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Luckhaupt
2/18/09

CS FOR HOUSE BILL NO. 9()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Ramras

A BILL

FOR AN ACT ENTITLED

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

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 05.15.105(b) is amended to read:

8 (b) The department shall adopt regulations that provide that a disqualification
9 of a person under (a) of this section based upon a conviction of that person for a
10 violation

11 (1) of a law of this state that is, or a law or ordinance of another
12 jurisdiction that would be if it was committed in this state, a class B felony other than
13 extortion, a class C felony, or an unclassified felony described outside of AS 11, and

1 that is not a crime of dishonesty or theft or a violation of gambling laws, terminates 10
2 years after the person's conviction;

3 (2) of a law or ordinance of this state or another jurisdiction that is a
4 crime involving theft or dishonesty or a violation of gambling laws, and that is not, or
5 would not be if it was committed in this state, a capital or an unclassified felony
6 described in AS 11, a class A felony, or extortion, terminates 10 years after the
7 person's conviction, if the department determines that the

8 (A) person is of good character, honesty, and integrity; and

9 (B) person's involvement in charitable gaming is not against the
10 public interest.

11 * Sec. 2. AS 05.15.140(b) is amended to read:

12 (b) In an application for a permit, a municipality or qualified organization
13 shall disclose the name and address of each person responsible for the operation of the
14 activity and whether any person named

15 (1) has been convicted of a violation of a law of this state that is, or a
16 law or ordinance of another state that would be if committed in this state, a capital or
17 [AN] unclassified felony described in AS 11, a class A felony, extortion, or a violation
18 of a law or ordinance of this state or another jurisdiction that is a crime involving theft
19 or dishonesty or a violation of gambling laws; or

20 (2) has a prohibited financial interest, as defined in regulations adopted
21 by the department, in the operation of the activity.

22 * Sec. 3. AS 08.64.326(a) is amended to read:

23 (a) The board may impose a sanction if the board finds after a hearing that a
24 licensee

25 (1) secured a license through deceit, fraud, or intentional
26 misrepresentation;

27 (2) engaged in deceit, fraud, or intentional misrepresentation while
28 providing professional services or engaging in professional activities;

29 (3) advertised professional services in a false or misleading manner;

30 (4) has been convicted, including conviction based on a guilty plea or
31 plea of nolo contendere, of

(A) a class A, capital, or unclassified felony or a crime in another jurisdiction with elements similar to a class A, capital, or unclassified felony in this jurisdiction;

(B) a class B or class C felony or a crime in another jurisdiction with elements similar to a class B or class C felony in this jurisdiction if the felony or other crime is substantially related to the qualifications, functions, or duties of the licensee; or

(C) a crime involving the unlawful procurement, sale, prescription, or dispensing of drugs;

(5) has procured, sold, prescribed, or dispensed drugs in violation of a law regardless of whether there has been a criminal action;

(6) intentionally or negligently permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards even if the patient was not injured;

(7) failed to comply with this chapter, a regulation adopted under this chapter, or an order of the board;

(8) has demonstrated

(A) professional incompetence, gross negligence, or repeated negligent conduct; the board may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient;

(B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the licensee's ability to practice safely;

(C) unfitness because of physical or mental disability;

(9) engaged in unprofessional conduct, in sexual misconduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by the board in regulations adopted under this chapter, or attempted sexual contact with a patient outside the scope of generally accepted methods of examination or treatment of the patient, regardless of the patient's consent or lack of consent, during the term of the physician-patient relationship, as defined by the board in regulations adopted under

1 this chapter, unless the patient was the licensee's spouse at the time of the contact or,
2 immediately preceding the physician-patient relationship, was in a dating, courtship,
3 or engagement relationship with the licensee;

4 (10) has violated AS 18.16.010;

5 (11) has violated any code of ethics adopted by regulation by the
6 board;

7 (12) has denied care or treatment to a patient or person seeking
8 assistance from the physician if the only reason for the denial is the failure or refusal
9 of the patient to agree to arbitrate as provided in AS 09.55.535(a); or

10 (13) has had a license or certificate to practice medicine in another
11 state or territory of the United States, or a province or territory of Canada, denied,
12 suspended, revoked, surrendered while under investigation for an alleged violation,
13 restricted, limited, conditioned, or placed on probation unless the denial, suspension,
14 revocation, or other action was caused by the failure of the licensee to pay fees to that
15 state, territory, or province.

16 * Sec. 4. AS 09.65.210 is amended to read:

17 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
18 **under the influence of alcohol or drugs.** A person who suffers personal injury or
19 death or the person's personal representative under AS 09.55.570 or 09.55.580 may
20 not recover damages for the personal injury or death if the injury or death occurred
21 while the person was

22 (1) engaged in the commission of a felony, the person has been
23 convicted of the felony, including conviction based on a guilty plea or plea of nolo
24 contendere, and the party defending against the claim proves by clear and convincing
25 evidence that the felony substantially contributed to the personal injury or death;

26 (2) engaged in conduct that would constitute the commission of a
27 capital felony, an unclassified felony, a class A felony, or a class B felony for which
28 the person was not convicted and the party defending against the claim proves by clear
29 and convincing evidence

30 (A) the felonious conduct; and

31 (B) that the felonious conduct substantially contributed to the

personal injury or death;

(3) fleeing after the commission, by that person, of conduct that would constitute a capital felony, an unclassified felony, a class A felony, or a class B felony or being apprehended for conduct that would constitute a capital felony, an unclassified felony, a class A felony, or a class B felony if the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the conduct during the flight or apprehension substantially contributed to the injury or death;

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the conduct substantially contributed to the personal injury or death; or

(5) engaged in conduct that would constitute a violation of AS 28.35.030 for which the person was not convicted if the party defending against the claim proves by clear and convincing evidence

(A) the violation of AS 28.35.030; and

(B) that the conduct substantially contributed to the personal injury or death.

* Sec. 5. AS 11.31.100(d) is amended to read:

(d) An attempt is

(1) an unclassified felony if the crime attempted is murder in the first degree;

(2) a class A felony if the crime attempted is an unclassified felony [OTHER THAN MURDER IN THE FIRST DEGREE];

(3) a class B felony if the crime attempted is a class A felony;

(4) a class C felony if the crime attempted is a class B felony;

(5) a class A misdemeanor if the crime attempted is a class C felony;

(6) a class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

1 * Sec. 6. AS 11.31.110(c) is amended to read:

2 (c) Solicitation is

3 (1) an unclassified felony if the crime solicited is murder in the first
4 degree;

5 (2) a class A felony if the crime solicited is an unclassified felony
6 [OTHER THAN MURDER IN THE FIRST DEGREE];

7 (3) a class B felony if the crime solicited is a class A felony;

8 (4) a class C felony if the crime solicited is a class B felony;

9 (5) a class A misdemeanor if the crime solicited is a class C felony;

10 (6) a class B misdemeanor if the crime solicited is a class A or class B
11 misdemeanor.

12 * Sec. 7. AS 11.31.120(i) is amended to read:

13 (i) Conspiracy is

14 (1) an unclassified felony if the object of the conspiracy is murder in
15 the first degree;

16 (2) a class A felony if the object of the conspiracy is a crime
17 punishable as an unclassified felony [OTHER THAN MURDER IN THE FIRST
18 DEGREE];

19 (3) a class B felony if the object of the conspiracy is a crime
20 punishable as a class A felony;

21 (4) a class C felony if the object of the conspiracy is a crime
22 punishable as a class B felony.

23 * Sec. 8. AS 11.31.120(h)(2) is amended to read:

24 (2) "serious felony offense" means an offense

25 (A) against the person under AS 11.41, punishable as a capital,
26 an unclassified, or a class A felony;

27 (B) involving controlled substances under AS 11.71,
28 punishable as an unclassified, a class A, or a class B felony;

29 (C) that is criminal mischief in the first degree under
30 AS 11.46.475; or

31 (D) that is terroristic threatening in the first degree under

AS 11.56.807.

* Sec. 9. AS 11.41.100(b) is amended to read:

(b) Murder in the first degree is a capital [AN UNCLASSIFIED] felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

* Sec. 10. AS 12.30.020(a) is amended to read:

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is a capital felony, an unclassified felony, or a class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required or will pose a danger to the alleged victim, other persons, or the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community.

* Sec. 11. AS 12.30.040(b) is amended to read:

(b) Notwithstanding the provisions of (a) of this section, a person may not be released on bail either before sentencing or pending appeal if the person has been convicted of an offense that is

(1) a capital felony, an unclassified felony, or a class A felony; or

(2) a class B or class C felony if the person has been previously convicted of an offense in this state that is a capital felony, an unclassified felony, a class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 - 11.41.438 or of an offense in another jurisdiction with elements substantially similar to an offense of this state described in this paragraph.

* Sec. 12. AS 12.47.110(b) is amended to read:

(b) On or before the expiration of the initial 90-day period of commitment, the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant

1 remains incompetent, the court may recommit the defendant for a second period of 90
2 days. The court shall determine at the expiration of the second 90-day period whether
3 the defendant has become competent. If, at the expiration of the second 90-day period,
4 the court determines that the defendant continues to be incompetent to stand trial, the
5 charges against the defendant shall be dismissed without prejudice, and continued
6 commitment of the defendant shall be governed by the provisions relating to civil
7 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
8 crime involving force against a person and the court finds that the defendant presents a
9 substantial danger of physical injury to other persons and that there is a substantial
10 probability that the defendant will regain competency within a reasonable period of
11 time, in which case the court may extend the period of commitment for an additional
12 six months. If the defendant remains incompetent at the expiration of the additional
13 six-month period, the charges shall be dismissed without prejudice, and continued
14 commitment proceedings shall be governed by the provisions relating to civil
15 commitment under AS 47.30.700 - 47.30.915. If the defendant remains incompetent
16 for five years after the charges have been dismissed under this subsection, the
17 defendant may not be charged again for an offense arising out of the facts alleged in
18 the original charges, except if the original charge is a class A felony, an [OR]
19 unclassified felony, or a capital felony.

20 * Sec. 13. AS 12.50.101(i)(1) is amended to read:

21 (1) "higher-level felony" means an unclassified, capital, or class A
22 felony;

23 * Sec. 14. AS 12.55.025(i) is amended to read:

24 (i) Except as provided by AS 12.55.125(a)(3), 12.55.145(d), 12.55.155(f), and
25 12.55.165, or in determining if a sentence of death should be imposed under
26 AS 12.58, the preponderance of the evidence standard of proof applies to sentencing
27 proceedings.

28 * Sec. 15. AS 12.55.125(a) is amended to read:

29 (a) A defendant convicted of murder in the first degree [OR MURDER OF
30 AN UNBORN CHILD UNDER AS 11.41.150(a)(1)] shall be sentenced to a definite
31 term of imprisonment of at least 20 years but not more than 99 years, or shall be

1 sentenced to death. A defendant convicted of murder of an unborn child under
2 AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at
3 least 20 years but not more than 99 years. A defendant convicted of murder in the
4 first degree, but not sentenced to death, shall be sentenced to a mandatory term of
5 imprisonment of 99 years when

6 (1) the defendant is convicted of the murder of a uniformed or
7 otherwise clearly identified peace officer, fire fighter, or correctional employee who
8 was engaged in the performance of official duties at the time of the murder;

9 (2) the defendant has been previously convicted of

10 (A) murder in the first degree under AS 11.41.100 or former
11 AS 11.15.010 or 11.15.020;

12 (B) murder in the second degree under AS 11.41.110 or former
13 AS 11.15.030; or

14 (C) homicide under the laws of another jurisdiction when the
15 offense of which the defendant was convicted contains elements similar to first
16 degree murder under AS 11.41.100 or second degree murder under
17 AS 11.41.110;

18 (3) the court finds by clear and convincing evidence that the defendant
19 subjected the murder victim to substantial physical torture;

20 (4) the defendant is convicted of the murder of and personally caused
21 the death of a person, other than a participant, during a robbery; or

22 (5) the court finds by clear and convincing evidence that the defendant
23 is a peace officer who used the officer's authority as a peace officer to facilitate the
24 murder.

25 * Sec. 16. AS 12.55.125(f) is amended to read:

26 (f) If a defendant is sentenced under (a) or (b) of this section,

27 (1) imprisonment for the prescribed minimum or mandatory term may
28 not be suspended under AS 12.55.080;

29 (2) imposition of sentence may not be suspended under AS 12.55.085;

30 (3) imprisonment for the prescribed minimum or mandatory term may
31 not be reduced, except as provided in (j) of this section;

(4) a sentence of death may not be suspended under AS 12.55.080.

* Sec. 17. AS 12.55.125(l) is amended to read:

(l) Notwithstanding any other provision of law, a defendant convicted of **a capital**, an unclassified, or **a** class A felony offense, and not **sentenced to death or** subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

* Sec. 18. AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d), or (e),

(A) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for **a capital**, an unclassified, or **a** class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(2) AS 12.55.125(l),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

(B) commission of and conviction for offenses relied on as prior most serious felony offenses must occur in the following order: conviction for the first offense must occur before commission of the second offense, and conviction for the second offense must occur before commission of the offense for which the defendant is being sentenced;

(3) AS 12.55.135(g),

(A) a prior conviction may not be considered if a period of five or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for a capital, an unclassified, or a class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a crime against a person or a crime involving domestic violence is considered a prior conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(4) AS 12.55.125(i),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a sexual felony is a prior conviction for a sexual felony;

(B) a felony conviction in another jurisdiction making it a crime to commit any lewd and lascivious act upon a child under the age of 16

years, with the intent of arousing, appealing to, or gratifying the sexual desires of the defendant or the victim is a prior conviction for a sexual felony;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective.

* Sec. 19. AS 12.55.155(f) is amended to read:

(f) Under this section, if [IF] the state seeks to establish a factor in aggravation at sentencing

(1) under (c)(7), (8), (12), (15), (18)(B), (19), (20), (21), or (31) of this section, or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence; the factors in aggravation listed in this paragraph and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury; all findings must be set out with specificity;

(2) other than one listed in (1) of this subsection, the factor shall be presented to a trial jury under procedures set by the court, unless the defendant waives trial by jury, stipulates to the existence of the factor, or consents to have the factor proven under procedures set out in (1) of this subsection; a factor in aggravation presented to a jury is established if proved beyond a reasonable doubt; written notice of the intent to establish a factor in aggravation must be served on the defendant and filed with the court

(A) 20 days before trial, or at another time specified by the court;

(B) within 48 hours, or at a time specified by the court, if the court instructs the jury about the option to return a verdict for a lesser included offense; or

(C) five days before entering a plea that results in a finding of guilt, or at another time specified by the court.

* **Sec. 20.** AS 12.55.185(10) is amended to read:

(10) "most serious felony" means

(A) arson in the first degree, promoting prostitution in the first degree under AS 11.66.110(a)(2), or any capital, unclassified, or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, a capital or an unclassified felony prescribed under AS 11.41;

* **Sec. 21.** AS 12 is amended by adding a new chapter to read:

Chapter 58. Capital Punishment.

Article 1. Election to Seek Death Penalty.

Sec. 12.58.010. Attorney General's election to seek death penalty. The attorney general shall determine whether to seek the death penalty against the defendant. If the attorney general elects to seek the death penalty, the district attorney shall give notice of election and the applicable aggravating factor or factors in AS 12.58.040 to the court, the defendant, and the defendant's attorney within 120 days of arraignment of the defendant on the capital felony indictment, or within 120 days of arraignment of the defendant if indictment has been waived. The time period for giving notice of election may be extended by the court.

Article 2. Imposition of Sentence.

Sec. 12.58.020. Sentencing procedure for a capital felony. (a) If a defendant is convicted of a capital felony, the court shall conduct a separate sentencing proceeding before the jury as soon as practicable. If a jury trial has been waived or if the defendant has pled guilty, the sentencing proceeding shall be held before a jury impaneled for the purpose.

(b) During the sentencing proceeding, evidence that the court considers to have probative value may be presented as to any aggravating factor under AS 12.58.040 or any mitigating factor, regardless of the admissibility of the evidence under the rules of evidence. The defendant shall have an opportunity to rebut hearsay

evidence that is admitted. The state and the defendant or the defendant's counsel shall be permitted to present oral statements. This subsection does not authorize the introduction of evidence in violation of the Constitution of the State of Alaska or the Constitution of the United States.

(c) After hearing the evidence, the jury shall deliberate and recommend a sentence to the court. The recommended sentence must include written findings of whether the jury unanimously finds

(1) beyond a reasonable doubt that at least one aggravating factor under AS 12.58.040 exists to justify the death sentence and the aggravating factor was noticed by the district attorney under AS 12.58.010; the jury does not have to unanimously agree with regard to a specific aggravating factor;

(2) beyond a reasonable doubt that the aggravating factor or factors outweigh any mitigating factors found to exist by a preponderance of the evidence; and

(3) that death is the appropriate sentence for the defendant.

Sec. 12.58.030. Sentence imposition for capital felony. (a) After considering the evidence and the recommended sentence, the court shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a). The court may not impose the death sentence unless the jury makes the findings required by AS 12.58.020. If the jury makes the findings required by AS 12.58.020, the court shall sentence the defendant to death unless the court finds the defendant was mentally retarded under AS 12.58.060. If a sentence of death is not recommended by the jury, the court shall sentence the defendant to a term of imprisonment under AS 12.55.125(a).

(b) When the court enters a sentence of death, it shall state in writing the jury's findings

(1) of the aggravating factor or factors that exist to justify the sentence;

(2) of mitigating factors considered but found insufficient to outweigh the aggravating factors; and

(3) that death is the appropriate sentence for the defendant.

(c) A judgment of conviction for which a sentence of death is imposed is

1 subject to automatic review under AS 12.58.100.

2 **Sec. 12.58.040. Aggravating factors.** In determining whether to impose a
3 sentence of death, the following aggravating factors may be considered:

4 (1) the defendant's conduct caused the death of a child under 18 years
5 of age, the defendant, at the time of the offense, was at least two years older than the
6 child, and the defendant

7 (A) was kidnapping, assaulting, or sexually assaulting, or was
8 attempting to kidnap, assault, or sexually assault, the child; or

9 (B) had kidnapped, assaulted, or sexually assaulted the child;

10 (2) the victim was a uniformed or otherwise clearly identified peace
11 officer, fire fighter, or corrections employee who was engaged in the performance of
12 official duties at the time of the murder;

13 (3) the defendant has been convicted of murdering two or more
14 individuals under AS 11.41.100, or a similar law of this or another jurisdiction,
15 regardless of whether the deaths occurred as the result of the same act or of several
16 related or unrelated acts;

17 (4) at the time of the act resulting in the death, the defendant was
18 serving a term of imprisonment, had escaped, or was on authorized or unauthorized
19 leave in or from a state facility or program for the incarceration or treatment of
20 persons adjudicated guilty of crimes;

21 (5) the defendant committed the murder under an agreement to receive
22 money or any other thing of value for committing the murder;

23 (6) the defendant solicited another person to commit the murder and
24 had paid or had agreed to pay money or any other thing of value for the other person's
25 committing the murder;

26 (7) the defendant committed the murder to obtain or maintain the
27 defendant's membership or to advance the defendant's position in the hierarchy of an
28 organization, association, or identifiable group;

29 (8) the victim was a judge, juror or former juror, prospective, current,
30 or former witness in an adjudicative proceeding, prosecuting attorney, deputy
31 prosecuting attorney, defense attorney, member of the board of parole, or probation or

1 parole officer, and the murder was related to the exercise of official duties performed
2 or to be performed by the victim;

3 (9) the defendant committed the murder to conceal the commission of
4 a crime or to protect or conceal the identity of any person committing a crime;

5 (10) there was more than one victim and the murders were part of a
6 common scheme or plan or the result of a single act of the defendant;

7 (11) at the time the defendant committed the murder, there existed a
8 court order, issued in this or any other state, that prohibited the defendant from
9 contacting the victim, molesting the victim, or disturbing the peace of the victim, and
10 the defendant had knowledge of the existence of that order.

11 **Sec. 12.58.050. Mitigating factors.** In determining whether to impose the
12 death sentence, all relevant mitigating factors may be considered, including the
13 following:

14 (1) the defendant committed the offense under a degree of duress,
15 coercion, threat, or compulsion that was insufficient to constitute a defense but that
16 significantly affected the defendant's conduct;

17 (2) the conduct of a youthful defendant was substantially influenced by
18 a person more mature than the defendant;

19 (3) the defendant acted with serious provocation from the victim;

20 (4) the defendant assisted authorities to detect or apprehend other
21 persons who committed the offense with the defendant;

22 (5) the defendant did not have a significant history, either as a juvenile
23 or an adult, of prior criminal activity;

24 (6) the murder was committed while the defendant was under the
25 influence of extreme mental disturbance;

26 (7) the victim consented to the act of murder;

27 (8) the defendant was an accomplice to a murder committed by another
28 person where the defendant's participation in the murder was relatively minor;

29 (9) the capacity of the defendant to appreciate the wrongfulness of the
30 defendant's conduct or to conform the defendant's conduct to the requirements of law
31 was substantially impaired as a result of mental disease or defect; however, a person

1 found to be mentally retarded under AS 12.58.060 may not be sentenced to death;
2
3 (10) there is not a likelihood that the defendant will pose a danger to
4 others in the future.

5 **Sec. 12.58.060. Finding of mental retardation.** If the jury recommends a
6 sentence of death, the court shall determine if the defendant was mentally retarded
7 under the definition of mental retardation in this section at the time the crime was
8 committed. A diagnosis of mental retardation shall be documented by a licensed
9 psychiatrist or licensed psychologist designated by the court who is an expert in the
10 diagnosis and evaluation of mental retardation. The defense shall establish mental
11 retardation by a preponderance of the evidence, and the court shall make a finding as
12 to the existence of mental retardation. If the court makes the finding of mental
13 retardation, the court shall proceed to sentence the defendant to a term of
14 imprisonment under AS 12.55.125(a). In this section,

15 (1) "adaptive behavior" means the effectiveness or degree with which
16 an individual meets the standards of personal independence and social responsibility
17 expected for the individual's age;

18 (2) "developmental period" means the period of time between
19 conception and the 18th birthday;

20 (3) "general intellectual functioning" means the results obtained by
21 assessment with one or more of the individually administered general intelligence tests
22 developed for the purpose of assessing intellectual functioning;

23 (4) "mentally retarded" means the individual has

24 (A) significantly subaverage general intellectual functioning
25 that exists concurrently with deficits in adaptive behavior; and

26 (B) both significantly subaverage general intellectual
27 functioning and deficits in adaptive behavior that were manifested during the
28 developmental period;

29 (5) "significantly subaverage general intellectual functioning" means
30 an intelligence quotient of 70 or below.

31 **Article 3. Sentence Review.**

Sec. 12.58.100. Review of judgment of conviction of a capital felony. (a) A

1 judgment of conviction of a capital felony for which a sentence of death is imposed
2 shall automatically be reviewed by the supreme court within 60 days after imposition
3 of the sentence. This time limit may be extended by the supreme court for good cause.

4 (b) A review under this section has priority over all other cases, and the case
5 shall be heard in accordance with rules adopted by the supreme court. On review, the
6 court shall determine

7 (1) whether the sentence was imposed under the influence of passion,
8 prejudice, or other arbitrary factor;

9 (2) whether the evidence supports the finding of an aggravating factor
10 under AS 12.58.040 and whether the jury has properly considered mitigating factors
11 under AS 12.58.050;

12 (3) whether the sentence is excessive compared to the penalty imposed
13 in similar cases, considering both the crime and the defendant; and

14 (4) any other issue that the defendant may raise as a point on appeal.

15 (c) In its consideration of an automatic appeal under (a) and (b) of this section,
16 the supreme court

17 (1) may not require the defendant to file a notice of appeal unless the
18 defendant raises an issue as a point on appeal under (b)(4) of this section;

19 (2) may not require the defendant to pay a fee;

20 (3) shall designate the entire record of the proceedings before the
21 sentencing court as the record on appeal;

22 (4) shall prepare the transcript of the proceedings for the record on
23 appeal at public expense; and

24 (5) may not require the defendant to submit and file a brief unless the
25 defendant raises an issue as a point on appeal under (b)(4) of this section.

26 **Sec. 12.58.110. Issuance of death warrant.** If the supreme court upholds a
27 judgment of conviction and sentence of death, the court shall issue a death warrant that
28 specifies a date of execution. The specified date of execution must be not less than 30
29 days nor more than 60 days after the date of the warrant. The death warrant shall be
30 delivered to the commissioner of corrections.

31 **Article 4. Administration of the Death Penalty.**

1 **Sec. 12.58.200. Administration of the death penalty.** The commissioner shall
2 establish a procedure for the execution of a sentence of death ordered by the state
3 supreme court at the time and place legally appointed.

4 **Sec. 12.58.210. Execution under supreme court death warrant.** After
5 receiving a supreme court warrant issued under AS 12.58.110, the commissioner shall
6 specify the time and place of execution.

7 **Sec. 12.58.220. Manner of execution.** (a) The punishment of death shall be
8 inflicted by continuous, intravenous administration of a lethal dose of a substance or
9 substances until death is pronounced by a licensed physician.

10 (b) A death sentence shall be carried out within a state correctional facility.

11 **Sec. 12.58.230. Return of death warrant.** After the execution, the
12 commissioner shall make a return upon the death warrant showing the time and place
13 in which the defendant was executed.

14 **Article 5. Stay of Execution.**

15 **Sec. 12.58.300. Incompetency or pregnancy of person sentenced to death.**
16 If, after a sentence of death is imposed, the commissioner has reason to believe that
17 the defendant has become incompetent to proceed with the execution or that the
18 defendant is pregnant, the commissioner shall immediately give written notice to the
19 court in which the sentence of death was imposed, the prosecuting attorney, and
20 counsel for the defendant. The execution of sentence shall be stayed pending further
21 order of the court.

22 **Sec. 12.58.310. Examination into competency.** (a) On receipt of notice under
23 AS 12.58.300 that the defendant is believed to be incompetent, the sentencing court
24 shall examine the mental condition of the defendant in the same manner as provided
25 for examining persons for competency to stand trial under AS 12.47.070.

26 (b) If the sentencing court finds that the defendant is incompetent, the court
27 shall immediately certify that finding to the supreme court and the commissioner, shall
28 sentence the defendant under AS 12.55.125(a), and shall order the defendant confined
29 in the same manner as provided for persons under AS 12.47.050.

30 (c) If the sentencing court finds that the defendant is competent, the court shall
31 immediately certify the finding to the supreme court and the commissioner. The

1 supreme court shall issue and deliver another warrant to the commissioner under
2 AS 12.58.110, together with a copy of the certified finding. Unless the sentencing
3 court's finding is appealed in accordance with applicable court rule, the warrant shall
4 specify a date of execution that is not less than 30 days nor more than 60 days after the
5 date of the warrant.

6 **Sec. 12.58.320. Disposition pending pregnancy.** (a) If the defendant is
7 pregnant, the sentencing court shall immediately certify that finding to the supreme
8 court and the commissioner. The supreme court shall issue an order staying the
9 execution of the sentence of death during the pregnancy.

10 (b) When the defendant is no longer pregnant, the sentencing court shall
11 immediately certify the finding to the supreme court and the commissioner. The
12 supreme court shall issue and deliver another warrant under AS 12.58.110, together
13 with a copy of the certified finding. Unless the sentencing court's finding is appealed
14 under applicable court rule, the warrant shall specify a date of execution not less than
15 30 days nor more than 60 days after the date of the warrant.

16 **Article 6. General Provisions.**

17 **Sec. 12.58.900. Definitions.** In this chapter,

18 (1) "commissioner" means the commissioner of corrections;

19 (2) "department" means the Department of Corrections.

20 * **Sec. 22.** AS 22.07.020(a) is amended to read:

21 (a) The court of appeals has appellate jurisdiction in actions and proceedings
22 commenced in the superior court involving

23 (1) criminal prosecution, except prosecution for a capital felony for
24 which a death sentence is imposed;

25 (2) post-conviction relief;

26 (3) matters under AS 47.12, including waiver of jurisdiction over a
27 minor under AS 47.12.100;

28 (4) extradition;

29 (5) habeas corpus;

30 (6) probation and parole; and

31 (7) bail.

1 * Sec. 23. AS 22.07.020(b) is amended to read:

2 (b) Except as limited in AS 12.55.120 and in this subsection, the court of
3 appeals has jurisdiction to hear appeals of unsuspended sentences of imprisonment
4 exceeding two years for a felony offense or 120 days for a misdemeanor offense
5 imposed by the superior court on the grounds that the sentence is excessive, or a
6 sentence of any length on the grounds that it is too lenient. The court of appeals, in the
7 exercise of this jurisdiction, may modify the sentence as provided by law and the state
8 constitution. The court of appeals does not have jurisdiction to hear appeals of
9 death sentences.

10 * Sec. 24. AS 47.12.030(a) is amended to read:

11 (a) When a minor who was at least 16 years of age at the time of the offense is
12 charged by complaint, information, or indictment with an offense specified in this
13 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense
14 for which the minor is charged or to any additional offenses joinable to it under the
15 applicable rules of court governing criminal procedure. The minor shall be charged,
16 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as
17 an adult. If the minor is convicted of an offense other than an offense specified in this
18 subsection, the minor may attempt to prove, by a preponderance of the evidence, that
19 the minor is amenable to treatment under this chapter. If the court finds that the minor
20 is amenable to treatment under this chapter, the minor shall be treated as though the
21 charges had been heard under this chapter, and the court shall order disposition of the
22 charges of which the minor is convicted under AS 47.12.120(b). The provisions of this
23 subsection apply when the minor is charged by complaint, information, or indictment
24 with an offense

25 (1) that is a capital felony, an unclassified felony, or a class A felony
26 and the felony is a crime against a person;

27 (2) of arson in the first degree;

28 (3) that is a class B felony and the felony is a crime against a person in
29 which the minor is alleged to have used a deadly weapon in the commission of the
30 offense and the minor was previously adjudicated as a delinquent or convicted as an
31 adult, in this or another jurisdiction, as a result of an offense that involved use of a

1 deadly weapon in the commission of a crime against a person or an offense in another
2 jurisdiction having elements substantially identical to those of a crime against a
3 person, and the previous offense was punishable as a felony; in this paragraph, "deadly
4 weapon" has the meaning given in AS 11.81.900(b); or

5 (4) that is misconduct involving weapons in the first degree under

6 (A) AS 11.61.190(a)(1); or

7 (B) AS 11.61.190(a)(2) when the firearm was discharged under
8 circumstances manifesting substantial and unjustifiable risk of physical injury
9 to a person.

10 * Sec. 25. AS 47.12.100(c) is amended to read:

11 (c) For purposes of making a determination under this section,

12 (1) the standard of proof is by a preponderance of the evidence; and

13 (2) the burden of proof that a minor is not amenable to treatment under
14 this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking
15 to have the court declare a minor a delinquent is based on the minor's alleged
16 commission of an offense that is a capital felony, an unclassified felony, or a class A
17 felony and that is a crime against a person, the minor

18 (A) is rebuttably presumed not to be amenable to treatment
19 under this chapter; and

20 (B) has the burden of proof of showing that the minor is
21 amenable to treatment under this chapter.

22 * Sec. 26. The uncoded law of the State of Alaska is amended by adding a new section to
23 read:

24 INDIRECT COURT RULE AMENDMENTS. (a) AS 12.58, added by sec. 21 of this
25 Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska
26 Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death
27 sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska
28 Supreme Court.

29 (b) AS 12.58.100, added by sec. 21 of this Act, has the effect of amending Rules 204,
30 209, 210, and 212, Alaska Rules of Appellate Procedure, by establishing procedures and
31 limitations on procedures relating to the filing and disposition of appeals of sentences in cases

1 in which the death penalty is imposed.

2 * Sec. 27. The uncoded law of the State of Alaska is amended by adding a new section to
3 read:

4 EXCESSIVE REVIEW. AS 12.58.100(b)(3), added by sec. 21 of this Act, provides
5 that the Alaska Supreme Court will review whether a sentence of death is excessive compared
6 to the penalty imposed in similar cases. Under that review, a sentence of death may not be
7 found excessive compared to the penalty imposed in similar cases based on the fact that a
8 sentence of death has not been previously authorized as a penalty for murder in this state.