalty, at least 24

their families. Although this cynical and humorous appeal failed in all U.S. courts, it was resurrected by Congress as the final push necessary to pass the new federal habeas law.

Now those very same defense attorneys, through the ABA, are complaining that habeas shouldn't have been sped up! Wake up, counsel. You got what you wished for.

### Defense Accountability

With the new law, unanimously upheld by the Supreme Court in 1996, those now sentenced to death, as well as all criminal defendants, still have 16 levels of post-conviction review available to them. Indeed, the American death penalty continues to have, by far, the greatest due process protections of any criminal sanction in the world.

The ABA believes that a moratorium

money, then such limited volunteerism would have occurred long ago.

In addition, there has existed, for many years, a significant body of law that has provided for a moratorium on executions whenever there was *provable* "ineffective assistance of counsel." So, what is the need for a moratorium now? Could it be that the ABA just didn't like Congress honoring the original intent of the "Great Writ," whereby issues of improper detention are *quickly* addressed by the court?

It is not difficult to see why ABA president Lee Cooper opposed this ABA resolution, finding it to be fundamentally dishonest.

### Black and White

The ABA and others cry "racism!" when there is no evidence of racism in the implement-

make up about the same number of total murder victims!

A crucial point is that capital murders and non-capital murders are two very distinct categories. Whites are, overwhelmingly, the primary victims in violent crimes relevant to capital cases. When combining that fact with the level of aggravation of the murder and the criminal background of the murderer, there is no race-of-the-victim effect showing a juror or prosecutor preference to white victims in capital cases. A reading of the appellate record finds that this fact was established conclusively by the federal courts in 1983, 1985 and 1987 in *McCleskey v. Georgia* and was reinforced by Smith College professors Rothman and Powers in their extensive 1994 study.

It is representative of this debate





---

# Facsimile Cover Sheet

**To: Sen. Robin Taylor**  
**Company:**  
**Phone:**  
**Fax: 19074653922**

**From: Don Schirmer**  
**Company:**  
**Phone: 9078743830**  
**Fax: 9078742929**

**Date: 03/10/97**

**Pages Including this  
cover page: 2**

**Comments: Hi Robin,**

I know that you probably have "too much" to read as it is, but I thought that you would find the following article interesting, as a Biblical argument "FOR CAPTOL" punishment.

Best Regards,  
Don

This is a quote from "Table Talk" May 2 1991

The New International Version and other modern translations render Exodus 20:13, "You shall not murder." In Hebrew, however, it is not the verb for murder that is used, but the verb which means kill, and that can refer to other kinds of manslaughter as well as premeditated murder. Thus, we find in the law that accidental manslaughter carried a kind of penalty with it (Numbers 35; Deuteronomy 19). Moreover, the law required that men be careful not to cause human death through negligence (Exodus 21:22-23; 28-30; Deuteronomy 22:8). Therefore, a more literal translation of Exodus 20:13 is appropriate: "You shall not kill."

Does that mean it is always wrong to kill? No. We are forbidden to take upon ourselves the right to kill other people and we are commanded to take care of the property so that we do not cause other people to die. God, however, has the right to kill and has delegated that right to human beings in certain circumstances. The same God who said to Israel, "You shall not kill," also ordered them to kill all the Canaanites in His name (Exodus 23:23; Deuteronomy 20:16-17). God also said that His people have the right to kill in self-defense (Exodus 22:2), which implies that defensive warfare is legitimate.

God commands capital punishment for murder. He commanded it originally as part of the Noachic Covenant (Genesis 9:6-6), reiterated it strongly at Mount Sinai (Exodus 21:12), and nowhere repealed it in the New Testament (indeed, see Romans 12:17-13:6). God makes it clear that it is a sin to spare the life of a murderer (Numbers 35:31).

In an age of sentimental secular humanism which has deeply infected the Church, it is important for Christians to understand that it is just as much a sin to spare a murderer as it is to be a murderer yourself. God has spoken and we are to obey Him whether we like it or not. Since God has spoken, it does not matter whether capital punishment deters crime or not. In fact, the Bible says that the death penalty is very much a deterrent (Deuteronomy 13:11; 17:13; 21:21). As far as Biblical religion is concerned, capital punishment for premeditated murder is not open for discussion.

Coram Deo

God alone can say who shall live and who shall die. Are you ready to bow the knee, intellectually, to that statement? If this makes you uncomfortable look up Proverbs 14:12 and reflect on it.

## ALASKANS AGAINST THE DEATH PENALTY

March 10, 1997

Dear Senator Taylor,

I am writing to urge you to vote against any effort to reinstate the death penalty in Alaska. Specifically, I urge you to reconsider your support of SB 60 and to oppose any bill submitting the death penalty to an "advisory vote."

Alaskans Against the Death Penalty is a state wide, non-partisan organization of individuals and groups from every walk of life who are united in our stand against returning the death penalty to our state. Our major reasons include:

1) the death penalty kills innocent people - 23 innocent people have been executed in the last 20 years in the US, and 48 have been released from death row

2) the death penalty has never been found to be a deterrent to crime. Recent FBI statistics show that the murder rate in states *without* the death penalty is 4.9/100,00 population, whereas in states *with* the death penalty it is 7.8/100,000.

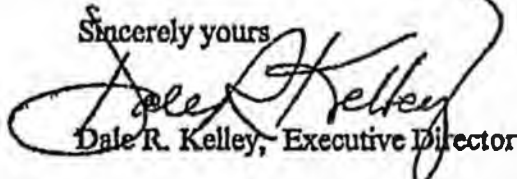
3) the death penalty overwhelmingly discriminates against the poor and people of color - In territorial Alaska, 75% of those executed were Alaska natives and other non-whites, while over 75% of the murders were committed by whites. In 1994 the Alaska Inter-Tribal Council and the Alaska Federation of Natives passed resolutions adamantly opposing the reinstatement of the death penalty in Alaska and urged the State of Alaska "not return to the irreversible, ineffective, wasteful, and plainly discriminatory practice of putting its own citizens to death under cover of law".

4) the death penalty costs 4 - 10 times more than paying for life in prison without parole. A single case, from arrest to execution, could cost Alaskans 5 million dollars - half of the entire annual prosecution budget - taking needed funds from health care, education, and crime prevention and law enforcement programs. And Alaska judges already have the power to sentence to life without parole.

In national polls, where 77% favored the death penalty *when given no alternative*, that number dropped to below 41% when offered life without parole. The simple "yes / no" results of this advisory vote could bypass the needed analysis and studied consideration of the complex factors related to the possibility of reenactment of the death penalty.

I respectfully urge you to vote against SB 60. It is unfair, expensive and bad public policy. Thank you for your consideration

Sincerely yours

  
Dale R. Kelley, Executive Director

|                   |                |         |                |            |   |
|-------------------|----------------|---------|----------------|------------|---|
| Post-It™ Fax Note | 7671           | Date    | 3/10           | # of pages | 1 |
| To                | Sen. R. Taylor | From    | Dale Kelley    |            |   |
| Co./Dept.         | Sen. Judiciary | Co.     | AAAP           |            |   |
| Phone #           | 907 465 3823   | Phone # | 258-2296       |            |   |
| Fax #             | 465-3922       | Fax #   | (907) 277-0281 |            |   |

Alaskans AGAINST the Death Penalty PO Box 202296 Anchorage, Alaska 99520-2296 907-258-2296 FX 907-258-0281

**Written testimony for the Senate Judiciary Committee hearing on  
the death penalty proposal, SB 60**

*submitted by Ron Reed  
112 Behrends Avenue  
Juneau, AK 99801  
Tel. 907-586-1338*

Members of the Committee:

The bill you have before you today is symbolic of all that is most reprehensible about the current politicization of the legislative process. It is quite literally playing politics with people's lives.

Should this bill pass, and the subsequent referendum lead to enactment of an effective death penalty in Alaska, it would guarantee a return in this state to the mentality of the frontier, when "justice" was routinely meted out by lynch mobs, frequently directed against hapless minorities. True, in the present instance, the hangman will carry a needle, the doom passed upon by people of substance, and the sentence be pronounced by the solemn black robes of justice, but these will make little difference to those - preponderantly the poor and minorities, if history and current trends are any guide - who will ultimately pay the supreme price.

I would remind you, Senators, that at least two dozen demonstrably innocent persons have been wrongfully murdered by various States in the U.S. during the last half century through the instrument of capital punishment, according to an exhaustive study by Amnesty International. Nothing can bring these victims of the hysteria, the frameups, and the lynch mob mentality of their time back to life; they are a permanent stain upon the fabric of this nation. The most recent two were executed in Indiana and Texas less than two years ago.

Alaska is not immune from prosecutorial misconduct, the misreading of evidence, the chasing after false scents. Mistakes will certainly be made, and people will pay with their lives for your political posturing and indifference to the consequences of your actions.

Moreover, as you and your colleagues shred the social safety net under the rubric that we simply can no longer afford to spend the money to take care of the neediest among us, you would introduce into the Alaska justice system a punishment that, on top of its finality and irreversibility, its arbitrariness of application and its built-in racial bias (as demonstrated in the Baldus study, accepted into evidence by the U.S. Supreme Court), would cost as much as five to six times the alternative of life in prison without parole, as the state of Florida recently calculated. The necessity of building new secure facilities, of enabling appeals so as to minimize the number of innocents put to death, of maintaining segregated tanks in sufficient number for any anticipated influx of the doomed - the death penalty is not cheap. Will the costs of having an effective death penalty be included in the information the public gets before voting to ratify state-sponsored murder? Will its demonstrated racial bias? Will its lack of effective deterrent effect, as shown by virtually every study of the last two decades? Somehow, I rather doubt it.

My only question to the sponsors and supporters of this proposed referendum and its consequences is this: should the death penalty be instituted, and the inevitable happen, which of you august lawmakers will be the one to face the hollow-eyed mother of the first wrongfully executed victim of your political opportunism and amorality, and tell her that you are among the intellectual authors of her child's murder?



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary Committee on S.B. 60. Advisory vote on Capitol Punishment dated Mon. March 10 at 1:30 pm.

I support S.B. 60 for 4 reasons:

- 1. I am Catholic and the Church has always recognized and supported the death penalty for heinous crimes. (I realize Liberals have tried to undermine this position with-in the church with lies.)
- 2. Actions have consequences! The sooner the State makes people realize it the sooner our violent premeditated crime rate will go down.
- 3. People are responsible for their actions and need to be responsible for them.
- 4. Not to have an advisory vote is to circumvent learning what the voters really want.

Please vote for S.B. 60. Thank You.

Signed Virginia C. Phillips

Testifier I

Representing(Optional)

404 Lake St., 2-D, SITKA

Address 907-747-8024

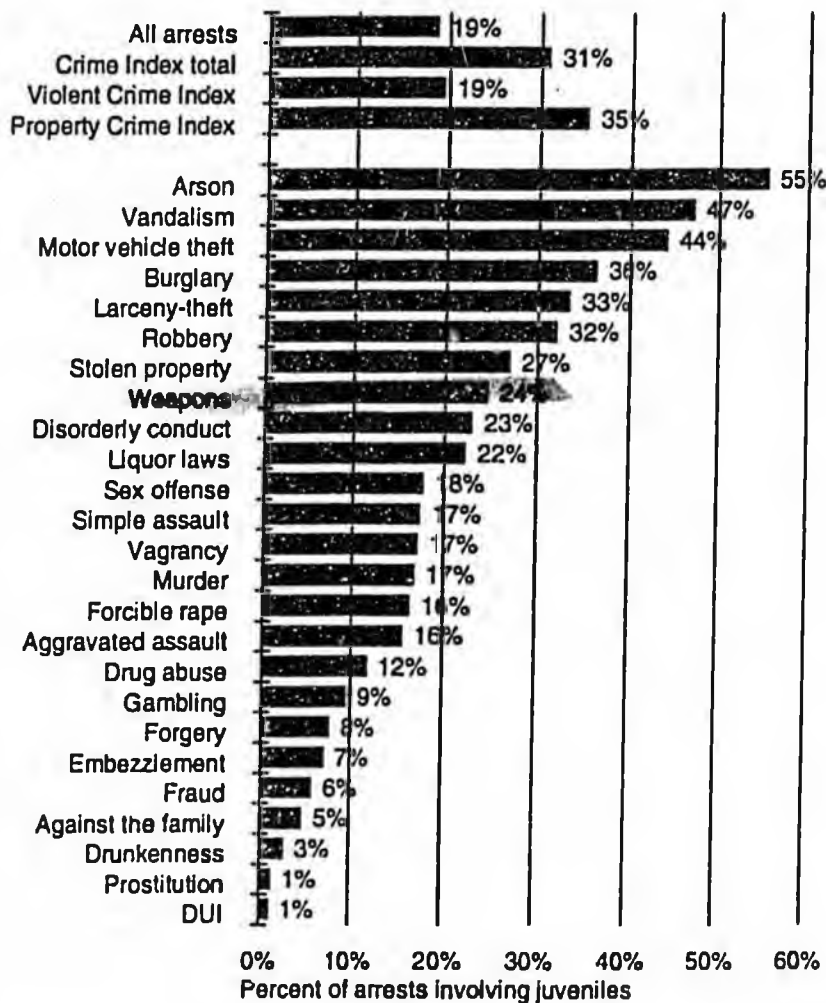
Phone

**S B**

**6 3**

## In 1994 juveniles accounted for 19% of all violent crime arrests and 14% of all violent crimes cleared by law enforcement

Juveniles accounted for a much larger proportion of property crime arrests than violent crime or drug arrests in 1994



- Nearly one-third of all persons arrested in 1994 for robbery were below age 18, well above the juvenile proportion of arrests for murder (17%), aggravated assault (16%), and forcible rape (16%).
- Juveniles were involved in 1% of all arrests for driving under the influence and prostitution, but more than 40% of all arrests for arson, vandalism, and motor vehicle theft.

Note: Running away and curfew violations are not presented in this figure because, by definition, only juveniles can be arrested for these offenses.

Data source: FBI. (1995). *Crime in the United States 1994*.

### How much of the crime problem is caused by juveniles?

Arrest proportions accurately characterize the ages of individuals entering the justice system. The fact that juveniles were 17% of all persons arrested for murder in 1994 implies that 17% of all persons entering the justice system on a murder charge were juveniles, not that the juveniles committed 17% of all murders.

Because juveniles are more likely than adults to commit crime in groups, arrest percentages are likely to exaggerate the juvenile contribution to the crime problem. The FBI clearance data provide a better assessment of the juvenile contribution to crime.

**Juveniles were responsible for 14% of all violent crimes cleared in 1994 and 25% of all property crimes cleared**

The juvenile contribution to the crime problem in the U.S. in 1994 varied considerably with the nature of the offense. Based on 1994 clearance data, juveniles were responsible for:

- 10% of murders.
- 13% of aggravated assaults.
- 14% of forcible rapes.
- 20% of robberies.
- 21% of burglaries.
- 25% of larceny-thefts.
- 25% of motor vehicle thefts.
- 48% of arsons.

Crimes with greater discrepancies between the arrest and clearance proportions may be those in which group behavior is more common. For example, while the discrepancy is small for forcible rape, it is relatively large for motor vehicle theft, burglary, murder, and robbery.

## All States allow juveniles to be tried as adults in criminal court under certain circumstances

### There is more than one path to criminal court

A juvenile's delinquency case can be transferred to criminal court for trial as an adult in one of three ways:

- Judicial waiver.
- Prosecutorial discretion.
- Statutory exclusion.

In a given State, one, two, or all three transfer mechanisms may be in place.

### Transfers to criminal court have been allowed in some States for more than 70 years

Some States have permitted juvenile offenders to be transferred to criminal court since before the 1920's — Arkansas, California, Colorado, Florida, Georgia, Kentucky, North Carolina, Ohio, Oregon, and Tennessee. Other States have permitted transfers since at least the 1940's — Delaware, Indiana, Maryland, Michigan, Nevada, New Hampshire, New

Mexico, Rhode Island, South Carolina, and Utah.

Traditionally, the decision to transfer a youth to criminal court was made by a juvenile court judge and was based upon the individual circumstances in each case. Beginning in the 1970's and continuing through the 1990's, however, State legislatures increasingly moved young offenders into criminal court based on age and offense seriousness without the case-specific assessment offered by the juvenile court process. In half the States, laws have been enacted that exclude some offenses from juvenile court and a number of States have also expanded the range of excluded offenses. One-quarter of the States have given prosecutors the discretion to charge certain offenses either in juvenile or criminal court.

### Judicial waiver is the most common transfer provision

In all States except Nebraska and New York, juvenile court judges may waive jurisdiction over a case and transfer it to criminal court. Such action is usually in response to a request by the prosecutor; however, in several States, juveniles or their parents may request judicial waiver. In most States, statutes limit waiver by age and offense.

### Statutes establish waiver criteria other than age and offense

Most State statutes also limit judicial waiver to juveniles who are "no longer amenable to treatment." The specific factors that determine lack of amenability vary, but typically include the juvenile's offense history and previous dispositional outcomes. Many statutes instruct juvenile courts to consider the availability of dispositional alternatives for treating the juvenile and the time available for sanctions, as well as public safety and the best interests of the child when making waiver decisions. The waiver process must adhere to certain constitutional principles of fairness (see Supreme Court decisions earlier in this chapter).

### Criminal courts often may return transferred cases to juvenile court or order juvenile sanctions

Several States have provisions for transferring "excluded" or "direct filed" cases from criminal court to juvenile court under certain circumstances. This procedure is sometimes referred to as "reverse" waiver or transfer. In many States juveniles tried as adults in criminal court may receive dispositions involving either criminal or juvenile court sanctions.

### Many States have a combination of transfer provisions



Note: Analysis conducted 10/94; some provisions effective 1/1/95.



# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

### SPONSOR STATEMENT - SB63

#### Treating juvenile offenders with multiple convictions for violent offenses with deadly weapons as adults

Senate Bill 63 would create a strong deterrent to the repeated use of deadly weapons by juveniles. Senate Bill 63 would treat minors age 16 and older, who for the second time use a deadly weapon to commit a violent crime, as adults.

Senate Bill 63 is modeled after the 19th Alaska Legislature's Senate Bill 26. SB26 passed the Senate 18 to 1 in 1996 but died in the House Finance Committee in the closing days of the session.

SB63 would prosecute minors as adults who:

1. use a deadly weapon to commit a crime against a person punishable as a felony,
2. are 16 or older, and
3. were previously adjudicated delinquent or convicted as an adult of using a deadly weapon to commit a crime against a person punishable as a felony.

Deadly weapons are defined by AS 11.81.900 as:

"'deadly weapon' means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive."

SB63 does not require any additional mandatory sentence or any specified punishment. Minors who are convicted of adult crimes, if incarcerated, are required by law to be segregated from adult prison populations as defined by AS 47.12.240.

The Department of Health & Social Services estimates that approximately 6 juveniles in FY'95 would have meet the criteria in SB63. These few violent juveniles represent a extraordinary danger to the public and should be dealt with as adults.

The Anchorage Police Department compiled 1995 data which revealed a 200% increase in arrests of juveniles for violent crimes between 1990 and 1994. That same period showed a much less increase of 40% in juvenile arrests for property crimes. Alaska lawmakers can help curb this unprecedented increase in juvenile violent crime in Alaska by passing SB63.

If you have further questions, please contact myself or Chris Hieb of my staff at 465-3892.

DD/dh

---

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

Produced in House



**SENATOR DAVE DONLEY**  
**ALASKA STATE LEGISLATURE**

**SECTIONAL ANALYSIS**  
**SENATE BILL 63**  
**2/11/97**

SB 63 automatically waives juvenile jurisdiction requires prosecution of minors as adults for certain felonies using deadly weapons.

Section 1 adds an automatic waiver of juvenile jurisdiction for those minors at least 16 years old who for the second time commit a violent crime involving a deadly weapon, and cites a definition of 'deadly weapon' in AS 11.81.900.

Section 2 defines the Acts applicability to first and second offenses committed.

DD/dh

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

**MEMBER:** Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO: SB 63**

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Minor felons using guns treated as adults. BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Sen. Donley  
 Requestor: S. Judiciary COMPONENT SERIAL NO. 0799

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

| OPERATING                     | 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>        | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>CAPITAL</b>                | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>CHANGE IN REVENUES ( )</b> | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| Revenue Code                  |       |       |       |       |       |       |

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 97) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

This bill would not have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650  
 Division: Alaska State Troopers Date: 03/21/97  
 Approved by Commissioner: Ronald L. Olla Date: 3/21/97  
 Agency: Department of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 63

Revision Date: \_\_\_\_\_  
Title: "An Act providing for automatic waiver of juvenile jurisdiction and prosecution of minors as adults..."

Department Affected: Administration

Sponsor: Senator Donley  
Requestor: (S) JUD

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>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> |

|                             |            |            |            |            |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| <b>CAPITAL EXPENDITURES</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> |
|-----------------------------|------------|------------|------------|------------|------------|------------|

|                               |            |            |            |            |            |            |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| <b>CHANGE IN REVENUES ( )</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</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>             | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> | <b>***</b> |

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

**POSITIONS:**

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

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

This bill expands the number of crimes for which a minor will automatically be treated as an adult to include any crime against a person punishable as a felony in which the minor is alleged to have used a deadly weapon and was previously adjudicated or convicted of a felony offense against a person that involved the use of a deadly weapon. This is a large category of cases, ranging down to class C felonies. In juvenile court less focus is placed on trial and more energy is expended to find the appropriate treatment. As felonies in adult court, this bill will cause an increase in the numbers of cases to go to trial with attendant expenditures. Without accurate predictions as to the numbers of cases, the increase is difficult to quantify.

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

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

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

*Arson M. Slace*  
Date: 3/21/97

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# CITY & BOROUGH OF JUNEAU

## POLICE DEPARTMENT

210 ADMIRAL WAY • JUNEAU, ALASKA 99801

RICHARD W. GUMMOW  
CHIEF OF POLICE

*Alaska's Capital City*

BUSINESS (907) 586-2780

FAX (907) 463-4808

February 3, 1997

Senator Dave Donley  
State Capitol  
Juneau, Alaska 99801

Dear Senator Donley:

I have reviewed SB 63 and concur with it's scope and content. Please accept this correspondence as my endorsement of SB 63.

It is important to provide the youth of this state with clear and significant consequences concerning the use of a deadly weapon. We are all aware of the increase in youth violence that has surfaced in our nation within the past few years. Hopefully this bill will pass and provide a deterrent for the young people of Alaska.

I appreciate having the opportunity to voice my feelings in this matter. If I can be of any additional assistance, please don't hesitate to contact me.

Sincerely,



C.W. Worth  
Police Officer

CW/jn

# ALASKA STATE FIREFIGHTERS ASSOCIATION



January 31, 1997

Senator Dave Donley  
Alaska State Legislature  
SB63 Sponsor

Dear Senator Donley,

I have reviewed Senate Bill 63 and would like to thank you for your sponsorship of it.

Strengthening prosecution of repeat violent juvenile offenders will offer Alaska citizens protection that is overdue.

To protect minors under juvenile jurisdiction is one thing, but to have repeated offenses committed involving deadly weapons is quite another.

I believe, as you have stated, that passage of SB 63 would create a strong deterrent to continued misuse of deadly weapons by young criminals.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat Eggers", with a long horizontal flourish extending to the right.

Patrick Eggers  
President,  
Alaska State Firefighters Association  
Box 240282  
Douglas, AK 99824



**ALASKA ASSOCIATION  
FIRE AND ARSON INVESTIGATORS  
A A F A I**

105 S. Willow • Kenai, Alaska 99611  
(907) 283-4136 • FAX (907) 283-~~2457~~ 8171

January 31, 1997

Senator Dave Donley  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

**SUBJECT: SUPPORT FOR SENATE BILL 63**

Senator Donley,

On behalf of the Alaska Association of Fire and Arson Investigators, please accept this letter of support for Senate Bill 63 that treats juvenile offenders with multiple convictions for violent offenses with deadly weapons as adults.

While SB63 provides an effective means to penalize offenders with multiple offenses as described in the Bill, it is hoped that the provisions for such a penalty will serve a dual purpose -- Prevention.

Respectfully Submitted,

Scott A. Walden,  
Fire Marshal - City of Kenai  
President - Alaska Association of Fire & Arson Investigators

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 1/27/97

FURTHER: Finance

Date of 5-Day Notice: 3/20/97  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3-27-97

Judiciary Committee considered

SENATE BILL NO. 63

"An Act providing for automatic waiver of juvenile jurisdiction and prosecution of minors as adults for certain violations of laws by minors who use deadly weapons to commit offenses that are crimes against a person, and relating to the sealing of the records of those minors."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the \_\_\_\_\_ Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR# \_\_\_\_\_

| SIGNING/DQ PASSES         | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|---------------------------|----|-----------------------|----|-----|----|
| <i>[Signature]</i>        | ✓  |                       |    |     |    |
| <i>Mike Miller</i>        | ✓  |                       |    |     |    |
|                           |    |                       |    |     |    |
|                           |    |                       |    |     |    |
|                           |    |                       |    |     |    |
|                           |    |                       |    |     |    |
| CHAIR: <i>[Signature]</i> | ✓  | CHAIR:                |    |     |    |

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

|    |           |      |   |     |
|----|-----------|------|---|-----|
| #2 | DPS       | 3/21 | d |     |
| #1 | DOA - PDA | 3/21 |   | *** |
|    |           |      |   |     |
|    |           |      |   |     |
|    |           |      |   |     |

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

|  |  |  |  |  |
|--|--|--|--|--|
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 63

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: "An Act providing for automatic waiver of juvenile BRU: All  
jurisdiction and prosecution of minors as adults for certain violations.." Component: All  
 Sponsor: Senator Donley  
 Requester: Senate Judiciary COMPONENT SERIAL NO. #0694

**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          | 311.0        | 618.4        | 925.8        | 1,931.0        | 1,931.0        | 1,931.0        |
| <b>TOTAL OPERATING</b> | <b>311.0</b> | <b>618.4</b> | <b>925.8</b> | <b>1,931.0</b> | <b>1,931.0</b> | <b>1,931.0</b> |

|                      |  |         |         |  |  |  |
|----------------------|--|---------|---------|--|--|--|
| CAPITAL EXPENDITURES |  | 1,350.0 | 7,650.0 |  |  |  |
|----------------------|--|---------|---------|--|--|--|

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

**FUND SOURCE** (Thousands of Dollars)

|                          |              |                |                |                |                |                |
|--------------------------|--------------|----------------|----------------|----------------|----------------|----------------|
| 1002 Federal Receipts    |              |                |                |                |                |                |
| 1003 GF Match            |              |                |                |                |                |                |
| 1004 GF                  | 311.0        | 1,968.4        | 8,575.8        | 1,931.0        | 1,931.0        | 1,931.0        |
| 1005 GF/Program Receipts |              |                |                |                |                |                |
| 1037 GF/Mental Health    |              |                |                |                |                |                |
| Other                    |              |                |                |                |                |                |
| <b>TOTAL</b>             | <b>311.0</b> | <b>1,968.4</b> | <b>8,575.8</b> | <b>1,931.0</b> | <b>1,931.0</b> | <b>1,931.0</b> |

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

**POSITIONS**

|           |  |  |  |    |    |    |
|-----------|--|--|--|----|----|----|
| FULL-TIME |  |  |  | 25 | 25 | 25 |
| PART-TIME |  |  |  |    |    |    |
| TEMPORARY |  |  |  |    |    |    |

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

Please see attached explanation.

Prepared by: Bruce Richards Phone: 465-3307  
 Division: Commissioner's Office *Margaret M. Pugh* Date: 3/24/97  
 Approved by Commissioner: Margaret M. Pugh Date: 3/24/97  
 Agency: Department of Corrections

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Assumptions

1. According to DFYS the number of juveniles who would be automatically waived under the proposed change to AS47.12.030(a) is approximately eight per year. These juveniles would be convicted of felonies which would average a sentence of three years.
2. Each felony case will require a pre-sentence investigation (PSI) report for the court. Preparing a PSI report for class A felonies costs approximately \$630 each. Each class B felony PSI report costs approximately \$455.
3. The statewide average daily cost of incarceration is \$105.27. It is assumed that those convicted of AS 47.12.030(a) offenses will require incarceration in state correctional facilities, as opposed to lower-cost community residential centers.
4. The correctional system cannot safely or legally absorb additional prisoners without additional beds being added. The system has operated over emergency capacity for several years. In addition to posing safety hazards, operating over emergency capacity has resulted in contempt of court fines which will total approximately \$2.4 million by the end of FY97. Without constructing new beds, the addition of violent juvenile offenders serving lengthy sentences in the adult system will worsen crisis levels of overcrowding, increasing the risks of harm to staff, prisoners, and the public.
5. The average cost of construction for a correctional bed is approximately \$100,000. A maximum security bed costs approximately \$160,000. The cost used in these calculations should be considered very conservative, given the nature of offenses for automatically waived juveniles. The department has projected that expansion of an existing facility by 64 beds would address the projected number of inmates in Senate Bill 63, as well as the current juvenile population already in state correctional facilities.
6. These cost estimates are not adjusted for inflation, nor do they reflect the significant upward trend in rates of violent juvenile crime. It is hoped that any deterrent effect achieved by this measure will offset those factors. If deterrence does not sufficiently offset the escalating juvenile crime rate, the operating and capital expenses will be higher.
7. The department (when possible) houses waived juveniles in single cells, at least during the initial months of incarceration, to determine their level of vulnerability to adult predators in the prison population. It is generally assumed that juvenile inmates require closer security than the average adult. The department does try to place juveniles with other juveniles when possible. However, this is more difficult to do in smaller facilities.

Fiscal Note/DOC  
 Senate Bill 63  
 March 22, 1997  
 Page 3 of 3

Operating Expenses

FY98: 8 class B felony offenses X \$455 per PSI report= \$3.6  
 8 inmates X 365 days X \$105.27 per day = \$307.4  
 TOTAL = \$311

| YEAR | OLD+<br>NEW | TOTAL | COST<br>PER DAY | DAYS | INCARC<br>COST PER<br>YEAR | PSI COSTS | TOTAL   |
|------|-------------|-------|-----------------|------|----------------------------|-----------|---------|
| FY98 | 8           | 8     | \$105.25        | 365  | \$307.4                    | \$3.6     | \$311   |
| FY99 | 8 + 8       | 16    | \$105.25        | 365  | \$614.8                    | \$3.6     | \$618.4 |
| FY00 | 16 + 8      | 24*   | \$105.25        | 365  | \$922.2                    | \$3.6     | \$925.8 |

\*Beginning in FY01 the first offenders (8) under proposed AS 47.12.030(a) would be released. This results in a net gain from this point forward since eight would enter the system and eight would be released.

Capital Expenses

64 bed expansion = \$9,000.0

Operating expenses for the expanded facility = \$1,931.0

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 63

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Juvenile Waiver/Deadly Weapons BRU: Trial Courts.  
 Component: \_\_\_\_\_  
 Sponsor: Sen. Donley  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      | 2.2   | 2.2   | 2.2   | 2.2   | 2.2   | 2.2   |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            | 3.3   | 3.3   | 3.3   | 3.3   | 3.3   | 3.3   |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS & CLAIMS        |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| TOTAL OPERATING        | 5.5   | 5.5   | 5.5   | 5.5   | 5.5   | 5.5   |
| CAPITAL EXPENDITURES   |       |       |       |       |       |       |
| CHANGE IN REVENUES ( ) |       |       |       |       |       |       |

Fund Source (Thousands of Dollars)

|                          |     |     |     |     |     |     |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    |     |     |     |     |     |     |
| 1003 GF Match            |     |     |     |     |     |     |
| 1004 GF                  | 5.5 | 5.5 | 5.5 | 5.5 | 5.5 | 5.5 |
| 1005 GF/Program Receipts |     |     |     |     |     |     |
| 1037 GF/Mental Health    |     |     |     |     |     |     |
| Other                    |     |     |     |     |     |     |
| TOTAL                    | 5.5 | 5.5 | 5.5 | 5.5 | 5.5 | 5.5 |

Estimate of any current year (FY 97) cost: None

Positions

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-Time |  |  |  |  |  |  |
| Part-Time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel - Doug Wooliver Phone: 264-8228  
 Agency: Alaska Court System Date: 03/26/97  
 Approved by: Stephanie J. Cole, Acting Administrative Director Date: 03/26/97  
 Agency: Alaska Court System

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ALASKA COURT SYSTEM  
FISCAL ANALYSIS  
SB 63

SB 63 provides for the automatic waiver into adult court of certain minors who are at least 16 years of age. A minor will be waived if charged with a crime against a person punishable as a felony in which the minor is alleged to have used a deadly weapon and the minor has either been previously adjudicated a minor or convicted as an adult for a similar crime.

According to the Division of Family and Youth Services, had this law been in place for fiscal year 1996, it would have resulted in 8 cases being waived into adult court. This note is based on that figure and assumes that 2 of those cases would have resulted in felony jury trials; a 25% trial rate is low for juvenile waiver cases. Based on the typical length of trial for other juvenile waiver cases, it is assumed that the average trial will last 5 days with an additional 2 days for motions, hearings, and other judicial work.

The note is offset by the amount of judicial time that would have been spent on the waived cases in juvenile court.

Not reflected in this note is the anticipated increase in juvenile court workload that may result from this bill. Although minors in juvenile court have the same right to a jury trial as adults, very few trials actually occur because the consequences of being adjudicated a delinquent are not as severe as a criminal conviction. However, the consequences of being adjudicated a delinquent in a case covered under this bill will be perceived as more severe since it means a subsequent offense will lead directly to adult court. Because of this, it is expected that juveniles will be more aggressively defending their first offenses and more willing to go to trial. This increase in workload for the juvenile court has not been included in this note due to the difficulty in assessing the extent of its impact. However, if the impact is significant the court may return to the legislature seeking additional funds.

Alaska Court System  
Fiscal Analysis  
SB 63

Personal Services

|   | <u>Total</u>   |
|---|----------------|
| Additional Pro tem Superior Court judge funding                                   | \$4,578        |
| Overtime for clerical staff in Clerk's Office                                     | <u>1,250</u>   |
| Subtotal Personal Services  | 5,828          |
| Offset for loss of work for juvenile court, Standing Master, Range 24A, 1/2 month | <u>(3,592)</u> |
| Total Personal Services   | 2,236          |

Contractual

|   |                       |
|---|-----------------------|
| Jury fees - 2 additional 5-day trials with 13 jurors at \$25 a day for each juror | <u>3,250</u>          |
| Total estimated costs   | <u><u>\$5,486</u></u> |

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB63

Revision Date: \_\_\_\_\_  
Title: Automatic Waiver of Juveniles

Dept. Affected: Health and Social Services  
BRU: Family and Youth Services  
Component: DFYS Central Office

Sponsor: Donley  
Requestor: Senate (JUD)

COMPONENT SERIAL NO. 259  
See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

| OPERATING              | FY98       | FY99       | FY00       | FY01       | FY02       | FY03       |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS, CLAIMS         |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|                         |  |  |  |  |  |  |
|-------------------------|--|--|--|--|--|--|
| CHANGES IN REVENUES ( ) |  |  |  |  |  |  |
|-------------------------|--|--|--|--|--|--|

**FUND SOURCE**

(Thousands of Dollars)

| FUND SOURCE              | FY98       | FY99       | FY00       | FY01       | FY02       | FY03       |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |
| Other (please specify)   |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**POSITIONS:**

| POSITIONS | FY98 | FY99 | FY00 | FY01 | FY02 | FY03 |
|-----------|------|------|------|------|------|------|
| FULL-TIME |      |      |      |      |      |      |
| PART-TIME |      |      |      |      |      |      |
| TEMPORARY |      |      |      |      |      |      |

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

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

There would be no fiscal impact to the Division if this bill were to become law.

3/25/97 Prepared by: L. Diane Worley, Director  
Division: Family & Youth Services  
Approved by Commissioner: Karen Perdue, Commissioner  
Agency: Department of Health & Social Services

Phone: 465-3191  
Date: 03/24/97  
Date: 3/25/97

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# ALASKA STATE LEGISLATURE

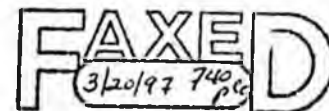


Sen. Robin Taylor, Chair  
Sen. Drue Pearce, Vice Chair  
Sen. Mike Miller  
Sen. Sean Parnell  
Sen. Johnny Ellis

State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: (907) 465-3922

## Senate Judiciary Committee

### MEMORANDUM



**TO:** Chris Christensen, Staff Counsel, Alaska Court System  
**FROM:** Laura Chase, Senate Judiciary Committee Aide *Laura Chase*  
**DATE:** March 14, 1997  
**RE:** Request for Fiscal Notes: SB 63

---

The Senate Judiciary Committee will be hearing SB 63 "Deadly Weapon Offenses by Juveniles" on Monday, March 24, 1997.

Although BASIS does not indicate modification of specific Judiciary statutes, I believe there may be a fiscal impact of the Alaska Court System. If there will be no impact, fiscal or other, to the Court System, please sign and return this statement below. Otherwise, please forward a fiscal note or zero fiscal note as soon as possible.

As always, I appreciate your effort and thank you for your assistance.

.....

This is to advise you that no fiscal note is necessary from the Alaska Court System because the bill does not relate to any departmental functions.

\_\_\_\_\_  
Chris Christensen, Staff Counsel

\_\_\_\_\_  
Date

*INFORMATION RELATED TO: SB 63*

Distributed by Senate Judiciary

# STATE OF ALASKA

DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

P.O. BOX 110630

JUNEAU, ALASKA 99811-0630

PHONE: (907) 465-3170

FAX: (907) 465-3397

RECEIVED APR 4 1997

April 1, 1997

The Honorable Robin Taylor  
Chair, Senate Judiciary Committee  
Alaska State Senate  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Taylor,

This letter is in response to Senator Pearce's request during the Senate Judiciary committee hearing on March 27, 1997 for case information related to SB 63. I have identified those cases in FY 95 and 96 which would have meet the automatic waiver criteria of the bill. Bob Buttcanne has contacted the specific district probation offices responsible for the respective cases and I have summarized the case circumstances below. The offense referral which would have initiated an automatic waiver response under SB 63 is listed first.

#### Case #1

A 16 year old boy was referred to Youth Corrections on September 7, 1995 for an Assault in the Third Degree for recklessly causing injury to another student with a set of brass knuckles during an argument over stolen stereo speakers. This boy had a prior delinquency adjudication for an Assault in the Third Degree on July 25, 1994. During the 1994 incident, the boy pointed a loaded hand gun at another youth. A third youth attempted to disarm the boy and during the struggle, a single shot was fired into the air. No one was injured during the incident.

#### Case #2

A 17 year old boy was referred to Youth Corrections on November 20, 1995 for an Assault in the Third Degree for using the vehicle he was driving in a manner which recklessly caused fear of imminent serious physical injury to the driver of another vehicle. After further investigation by the Youth Corrections probation officer and a review from the Department of Law, the arrest charge was reduced to an Assault in the Fourth Degree and adjusted with informal action. This boy had been previously adjudicated delinquent for an Assault in the Third Degree on August 30, 1993. In the 1993 incident, the boy cut another person in the neck with a knife during a fight on a downtown street.

Case #3

A 17 year old boy was referred to Youth Corrections on October 13, 1994 for an Assault in the Third Degree. This boy had instigated a series of events where another youth attacked and seriously injured a third young person. Investigation found sufficient evidence to hold this 17 year old fully accountable for the offense, even though he was not the one who had physical contact with the victim. Youth Corrections and the Department of Law considered a discretionary waiver petition, but felt the overall case circumstances were not sufficient to support this action. The case was adjudicated as a felony assault and the boy was placed in a youth corrections institution. The boy had previously been adjudicated for an Assault in the Third Degree on February 1, 1993. In that incident, the boy stabbed another boy in the hand with a knife after the other boy decided he could be returned home from a camping trip if he sustained some type of serious injury.

Case #4

A 17 year old girl was referred to Youth Corrections on October 9, 1995 for an Assault in the Second Degree. After the girl had sex with an adult male, a dispute arose over the amount of money he was to have given to her. During the ensuing argument, the girl stabbed the man. There were numerous inconsistencies in both the girl and man's rendition of the facts. After further investigation and negotiation between the girl's attorney and Department of Law, the girl admitted to an Assault in the Fourth Degree offense as part of an agreement to be institutionalized at a youth facility. The girl had previously been adjudicated delinquent for an Assault in the Third Degree on July 21, 1992. In the 1992 incident, the girl threatened and attempted to kill her older brother with a kitchen knife during a domestic violence disturbance in the family home.

Case #5

A 17 year old boy was referred to Youth Corrections on November 28, 1994 for an Assault in the Third Degree. This boy had been arguing and fighting with a group of other young people when he produced a pistol and fired two shots into the air. The boy had previously been adjudicated delinquent on an Assault in the Third Degree charge on April 22, 1993. The 1993 incident involved a domestic violence dispute with a sibling. The boy discharged two rounds from a handgun during an argument. There were no injuries, however the boy stipulated to an institutional placement at a youth facility for the incident.

Senator Robin Taylor  
April 1, 1997

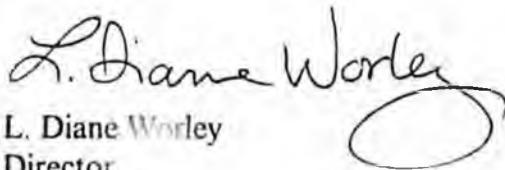
page 3

Case #6

A 17 year old boy was referred to Youth Corrections on February 8, 1995 for Assault in the Second Degree. Together with a co-defendant, this boy pulled another youth out of a vehicle and beat him in the head with a glass juice bottle because the victim had been pressuring the 17 year olds sister to engage in sexual intercourse. After review by Youth Corrections and the district attorney, the offense was reduced to Assault in the Third Degree. The boy had a prior adjudication for Assault in the Third Degree on April 20, 1993. During the 1993 incident, the boy, who was certified learning disabled by the school, became agitated in class. A teacher assistant directed him into a time out area. When the boy returned to the class room, he became agitated again and was asked to leave. As he walked out of the class room, he produced a pocket knife, opened it and waived the open blade in front of the teacher assistant's face. He inflicted no injury but did place her in fear of serious injury.

These are the total number of cases meeting the specific criteria of SB 63 during both fiscal years 1995 and 1996. I hope this provides you with the understanding of the specifics of these cases and assists you in your action regarding this bill. Please do not hesitate to contact me if you have additional questions.

Sincerely,



L. Diane Worley  
Director

**S B**

**6 7**

# SENATE COMMITTEE REPORT

DATE: 2/13/97

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 2/27/97

Judiciary Committee considered

SENATE BILL NO. 67

"An Act relating to the imposition of criminal sentences; and amending Rule 32.2, Alaska Rules of Criminal Procedure."

and recommends:

- be replaced with CS SB 67 (JUD)
- adopt previous CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical change
  - new: SCR# \_\_\_\_\_

| SIGNING DO PASS                    | DP                                  | OTHER RECOMMENDATIONS | NR | DNP | AM |
|------------------------------------|-------------------------------------|-----------------------|----|-----|----|
| <i>Mike Miller</i>                 | <input checked="" type="checkbox"/> | <i>J. Ellis</i>       |    |     |    |
| <i>Peace</i>                       | <input checked="" type="checkbox"/> |                       |    |     |    |
| <i>Sean Russell</i>                | <input checked="" type="checkbox"/> |                       |    |     |    |
| <br>                               |                                     |                       |    |     |    |
| <br>                               |                                     |                       |    |     |    |
| <br>                               |                                     |                       |    |     |    |
| <b>CHAIR:</b> <i>Adrian Taylor</i> | <input checked="" type="checkbox"/> | <b>CHAIR:</b>         |    |     |    |

**NEW FISCAL NOTE(S):**

| Department               | Date        | Zero                                | Fiscal |
|--------------------------|-------------|-------------------------------------|--------|
| <i>DPS (OSU3)</i>        | <i>2/21</i> | <input checked="" type="checkbox"/> |        |
| <i>DPS Violent Crime</i> | <i>2/21</i> | <input checked="" type="checkbox"/> |        |
| <br>                     |             |                                     |        |
| <br>                     |             |                                     |        |

*Jud CS  
Jud CS*

*Law = #2  
Forthcoming  
Jud CS*

fiscal note

**PREVIOUS FISCAL NOTE(S):\***

| Department           | Date       | Zero                                | Fiscal |
|----------------------|------------|-------------------------------------|--------|
| <i>Public System</i> | <i>2/4</i> | <input checked="" type="checkbox"/> |        |
| <br>                 |            |                                     |        |
| <br>                 |            |                                     |        |

*Jud CS*

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

No. 4

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

Bill Version: CSSB 67 (Jud)

(S) Publish Date: 3-5-97

|   |  |
|---|--|
| Revision Date: _____  | Dept. Affected: <u>Department of Law</u> |
| Title: <u>"An Act relating to the imposition of criminal sentences; amending Rule 32.2, Ak Rules of Criminal Procedure"</u> | BRU: <u>Criminal Division</u>            |
| Sponsor: <u>Senator Halford</u>   | Component: <u>Criminal Division</u>      |
| Requester: <u>Senate Judiciary Committee</u>  | COMPONENT SERIAL NO. <u>2085</u>         |

**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>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

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

**FUND SOURCE** (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1006 GF/MHTIA            |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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

**POSITIONS**

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

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

The Senate Judiciary Committee Substitute for SB 67 includes a new section stating that the required approximate minimum term statement in the sentencing report is for informational purposes only, and cannot be used as a basis for review or appeal of the sentence imposed.

With this change, the Department of Law no longer anticipates any fiscal impact from passage of this legislation.

|   |                        |
|---|------------------------|
| Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>                  | Phone: <u>465-5370</u> |
| Division: <u>Administrative Services Division</u>                         | Date: <u>2/27/97</u>   |
| Approved by Commissioner: <u>Bruce M. Botelho</u> <i>Bruce M. Botelho</i> | Date: <u>2/27/97</u>   |
| Agency: <u>Department of Law</u>  |                        |

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STATE OF ALASKA

FISCAL NOTE

BIL

No. 3

NO:

Bill Version: CS SB 67 (Jud)

1997 LEGISLATIVE SESSION

(S) Publish Date: 3-5-97

Revision Date: \_\_\_\_\_

Dept. Affected: Public Safety

Title: Truth in Sentencing

DPS Statewide Support

Component: Commissioner's Office

Sponsor: Rules Committee

Requestor: S. Judiciary

COMPONENT SERIAL NO. 0523

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

| OPERATING              | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| TOTAL OPERATING        | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| CAPITAL EXPENDITURES   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| CHANGE IN REVENUES ( ) | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| Code Revenue           |       |       |       |       |       |       |

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact \$ \_\_\_\_\_

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary )

No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner

Phone: 465-4322

Division: Commissioner's Office

Date: 2/20/97

Approved by Commissioner: *Del Smith*

Date: 2/21/97

Agency: Ronald L. Otte, Dept. of Public Safety

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# FISCAL NOTE

No. 4

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL N**

Bill Version: CSSB 67 (Jud)

(S) Publish Date: 3-5-97

Revision Date: \_\_\_\_\_  
Title: Truth in Sentencing

Dept. Affected: Public Safety  
BRU: Violent Crimes Compensation Board

Sponsor: Sen. Halford  
Requestor: S. Judiciary

Component: \_\_\_\_\_  
COMPONENT SERIAL NO. \_\_\_\_\_

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

| OPERATING              | FY 98    | FY 99    | FY 00    | FY 01    | FY 02    | FY 03    |
|------------------------|----------|----------|----------|----------|----------|----------|
| PERSONAL SERVICES      | 0        |          |          |          |          |          |
| TRAVEL                 | 0        |          |          |          |          |          |
| CONTRACTUAL            | 0        |          |          |          |          |          |
| SUPPLIES               | 0        |          |          |          |          |          |
| EQUIPMENT              | 0        |          |          |          |          |          |
| LAND & STRUCTURES      | 0        |          |          |          |          |          |
| GRANTS CLAIMS          | 0        |          |          |          |          |          |
| MISCELLANEOUS          | 0        |          |          |          |          |          |
| <b>TOTAL OPERATING</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
| CHANGE IN REVENUES ( )<br>Revenue Code |  |  |  |  |  |  |
|--|--|--|--|--|--|--|

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 97) impact: \$ \_\_\_\_\_

**POSITIONS:**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

ANALYSIS. (Attach a separate page if necessary.)

The Violent Crimes Compensation Board approves of any vehicle which makes the victim more informed.

Prepared By: Nola K. Capp  
Division: Violent Crimes Compensation Board

Phone: 465-3040  
Date: February 10, 1997

Approved by Commissioner: *Ronald L. Otte*  
Agency: Ronald L. Otte, Dept. of Public Safety

Date: 2/21/97

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CS FOR SENATE BILL NO. 67(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS HALFORD, Green, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the imposition of criminal sentences; and amending Rule 32.2,  
2 Alaska Rules of Criminal Procedure."

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

4 \* Section 1. This Act may be known as the "Truth in Sentencing Act of 1997."

5 \* Sec. 2. AS 12.55.015 is amended by adding a new subsection to read:

6 (h) Unless a defendant is ineligible for a deduction under AS 33.20, when a  
7 defendant is sentenced to a term of imprisonment of two years or more, the sentence  
8 consists of two parts: (1) a minimum term of imprisonment that is equal to not less  
9 than two-thirds of the total term of imprisonment; and (2) a maximum term of  
10 supervised release on mandatory parole that is equal to not more than one-third of the  
11 total term of imprisonment; the amount of time that the inmate actually serves in  
12 imprisonment and on supervised release is subject to the provisions of AS 33.20.010 -  
13 33.20.060.

14 \* Sec. 3. AS 12.55.025(a) is amended to read:

1 (a) When imposing a sentence for conviction of a felony offense or a sentence  
 2 of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a  
 3 regulation adopted under AS 04, or an ordinance adopted in conformity with  
 4 AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that  
 5 includes the following:

6 (1) a verbatim record of the sentencing hearing and any other in-court  
 7 sentencing procedures;

8 (2) findings on material issues of fact and on factual questions required  
 9 to be determined as a prerequisite to the selection of the sentence imposed;

10 (3) a clear statement of the terms of the sentence imposed; if a term  
 11 of imprisonment is imposed, the statement must include

12 (A) the approximate minimum term the defendant is  
 13 expected to serve before being released or placed on mandatory parole if  
 14 the defendant is eligible for and does not forfeit good conduct deductions  
 15 under AS 33.20.010; and

16 (B) if applicable, the approximate minimum term of  
 17 imprisonment the defendant must serve before becoming eligible for  
 18 release on discretionary parole;

19 (4) any recommendations as to the place of confinement or the manner  
 20 of treatment; and

21 (5) in the case of a conviction for a felony offense, information  
 22 assessing

23 (A) the financial, emotional, and medical effects of the offense  
 24 on the victim;

25 (B) the need of the victim for restitution; and

26 (C) any other information required by the court.

27 \* Sec. 4. AS 12.55.025 is amended by adding a new subsection to read:

28 (j) The approximate minimum terms provided under (a)(3) of this section in  
 29 the sentencing report are for information purposes only. The approximate minimum  
 30 terms are not part of the sentence imposed and do not form a basis for review or  
 31 appeal of the sentence imposed or provide a defendant with a right to any specific term

1 of imprisonment or supervised release on mandatory parole.

2 \* Sec. 5. Rule 32.2(e), Alaska Rules of Criminal Procedure, is amended to read:

3 (e) **Imposition of Sentence.** At the sentencing hearing, the judge shall impose  
4 sentence and shall clearly state the precise terms of the sentence imposed, the reasons  
5 for the selecting the particular sentence, and the purposes the sentence is intended to  
6 serve. If a term of imprisonment is imposed, the judge shall, for information  
7 purposes, identify the approximate term of imprisonment the defendant must  
8 serve if the defendant is eligible for and does not forfeit good conduct deductions  
9 under AS 33.20.010, and if applicable, the approximate minimum term of  
10 imprisonment the defendant must serve before becoming eligible for release on  
11 discretionary parole. The approximate terms of imprisonment provided for  
12 information purposes are not part of the sentence imposed and do not form a  
13 basis for review or appeal of the sentence imposed.

14 \* Sec. 6. The amendments of AS 12.55.025, made by secs. 3 - 4 of this Act, amend  
15 Rule 32.2, Alaska Rules of Criminal Procedure, by adding requirements for sentencing reports.

16 \* Sec. 7. This Act takes effect only if secs. 5 and 6 of this Act receive the two-thirds  
17 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. CSSB 67 (JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: "An Act relating to the imposition of criminal sentence; and amending the Rule 32.2, Alaska Rules of Criminal.." BRU: ALL  
 Component: ALL  
 Sponsor: Senator Halford  
 Requester: Senate Finance COMPONENT SERIAL NO. #0694

**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>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |              |              |              |            |            |            |
|-----------------------------|--------------|--------------|--------------|------------|------------|------------|
| <b>CAPITAL EXPENDITURES</b> | <b>715.0</b> | <b>715.0</b> | <b>715.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-----------------------------|--------------|--------------|--------------|------------|------------|------------|

|                                    |              |              |              |            |            |            |
|------------------------------------|--------------|--------------|--------------|------------|------------|------------|
| <b>CHANGE IN REVENUES ( 1002 )</b> | <b>650.0</b> | <b>650.0</b> | <b>650.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|------------------------------------|--------------|--------------|--------------|------------|------------|------------|

**FUND SOURCE** (Thousands of Dollars)

|                          |              |              |              |            |            |            |
|--------------------------|--------------|--------------|--------------|------------|------------|------------|
| 1002 Federal Receipts    | 650.0        | 650.0        | 650.0        |            |            |            |
| 1003 GF Match            | 65.0         | 65.0         | 65.0         |            |            |            |
| 1004 GF                  |              |              |              |            |            |            |
| 1005 GF/Program Receipts |              |              |              |            |            |            |
| 1037 GF/Mental Health    |              |              |              |            |            |            |
| Other                    |              |              |              |            |            |            |
| <b>TOTAL</b>             | <b>715.0</b> | <b>715.0</b> | <b>715.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

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

As amended, SB 67 should qualify the State of Alaska to apply for and receive federal Truth-in-Sentencing grants under the United States Department of Justice Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants program. These funds are to be used for prison construction or renovations. Congress has authorized funds for the grants through FY 2000. The amount that the State of Alaska would be eligible to receive depends upon how many other states qualify, inasmuch as appropriated funds are divided between qualifying states on the basis of their number of violent offenders. Had Alaska qualified this past year, its share would have been \$650,000 plus a required 10% state match. The Department of Corrections assumes that Congress will appropriate similar sums each year, but that Alaska's share may receive a slight decrease each year as more states qualify.

Prepared by: Bruce Richards Phone: 465-3307  
 Division: Commissioner's Office Margaret M. Pugh Date: 3/12/97  
 Approved by Commissioner: Margaret M. Pugh Date: 3/12/97  
 Agency: Department of Corrections

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