

SENATE BILL NO. 52

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS TAYLOR, Pearce

Introduced: 1/25/95

Referred: JUD, FIN

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 11.41.100(b) is amended to read:

7 (b) Murder in the first degree is **a capital** [AN UNCLASSIFIED] felony and
8 is punishable as provided in **AS12.55.125(a)** [AS 12.55].

9 * **Sec. 2.** AS12.30.020(a) is amended to read:

10 (a) A person charged with an offense shall, at that person's first appearance
11 before a judicial officer, be ordered released pending trial on the person's personal
12 recognizance or upon the execution of an unsecured appearance bond in an amount
13 specified by the judicial officer unless the offense is **a capital felony**, an unclassified
14 felony, or **a** class A felony or unless the officer determines that the release of the

1 person will not reasonably assure the appearance of the person as required, or will
2 pose a danger to other persons and the community. If the offense with which a person
3 is charged is a felony, on motion of the prosecuting attorney, the judicial officer may
4 allow the prosecuting attorney up to 48 hours to demonstrate that release of the person
5 on the person's personal recognizance or upon the execution of an unsecured
6 appearance bond will not reasonably assure the appearance of the person, or will pose
7 a danger to other persons and the community.

8 * **Sec. 3.** AS12.30.040(b) is amended to read:

9 (b) Notwithstanding the provisions of (a) of this section, if a person has been
10 convicted of an offense that [WHICH] is **a capital felony**, an unclassified felony, or
11 a class A felony, the person may not be released on bail either before sentencing or
12 pending appeal.

13 * **Sec. 4.** AS12.47.110(b) is amended to read:

14 (b) On or before the expiration of the initial 90-day period of commitment, the
15 court shall conduct a hearing to determine whether or not the defendant remains
16 incompetent. If the court finds by a preponderance of the evidence that the defendant
17 remains incompetent, the court may recommit the defendant for a second period of 90
18 days. The court shall determine at the expiration of the second 90-day period whether
19 the defendant has become competent. If at the expiration of the second 90-day period
20 the court determines that the defendant continues to be incompetent to stand trial, the
21 charges against the defendant shall be dismissed without prejudice and continued
22 commitment of the defendant shall be governed by the provisions relating to civil
23 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
24 crime involving force against a person and the court finds that the defendant presents
25 a substantial danger of physical injury to other persons and that there is a substantial
26 probability that the defendant will regain competency within a reasonable period of
27 time, in which case the court may extend the period of commitment for an additional
28 six months. If the defendant remains incompetent at the expiration of the additional
29 six-month period, the charges shall be dismissed without prejudice and either civil
30 commitment proceedings shall be instituted or the court shall order the release of the
31 defendant. If the defendant remains incompetent for five years after the charges have

1 been dismissed under this subsection, the defendant may not be charged again for an
2 offense arising out of the facts alleged in the original charges, except if the original
3 charge is a class A felony, [OR] unclassified felony, **or capital felony**.

4 * **Sec. 5.** AS 12.55.025(i) is amended to read:

5 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d),
6 12.55.155(f), and 12.55.165, **or in determining if a sentence of death should be**
7 **imposed under AS 12.58**, the preponderance of the evidence standard of proof applies
8 to sentencing proceedings.

9 * **Sec. 6.** AS 12.55.125(a) is amended to read:

10 (a) A defendant convicted of murder in the first degree shall be sentenced to
11 a definite term of imprisonment of at least 20 years but not more than 99 years, **or**
12 **shall be sentenced to death**. A defendant convicted of murder in the first degree, **but**
13 **not sentenced to death**, shall be sentenced to a mandatory term of imprisonment of
14 99 years when

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

18 (2) the defendant has been previously convicted of

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

21 (B) murder in the second degree under AS 11.41.110 or former
22 AS 11.15.030; or

23 (C) homicide under the laws of another jurisdiction when the
24 offense of which the defendant was convicted contains elements similar to first
25 degree murder under AS 11.41.100 or second degree murder under
26 AS 11.41.110; or

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

29 * **Sec. 7.** AS 12.55.125(f) is amended to read:

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

31 (1) imprisonment for the prescribed minimum term may not be

1 suspended under AS 12.55.080;

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

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

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

6 * **Sec. 8.** AS 12.55.145(a) is amended to read:

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

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

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

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

22 * **Sec. 9.** AS 12.55.155(f) is amended to read:

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

30 * **Sec. 10.** AS12 is amended by adding a new chapter to read:

31 CHAPTER 58. CAPITAL PUNISHMENT.

1 ARTICLE 1. IMPOSITION OF SENTENCE.

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

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

7 (b) During the sentencing proceeding, evidence may be presented as to any
8 aggravating or mitigating factor that the court considers to have probative value,
9 regardless of the admissibility of the evidence under the rules of evidence. The
10 defendant shall have an opportunity to rebut hearsay evidence that is admitted. The
11 state and the defendant or the defendant's counsel shall be permitted to present oral
12 statements. This subsection does not authorize the introduction of evidence in
13 violation of the Constitution of the State of Alaska or the Constitution of the United
14 States.

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

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

20 (2) by a preponderance of the evidence that the aggravating factor or
21 factors outweigh any mitigating factors found to exist by a preponderance of the
22 evidence; and

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

24 Sec. 12.58.020. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
25 After considering the evidence and the recommended sentence, the court shall enter
26 a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).
27 The court may not impose the death sentence unless the jury (1) finds beyond a
28 reasonable doubt at least one aggravating factor, (2) finds by a preponderance of the
29 evidence that that factor or those factors are not outweighed by any mitigating factors
30 found to exist by a preponderance of the evidence, and (3) recommends that the
31 defendant be sentenced to death. If the jury findings include an aggravating factor or

1 factors that are not outweighed by one or more of the mitigating factors and if the jury
2 recommends a sentence of death, the court shall sentence the defendant to death. If
3 a sentence of death is not recommended by the jury, the court shall sentence the
4 defendant to a term of imprisonment under AS 12.55.125(a).

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

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

8 (2) mitigating factors considered but found insufficient to outweigh the
9 aggravating factors.

10 (c) A judgment of conviction for which a sentence of death is imposed is
11 subject to automatic review under AS 12.58.100.

12 Sec. 12.58.030. AGGRAVATING FACTORS. In determining whether to
13 impose a sentence of death, the following aggravating factors may be considered:

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

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

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

21 (4) the defendant has a prior conviction for a felony that involved the
22 use of violence against a person or for murder under AS 11.41.100 - 11.41.110, former
23 AS11.15.010 or 11.15.030, or the law of another jurisdiction with substantially similar
24 elements;

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

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

31 (7) the defendant committed the offense under an agreement that the

1 defendant either pay or be paid for the commission of the offense, or for other
2 pecuniary gain;

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

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

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

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

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

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

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

18 ARTICLE 2. SENTENCE REVIEW.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ARTICLE 3. ADMINISTRATION OF THE DEATH PENALTY.

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

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

27 Sec. 12.58.220. MANNER OF EXECUTION. (a) The punishment of death
28 shall be inflicted

29 (1) by hanging by the neck until death is pronounced by a licensed
30 physician; or

31 (2) at the election of the defendant, by continuous, intravenous

1 administration of a lethal dose of sodium thiopental until death is pronounced by a
2 licensed physician.

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

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

7 ARTICLE 4. STAY OF EXECUTION.

8 Sec. 12.58.300. INCOMPETENCY OR PREGNANCY OF PERSON
9 SENTENCED TO DEATH. If, after a sentence of death is imposed, the commissioner
10 has reason to believe that the defendant has become incompetent to proceed with the
11 execution or that the defendant is pregnant, the commissioner shall immediately give
12 written notice to the court in which the sentence of death was imposed, the prosecuting
13 attorney, and counsel for the defendant. The execution of sentence shall be stayed
14 pending further order of the court.

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

20 (b) If the sentencing court finds that the defendant is incompetent, the court
21 shall immediately certify that finding to the supreme court and the commissioner and
22 shall enter an order for commitment in the same manner as provided for commitment
23 under AS12.47.110.

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

31 Sec. 12.58.320. DISPOSITION PENDING PREGNANCY. (a) If the

1 defendant is pregnant, the sentencing court shall immediately certify that finding to the
2 supreme court and the commissioner. The supreme court shall issue an order staying
3 the execution of the sentence of death during the pregnancy.

4 (b) When the defendant is no longer pregnant, the sentencing court shall
5 immediately certify the finding to the supreme court and the commissioner. The
6 supreme court shall issue and deliver another warrant under AS12.58.110, together
7 with a copy of the certified finding. Unless the sentencing court's finding is appealed
8 under applicable court rule, the warrant shall specify a date of execution not less than
9 30 days nor more than 60 days after the date of the warrant.

10 ARTICLE 5. GENERAL PROVISIONS.

11 Sec. 12.58.900. DEFINITIONS. In this chapter,

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

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

14 * **Sec. 11.** AS 22.07.020(a) is amended to read:

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

17 (1) criminal prosecution, **except prosecution for a capital felony for**
18 **which a death sentence is imposed;**

19 (2) post-conviction relief;

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

22 (4) extradition;

23 (5) habeas corpus;

24 (6) probation and parole; and

25 (7) bail.

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

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

31 * **Sec. 13.** The lieutenant governor shall place before the qualified voters of the state at the

1 November 1996 general election a question advisory to the legislature of whether capital
2 punishment should be an authorized sentence for murder in the first degree. The question
3 shall appear on the ballot in the following form:

4 Q U E S T I O N

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

7 Yes []

No []

8 * **Sec. 14.** Section 13 of this Act takes effect immediately.

9 * **Sec. 15.** Except for sec. 13 of this Act, this Act takes effect June 1, 1997.