

HOUSE BILL NO. 166

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES MASEK, Kohring

Introduced: 3/5/97

Referred: 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 allowing the imposition of the death penalty when certain
3 of those murders are committed against children; establishing sentencing procedures
4 for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of
5 Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate
6 Procedure."

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

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

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

12 (1) has been convicted of a violation of a law of this state that is, or
13 a law or ordinance of another state that would be if committed in this state, **a capital**

1 or [AN] unclassified felony described in AS 11, a class A felony, extortion, or a
 2 violation of a law or ordinance of this state or another jurisdiction that is a crime
 3 involving theft or dishonesty or a violation of gambling laws; or

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

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

7 (d) An attempt is

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

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

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

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

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

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

16 B misdemeanor.

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

18 (c) Solicitation is a

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

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

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

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

24 (5) class B misdemeanor if the crime solicited is a class A or class B

25 misdemeanor.

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

27 (h) Conspiracy is

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

30 (2) a class A felony if the object of the conspiracy is a crime
 31 punishable as an unclassified felony [OTHER THAN MURDER IN THE FIRST

1 DEGREE];

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

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

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

7 (i) In this section,

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

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

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

14 (B) involving controlled substances under AS 11.71, punishable
15 as an unclassified, **a** class A, or **a** class B felony.

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

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

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

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

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

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

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

6 (2) a class B or class C felony if the person has been previously
7 convicted of an offense in this state that is **a capital felony** an unclassified felony, a
8 class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 -
9 11.41.438 or of an offense in another jurisdiction with elements substantially similar
10 to an offense of this state described in this paragraph.

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

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

1 charge is a class A felony, an [OR] unclassified felony, or a capital felony.

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

3 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d),
4 12.55.155(f), and 12.55.165, or in determining if a sentence of death should be
5 imposed under AS 12.58, the preponderance of the evidence standard of proof applies
6 to sentencing proceedings.

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

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

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

16 (2) the defendant has been previously convicted of

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

19 (B) murder in the second degree under AS 11.41.110 or former
20 AS 11.15.030; or

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

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

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

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

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

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

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

3 **(4) a sentence of death may not be suspended in AS 12.55.080.**

4 * **Sec. 13.** AS 12.55.125(l) is amended to read:

5 (l) Notwithstanding any other provision of law, a defendant convicted of **a**
6 **capital**, an unclassified, or **a** class A felony offense, and not **sentenced to death or**
7 subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced
8 to a definite term of imprisonment of at least 40 years but not more than 99 years
9 when the defendant has been previously convicted of two or more most serious
10 felonies and the prosecuting attorney has filed a notice of intent to seek a definite
11 sentence under this subsection at the time the defendant was arraigned in superior
12 court. If a defendant is sentenced to a definite term under this section,

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

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

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

18 * **Sec. 14.** AS 12.55.145(a) is amended to read:

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

20 (1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

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

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

29 (C) two or more convictions arising out of a single, continuous
30 criminal episode during which there was no substantial change in the nature of
31 the criminal objective are considered a single conviction unless the defendant

1 was sentenced to consecutive sentences for the crimes; offenses committed
 2 while attempting to escape or avoid detection or apprehension after the
 3 commission of another offense are not part of the same criminal episode or
 4 objective;

5 (2) AS 12.55.125(1),

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

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

14 * **Sec. 15.** AS 12.55.155(f) is amended to read:

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

21 All findings must be set out with specificity.

22 * **Sec. 16.** AS 12.55.185(8) is amended to read:

23 (8) "most serious felony" means

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

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

30 * **Sec. 17.** AS 12 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.** (a) If, after a
3 trial by jury, a defendant is convicted of a capital felony, the court shall conduct a
4 separate sentencing proceeding before the trial jury as soon as practicable. If a jury
5 trial has been waived or if the defendant has pled guilty, the sentencing proceeding
6 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) After
25 considering the evidence and the recommended sentence, the court shall enter a
26 sentence of death or a term of imprisonment in accordance with AS 12.55.125(a). The
27 court may not impose the death sentence unless the jury (1) finds beyond a reasonable
28 doubt at least one aggravating factor, (2) finds by a preponderance of the evidence that
29 that factor or those factors are not outweighed by any mitigating factors found to exist
30 by a preponderance of the evidence, and (3) recommends that the defendant be
31 sentenced to death. If the jury findings include an aggravating factor or factors that

1 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 impose a
 13 sentence of death, the following aggravating factors may be considered: the
 14 defendant's conduct caused the death of a child under 18 years of age, the defendant,
 15 at the time of the offense, was at least two years older than the child, and the
 16 defendant

17 (1) was kidnaping, assaulting, or sexually assaulting, or was attempting
 18 to kidnap, assault, or sexually assault, the child; or

19 (2) had kidnaped, assaulted, or sexually assaulted the child.

20 **Sec. 12.58.040. Mitigating factors.** In determining whether to impose the
 21 death sentence, all mitigating factors shall be considered, including, but not limited to,
 22 the following:

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

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

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

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

31 **Article 2. Sentence Review.**

1 **Sec. 12.58.100. Review of judgment of conviction of a capital felony.** (a)
 2 A judgment of conviction of a capital felony for which a sentence of death is imposed
 3 shall automatically be reviewed by the supreme court within 60 days after imposition
 4 of the sentence. This time limit may be extended by the supreme court for good cause.

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

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

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

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

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

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

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

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

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

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

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

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

1 **Article 3. Administration of the Death Penalty.**

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

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

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

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

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

15 **Article 4. Stay of Execution.**

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

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

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

31 (c) If the sentencing court finds that the defendant is competent, the court shall

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

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

11 (b) When the defendant is no longer pregnant, the sentencing court shall
 12 immediately certify the finding to the supreme court and the commissioner. The
 13 supreme court shall issue and deliver another warrant under AS 12.58.110, together
 14 with a copy of the certified finding. Unless the sentencing court's finding is appealed
 15 under applicable court rule, the warrant shall specify a date of execution not less than
 16 30 days nor more than 60 days after the date of the warrant.

17 **Article 5. General Provisions.**

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

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

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

21 * **Sec. 18.** AS 22.07.020(a) is amended to read:

22 (a) The court of appeals has appellate jurisdiction in actions and proceedings
 23 commenced in the superior court involving [:]

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

26 (2) post-conviction relief;

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

29 (4) extradition;

30 (5) habeas corpus;

31 (6) probation and parole; and

1 (7) bail.

2 * **Sec. 19.** AS 22.07.020(b) is amended to read:

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

11 * **Sec. 20.** AS 47.12.030(a) is amended to read:

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

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; or

27 (2) of arson in the first degree.

28 * **Sec. 21.** AS 47.12.100(c) is amended to read:

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

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

31 (2) the burden of proof that a minor is not amenable to treatment under

1 this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking
2 to have the court declare a minor a delinquent is based on the minor's alleged
3 commission of an offense that is **a capital felony**, an unclassified felony, or **a** class
4 A felony and that is a crime against a person, the minor

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

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

9 * **Sec. 22.** APPLICABILITY TO CRIMINAL RULES. AS 12.58, added by sec. 17 of this
10 Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska
11 Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death
12 sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska
13 Supreme Court.

14 * **Sec. 23.** APPLICABILITY TO APPELLATE RULES. AS 12.58.100, added by sec. 17
15 of this Act, has the effect of amending Rules 204, 209, 210, and 212, Alaska Rules of
16 Appellate Procedure, by establishing procedures and limitations on procedures relating to the
17 filing and disposition of appeals of sentences in cases in which the death penalty is imposed.