

**HOUSE BILL NO. 45**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES SANDERS, Kohring**

**Introduced: 1/16/95**

**Referred: State Affairs, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act authorizing capital punishment, classifying murder in the first degree as  
2 a capital felony, and establishing sentencing procedures for capital felonies;  
3 authorizing an advisory vote on instituting capital punishment; and providing for  
4 an effective date."

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

6 \* **Section 1.** AS 05.15.140(b) is amended to read:

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

10 (1) has been convicted of a violation of a law of this state that is, or a law or  
11 ordinance of another state that would be if committed in this state, a capital or [AN]  
12 unclassified felony described in AS 11, a Class A felony, extortion, or a violation of  
13 a law or ordinance of this state or another jurisdiction that is a crime involving theft  
14 or dishonesty or a violation of gambling laws; or

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

3 \* **Sec. 2.** AS 11.31.100(d) is amended to read:

4 (d) An attempt is

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

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

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

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

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

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

14 \* **Sec. 3.** AS 11.31.110(c) is amended to read:

15 (c) Solicitation is a

16 (1) class A felony if the crime solicited is a capital or [AN]  
17 unclassified felony;

18 (2) class B felony if the crime solicited is a class A felony;

19 (3) class C felony if the crime solicited is a class B felony;

20 (4) class A misdemeanor if the crime solicited is a class C felony;

21 (5) class B misdemeanor if the crime solicited is a class A or class B  
22 misdemeanor.

23 \* **Sec. 4.** AS 11.31.120(h) is amended to read:

24 (h) Conspiracy is

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

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

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

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

3 \* **Sec. 5.** AS 11.31.120(i) is amended to read:

4 (i) In this section,

5 (1) "overt act in furtherance of the conspiracy" means an act of such  
6 character that it manifests a purpose on the part of the actor that the object of the  
7 conspiracy be completed;

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

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

11 (B) involving controlled substances under AS 11.71, punishable  
12 as an unclassified, class A, or class B felony.

13 \* **Sec. 6.** AS 11.41.100(b) is amended to read:

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

16 \* **Sec. 7.** AS 12.30.020(a) is amended to read:

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

29 \* **Sec. 8.** AS 12.30.040(b) is amended to read:

30 (b) Notwithstanding the provisions of (a) of this section, if a person has been  
31 convicted of an offense **that** [WHICH] is **a capital felony,** an unclassified felony, or

1 a class A felony, the person may not be released on bail either before sentencing or  
2 pending appeal.

3 \* **Sec. 9.** AS 12.47.110(b) is amended to read:

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

25 \* **Sec. 10.** AS 12.55.025(i) is amended to read:

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

30 \* **Sec. 11.** AS 12.55.125(a) is amended to read:

31 (a) A defendant convicted of murder in the first degree shall be sentenced to

1 a definite term of imprisonment of at least 20 years but not more than 99 years, **or**  
2 **shall be sentenced to death.** A defendant convicted of murder in the first degree, **but**  
3 **not sentenced to death,** shall be sentenced to a mandatory term of imprisonment of  
4 99 years when

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

8 (2) the defendant has been previously convicted of

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

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

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

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

19 \* **Sec. 12.** AS 12.55.125(f) is amended to read:

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

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

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

24 (3) imprisonment for the prescribed minimum term may not be  
25 otherwise reduced;

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

27 \* **Sec. 13.** AS 12.55.145(a) is amended to read:

28 (a) For purposes of considering prior convictions in imposing sentence under  
29 AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i)

30 (1) a prior conviction may not be considered if a period of 10 or more  
31 years has elapsed between the date of the defendant's unconditional discharge on the

1 immediately preceding offense and commission of the present offense unless the prior  
2 conviction was for a capital, [AN] unclassified, or class A felony;

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

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

12 \* **Sec. 14.** AS 12.55.155(f) is amended to read:

13 (f) Under this section, if [IF] the state seeks to establish a factor in  
14 aggravation at sentencing or if the defendant seeks to establish a factor in mitigation  
15 at sentencing, written notice must be served on the opposing party and filed with the  
16 court not later than 10 days before the date set for imposition of sentence. Under this  
17 section, factors [FACTORS] in aggravation and factors in mitigation must be  
18 established by clear and convincing evidence before the court sitting without a jury.  
19 All findings must be set out with specificity.

20 \* **Sec. 15.** AS 12 is amended by adding a new chapter to read:

21 CHAPTER 58. CAPITAL PUNISHMENT.

22 ARTICLE 1. IMPOSITION OF SENTENCE.

23 Sec. 12.58.010. SENTENCING PROCEDURE FOR A CAPITAL FELONY.

24 (a) If, after a trial by jury, a defendant is convicted of a capital felony, the court shall  
25 conduct a separate sentencing proceeding before the trial jury as soon as practicable.  
26 If a jury trial has been waived or if the defendant has pled guilty, the sentencing  
27 proceeding shall be held before a jury impaneled for the purpose.

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

1 state and the defendant or the defendant's counsel shall be permitted to present oral  
2 statements. This subsection does not authorize the introduction of evidence in  
3 violation of the Constitution of the State of Alaska or the Constitution of the United  
4 States.

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

8 (1) beyond a reasonable doubt that an aggravating factor or factors exist  
9 to justify the death sentence;

10 (2) by a preponderance of the evidence that the aggravating factor or  
11 factors outweigh any mitigating factors found to exist by a preponderance of the  
12 evidence; and

13 (3) that the defendant should be sentenced to death.

14 Sec. 12.58.020. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)  
15 After considering the evidence and the recommended sentence, the court shall enter  
16 a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).  
17 The court may not impose the death sentence unless the jury (1) finds beyond a  
18 reasonable doubt at least one aggravating factor, (2) finds by a preponderance of the  
19 evidence that that factor or those factors are not outweighed by any mitigating factors  
20 found to exist by a preponderance of the evidence, and (3) recommends that the  
21 defendant be sentenced to death. If the jury findings include an aggravating factor or  
22 factors that are not outweighed by one or more of the mitigating factors and if the jury  
23 recommends a sentence of death, the court shall sentence the defendant to death. If  
24 a sentence of death is not recommended by the jury, the court shall sentence the  
25 defendant to a term of imprisonment under AS 12.55.125(a).

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

28 (1) aggravating factors that exist to justify the sentence; and

29 (2) mitigating factors considered but found insufficient to outweigh the  
30 aggravating factors.

31 (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. 12.58.030. AGGRAVATING FACTORS. In determining whether to  
3 impose a sentence of death, the following aggravating factors may be considered:

4 (1) the defendant's conduct during the commission of the offense  
5 manifested deliberate cruelty to another person in that it involved torture or an  
6 aggravated battery;

7 (2) the defendant's conduct caused the death of two or more persons,  
8 other than accomplices;

9 (3) the defendant's conduct created a risk of imminent physical injury  
10 to three or more persons, other than accomplices;

11 (4) the defendant has a prior conviction for a felony that involved the  
12 use of violence against a person or for murder under AS 11.41.100 - 11.41.110, former  
13 AS 11.15.010 or 11.15.030, or the law of another jurisdiction with substantially similar  
14 elements;

15 (5) the defendant knowingly directed the conduct constituting the  
16 offense at the President of the United States or the governor of this state;

17 (6) the defendant knowingly directed the conduct constituting the  
18 offense at an active or former law enforcement officer, prosecuting attorney, fire  
19 fighter, judicial officer, or correctional officer during or because of the exercise of  
20 official duties;

21 (7) the defendant committed the offense under an agreement that the  
22 defendant either pay or be paid for the commission of the offense, or for other  
23 pecuniary gain;

24 (8) the defendant was on release under AS 12.30.020 - 12.30.040 for  
25 another felony charge or conviction having assault as a necessary element;

26 (9) the defendant was a member of an organized group of five or more  
27 persons, and the offense was committed to further the criminal objectives of the group.

28 Sec. 12.58.040. MITIGATING FACTORS. In determining whether to impose  
29 the death sentence, all mitigating factors shall be considered, including, but not limited  
30 to, the following:

31 (1) the defendant committed the offense under a degree of duress,

1 coercion, threat, or compulsion that was insufficient to constitute a defense but that  
2 significantly affected the defendant's conduct;

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

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

6 (4) the defendant assisted authorities to detect or apprehend other  
7 persons who committed the offense with the defendant.

8 ARTICLE 2. SENTENCE REVIEW.

9 Sec. 12.58.100. REVIEW OF JUDGMENT OF CONVICTION OF A  
10 CAPITAL FELONY. (a) A judgment of conviction of a capital felony for which a  
11 sentence of death is imposed shall automatically be reviewed by the supreme court  
12 within 60 days after imposition of the sentence. This time limit may be extended by  
13 the supreme court for good cause.

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

17 (1) the sentence was imposed under the influence of passion, prejudice,  
18 or other arbitrary factor;

19 (2) the evidence supports the finding of an aggravating factor under  
20 AS 12.58.030 and whether the jury has properly considered mitigating factors under  
21 AS 12.58.040;

22 (3) the sentence is excessive or disproportionate to the penalty imposed  
23 in similar cases, considering both the crime and the defendant; and

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

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

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

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

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

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

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

5 Sec. 12.58.110. ISSUANCE OF DEATH WARRANT. If the supreme court  
6 upholds a judgment of conviction and sentence of death, the court shall issue a death  
7 warrant that specifies a date of execution. The specified date of execution must be not  
8 less than 30 days nor more than 60 days after the date of the warrant. The death  
9 warrant shall be delivered to the commissioner of corrections.

### 10 ARTICLE 3. ADMINISTRATION OF THE DEATH PENALTY.

11 Sec. 12.58.200. ADMINISTRATION OF THE DEATH PENALTY. The  
12 commissioner shall establish a procedure for the execution of a sentence of death  
13 ordered by the state supreme court at the time and place legally appointed.

14 Sec. 12.58.210. EXECUTION UNDER SUPREME COURT DEATH  
15 WARRANT. After receiving a supreme court warrant issued under AS 12.58.110, the  
16 commissioner shall specify the time and place of execution.

17 Sec. 12.58.220. MANNER OF EXECUTION. (a) The punishment of death  
18 shall be inflicted by continuous, intravenous administration of a lethal dose of sodium  
19 thiopental until death is pronounced by a licensed physician.

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

21 Sec. 12.58.230. RETURN OF DEATH WARRANT. After the execution the  
22 commissioner shall make a return upon the death warrant showing the time and place  
23 in which the defendant was executed.

### 24 ARTICLE 4. STAY OF EXECUTION.

25 Sec. 12.58.300. INCOMPETENCY OR PREGNANCY OF PERSON  
26 SENTENCED TO DEATH. If, after a sentence of death is imposed, the commissioner  
27 has reason to believe that the defendant has become incompetent to proceed with the  
28 execution or that the defendant is pregnant, the commissioner shall immediately give  
29 written notice to the court in which the sentence of death was imposed, the prosecuting  
30 attorney, and counsel for the defendant. The execution of sentence shall be stayed  
31 pending further order of the court.

1           Sec. 12.58.310. EXAMINATION INTO COMPETENCY. (a) On receipt of  
2 notice under AS 12.58.300 that the defendant is believed to be incompetent, the  
3 sentencing court shall examine the mental condition of the defendant in the same  
4 manner as provided for examining persons for competency to stand trial under  
5 AS 12.47.070.

6           (b) If the sentencing court finds that the defendant is incompetent, the court  
7 shall immediately certify that finding to the supreme court and the commissioner and  
8 shall enter an order for commitment in the same manner as provided for commitment  
9 under AS 12.47.110.

10           (c) If the sentencing court finds that the defendant is competent, the court shall  
11 immediately certify the finding to the supreme court and the commissioner. The  
12 supreme court shall issue and deliver another warrant to the commissioner under  
13 AS 12.58.110, together with a copy of the certified finding. Unless the sentencing  
14 court's finding is appealed in accordance with applicable court rule, the warrant shall  
15 specify a date of execution that is not less than 30 days nor more than 60 days after  
16 the date of the warrant.

17           Sec. 12.58.320. DISPOSITION PENDING PREGNANCY. (a) If the  
18 defendant is pregnant, the sentencing court shall immediately certify that finding to the  
19 supreme court and the commissioner. The supreme court shall issue an order staying  
20 the execution of the sentence of death during the pregnancy.

21           (b) When the defendant is no longer pregnant, the sentencing court shall  
22 immediately certify the finding to the supreme court and the commissioner. The  
23 supreme court shall issue and deliver another warrant under AS 12.58.110, together  
24 with a copy of the certified finding. Unless the sentencing court's finding is appealed  
25 under applicable court rule, the warrant shall specify a date of execution not less than  
26 30 days nor more than 60 days after the date of the warrant.

27                           ARTICLE 5. GENERAL PROVISIONS.

28           Sec. 12.58.900. DEFINITIONS. In this chapter,

- 29                           (1) "commissioner" means the commissioner of corrections;  
30                           (2) "department" means the Department of Corrections.

31   \* **Sec. 16.** AS 22.07.020(a) is amended to read:

1 (a) The court of appeals has appellate jurisdiction in actions and proceedings  
2 commenced in the superior court involving:

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

5 (2) post-conviction relief;

6 (3) children's court matters under AS 47.10.010(a)(1), including waiver  
7 of children's court jurisdiction over a minor under AS 47.10;

8 (4) extradition;

9 (5) habeas corpus;

10 (6) probation and parole; and

11 (7) bail.

12 \* **Sec. 17.** AS 22.07.020(b) is amended to read:

13 (b) Except for appeals of a death sentence, the [THE] court of appeals has  
14 jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court  
15 on the grounds that the sentence is excessive or too lenient and, in the exercise of this  
16 jurisdiction, may modify the sentence as provided by law and the state constitution.

17 \* **Sec. 18.** AS 47.10.010(e) is amended to read:

18 (e) When a minor who was at least 16 years of age at the time of the offense  
19 is arraigned on a charge for an offense specified in this subsection, AS 47.10.020 -  
20 47.10.090 and the Alaska Delinquency Rules do not apply to the offense for which the  
21 minor is arraigned or to any additional offenses joinable to it under the applicable rules  
22 of court governing criminal procedure. The minor shall be charged, prosecuted, and  
23 sentenced in the superior court in the same manner as an adult unless the minor is  
24 convicted of some offense other than an offense specified in this subsection, in which  
25 event the minor may attempt to prove, by a preponderance of the evidence, that the  
26 minor is amenable to treatment under this chapter. If the court finds that the minor is  
27 amenable to treatment under this chapter, the minor shall be treated as though the  
28 charges had been heard under AS 47.10.010 - 47.10.142, and the court shall order  
29 disposition of the charges of which the minor is convicted under AS 47.10.080(b). The  
30 provisions of this subsection apply when the minor is arraigned on a charge

31 (1) that is a capital felony, an unclassified felony, or a class A felony

1 and the felony is a crime against a person; or  
2 (2) of arson in the first degree.

3 \* **Sec. 19.** AS 47.10.060(f) is amended to read:

4 (f) For purposes of making a determination under (a) and (d) of this section,  
5 (1) the standard of proof is by a preponderance of the evidence; and  
6 (2) the burden of proof that a minor is not amenable to treatment under  
7 AS 47.10.010 - 47.10.142 is on the state; however, if the petition filed under  
8 AS 47.10.020 seeking to have the court declare a minor a delinquent is based on the  
9 minor's alleged commission of an offense that is **a capital felony**, an unclassified  
10 felony, or class A felony and that is a crime against a person, the minor

11 (A) is rebuttably presumed not to be amenable to treatment  
12 under AS 47.10.010 - 47.10.142; and

13 (B) has the burden of proof of showing that the minor is  
14 amenable to treatment under AS 47.10.010 - 47.10.142.

15 \* **Sec. 20.** The lieutenant governor shall place before the qualified voters of the state at the  
16 November 1996 general election a question advisory to the legislature of whether capital  
17 punishment should be an authorized sentence for murder in the first degree. The question  
18 shall appear on the ballot in the following form:

19 Q U E S T I O N

20 Should capital punishment for murder in the first degree as now  
21 authorized by law go into effect June 1, 1997?

22 Yes [ ] No [ ]

23 \* **Sec. 21.** Section 20 of this Act takes effect immediately.

24 \* **Sec. 22.** Except for sec. 20 of this Act, this Act takes effect June 1, 1997.