

SECTIONAL ANALYSIS
COMMITTEE SUBSTITUTE for HOUSE BILL 9 (LS0036\E)

“An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure.”

Section 1: Amends AS 05.15.105(b), Persons prohibited from involvement. Adds capital offense to the section prohibiting persons from becoming involved in games of skill and chance.

Section 2: Amends AS 05.15.140(b), Proof necessary to qualify for a permit. Adds capital offense to the section requiring a municipality or qualified organization to disclose the name and address of each person responsible for the operation of the activity and whether any person named has committed an offense as listed in subsection (b)(1).

Section 3: Amends AS 08.64.326(a), Grounds for imposition of disciplinary sanctions. Adds capital offense to the subsection where the Medical Board may impose a sanction if the board finds after a hearing that a licensee has committed a class A or unclassified felony.

Section 4: Amends AS 09.65.210, Damages resulting from commission of a felony or while under the influence of alcohol or drugs. Adds capital felony to the section prohibiting a person from recovering damages for a personal injury or death if the person was engaged in conduct that would constitute the commission of a capital, unclassified, class A or class B felonies.

Section 5: Amends AS 11.31.100(d), Attempt. Removes “other than murder in the first degree” from the attempt classifications under subsection (d) (2).

Section 6: Amends AS 11.31.110(c), Solicitation. Removes “other than murder in the first degree” from the solicitation classifications under subsection (e) (2).

Section 7: Amends AS 11.31.120(i), Conspiracy. Removes “other than murder in the first degree” from the conspiracy classifications under subsection (i) (2).

Section 8: Amends AS 11.31.120(h) (2), Conspiracy. Adds capital felony to the definition of serious felony offense in the conspiracy statutes as provided within the newly amended statute, AS 12.55.125(a), Sentences of imprisonment of felonies.

Section 9: Amends AS 11.41.100(b), Murder in the first degree. Defines murder in the first degree as a capital offense as it is provided under AS 12.55.125(a).

Section 10: Amends 12.30.020(a), Bail. Adds capital offense to the list of felonies for which bail may not be applicable unless certain conditions are met.

Section 11: Amends AS 12.30.040(b), Release after conviction. Adds capital offense to the provisions under which a person may not be release on bail before sentencing or pending appeal.

Section 12: Amends AS 12.47.110(b), Commitment on finding of incompetency. Adds capital felony to the list of charges for which a defendant may be charged again after a five-year period.

Section 13: Amends AS 12.50.101(i) (1), Immunity of witnesses. Adds capital offense to the list of “higher level” felonies.

Section 14: Amends AS 12.55.025(i), Sentencing procedures. Exempts imposing a sentence of death from the preponderance of evidence standard of proof as it applies to criminal proceedings.

Section 15: Amends AS 12.55.125(a), Sentences of imprisonment for felonies. Adds the death sentence to the sentencing considerations for murder in the first degree. Also removes the murder of an unborn child from the imposition of a death sentence, listing the parameters of sentencing and lists the possible sentence for one convicted of murder in the first degree and the circumstances that are to be considered upon sentencing.

Section 16: Amends AS 12.55.125(f), Sentences of imprisonment for felonies. Adds a sentence of death to the list of those sentences that may not be suspended.

Section 17: Amends AS 12.55.125(l), Sentences of imprisonment for felonies. Defines the length of sentence of 99 years for those convicted of a capital, unclassified or a class A felony offense when the defendant has been convicted of two or more serious felonies.

Section 18: Amends AS 12.55.145(a), Prior convictions. Adds capital offense to the exceptions for which a certain time period has elapsed when considering prior convictions upon sentencing.

Section 19: Amends AS 12.55.155(f), Factors in aggravation and mitigation. Clarifies that the aggravators listed within this section can only be considered under presumptive sentencing and not for capital punishment.

Section 20: Amends AS 12.55.185(10), Definitions. Adds capital felony to the definition of “most serious felony.”

Section 21: Adds a new chapter, Chapter 58, to AS 12, Code of Criminal Procedure.

Article 1. Election to Seek Death Penalty.

Sec. 12.58.010. Prosecutor’s election to seek death penalty. Outlines the procedure in which the attorney general can seek the death penalty and the district attorney giving notice and the applicable aggravating factor(s) to the court, the defendant and the defendant’s attorney within 120 days of arraignment on the capital felony indictment or within 120 days of arraignment if the indictment has been waived.

Article 2. Imposition of Sentence.

Sec. 12.58.020, Sentencing procedure for a capital felony. If a defendant is convicted of a capital felony, the court conduct a separate sentencing proceeding before the jury to consider imposition of the death penalty. Aggravating or mitigating factors may be presented regardless of the admissibility of the evidence under the rules of evidence as long as this introduction of evidence does not violate the United States or State of Alaska constitutions.

After hearing the evidence, the jury will deliberate and recommend a sentence which includes a written finding of whether the jury agrees there is beyond a reasonable doubt at least one aggravating factor exists and that the aggravating factor(s) outweigh any mitigating factors found to exist by preponderance of the evidence and that death is the appropriate sentence for the defendant.

Sec. 12.58.030, Sentence imposition for capital felony. After hearing the evidence, the court may impose a sentence of death or term of imprisonment. A death sentence may be imposed if a jury finds that there is no reasonable doubt that at least one aggravating factor exists nor is the aggravating factor or factors outweighed by any mitigating factors and a death sentence has been recommended by the jury. If the court determines the defendant is mentally retarded under AS 12.58.060, a death sentence may not be imposed. When the court enters a death sentence, it is to state in writing the jury’s findings of aggravating factors and mitigating factors considered but found insufficient to outweigh the aggravators. The death sentence is automatically subject to automatic review by the Supreme Court.

Sec. 12.58.040, Aggravating factors. Lists of aggravating factors that a jury may consider when determining whether a death sentence should be imposed.

Sec. 12.58.050, Mitigating factors. Lists of relevant mitigating factors to be considered when determining whether a death sentence should be imposed.

Sec. 12.58.060, Finding of mental retardation. If a death sentence is recommended, the court is to determine if the defendant was mentally retarded at the time the crime was committed. The procedure for a finding of mental retardation is outlined within this section.

Article 3. Sentence Review.

Sec. 12.58.100, Review of judgment of conviction of a capital offense. States that the Supreme Court shall review a death sentence within 60 days after imposition of the sentence. This time limit may be extended by the court for good cause. This review has priority over all other cases. This section outlines the review process that must be undertaken by the Supreme Court.

Sec. 12.58.110, Issuance of death warrant. If the Supreme Court upholds the conviction and sentence of death, it is to issue a death warrant and specific date of execution. The date of execution is to be no less than 30 days nor no more than 60 days after the date of the warrant. The death warrant is to be delivered to the commissioner of Corrections.

Article 4. Administration of the Death Penalty.

Sec. 12.58.200, Administration of the death penalty. The procedure for the execution of a sentence of death will be established by the commissioner of Corrections (commissioner).

Sec. 12.58.210, Execution under Supreme Court death warrant. After receiving the death warrant from the Supreme Court, the commissioner will specify the time and place of execution.

Sec. 12.58.220, Manner of execution. The punishment of death is to be inflicted by a lethal dose of a substance or substances until death is pronounced by a licensed physician and is to be carried out within a state correctional facility.

Sec. 12.58.230, Return of death warrant. The commissioner is to return the death warrant to the Supreme Court showing the time and place in which the defendant was executed.

Article 5. Stay of Execution.

Sec. 12.58.300, Incompetency or pregnancy of person sentenced to death. If after the death sentence is imposed and the commissioner has reason to believe the defendant is incompetent to proceed with the execution or the defendant is pregnant, written notice is to be given immediately to the court in which the death sentence was imposed, the prosecuting attorney and the counsel for the defendant. The execution will be stayed pending further order of the court.

Sec. 12.58.310, Examination into competency. Upon receiving receipt of notice, the sentencing court is to examine the mental condition of the defendant in the same manner as prescribed under AS 12.47.070. If the defendant is found to be incompetent, the court is to certify that finding to the Supreme Court and the commissioner and sentence the defendant under AS 12.55.125(a) and enter an order for confinement. If the defendant is found to be competent, that finding will be certified and sent immediately to the

Supreme Court and the commissioner. The Supreme Court is then required to issue another death warrant specifying a date of execution unless the finding is appealed.

Sec. 12.58.320, Disposition pending pregnancy. If the defendant is pregnant, the sentencing court is to certify that finding to the Supreme Court and the commissioner and also issue an order staying the execution during the pregnancy. Upon the completion of the pregnancy, the sentencing court is to immediately certify that finding to the Supreme Court and the commissioner. Another death warrant is issued by the Supreme Court specifying the date of execution.

Article 6. General Provisions.

Sec. 12. 58.900, Definitions. Defines commissioner and department as it applies to Chapter 12.58.

Section 22: Amends AS 22.07.020(a), Jurisdiction. Excludes prosecution for a capital felony for which a death sentence is imposed from the Court of Appeals jurisdiction.

Section 23: Amends AS 22.07.020(a), Jurisdiction. Excludes appeals of a death sentence from the Court of Appeals jurisdiction.

Section 24: Amends AS 47.12.030(a), Provisions inapplicable (Welfare, Social Services and Institutions chapter). Includes capital felony as one of the charges for which a 16-year old may be tried.

Section 25: Amends AS 47.12.100(c), Waiver of jurisdiction. Incorporates capital felony into the provisions that a minor is or is not amendable to treatment.

Section 26: Indirect Court Rule Amendments. AS 12.58 has the effect of modifying the sentencing provisions of Rules 32 (Sentence and Judgment), 32.1 (Presentence Procedure for Felony Sentencing) and 32.3 (Judgments and Orders), Alaska Rules of Criminal Procedure. AS 12.58 also has the effect of amending Rules 204 (Appeal: Time-Notice—Bonds), 209 (Appeals at Public Expense), 210 (Record on Appeal) and 212 (Briefs), Alaska Rules of Appellate Procedure.

Section 27: EXCESSIVE REVIEW, added by Section 21 of the bill. Provides that the Supreme Court will review whether a sentence of death is excessive compared to penalties imposed in similar cases. A sentence of death may not be found to be excessive when compared to similar cases based on the fact that a sentence of death had not been previously authorized as a penalty for murder in the state.