

**HOUSE BILL NO. 9**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES CHENAULT, Ramras**

**Introduced: 1/20/09**

**Referred: Judiciary, Finance**

**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

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

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

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

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

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

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

17 (8) has demonstrated

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

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

24 (C) unfitness because of physical or mental disability;

25 (9) engaged in unprofessional conduct, in sexual misconduct, or in  
26 lewd or immoral conduct in connection with the delivery of professional services to  
27 patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by  
28 the board in regulations adopted under this chapter, or attempted sexual contact with a  
29 patient outside the scope of generally accepted methods of examination or treatment of  
30 the patient, regardless of the patient's consent or lack of consent, during the term of the  
31 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. (a) The board may impose a sanction if the board finds  
 16 after a hearing that a licensee

17 (1) secured a license through deceit, fraud, or intentional  
 18 misrepresentation;

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

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

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

24 (A) a class A or unclassified felony or a crime in another  
 25 jurisdiction with elements similar to a class A or unclassified felony in this  
 26 jurisdiction;

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

31 (C) a crime involving the unlawful procurement, sale,

1 prescription, or dispensing of drugs;

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

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

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

9 (8) has demonstrated

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

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

16 (C) unfitness because of physical or mental disability;

17 (9) engaged in unprofessional conduct, in sexual misconduct, or in  
18 lewd or immoral conduct in connection with the delivery of professional services to  
19 patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by  
20 the board in regulations adopted under this chapter, or attempted sexual contact with a  
21 patient outside the scope of generally accepted methods of examination or treatment of  
22 the patient, regardless of the patient's consent or lack of consent, during the term of the  
23 physician-patient relationship, as defined by the board in regulations adopted under  
24 this chapter, unless the patient was the licensee's spouse at the time of the contact or,  
25 immediately preceding the physician-patient relationship, was in a dating, courtship,  
26 or engagement relationship with the licensee;

27 (10) has violated AS 18.16.010;

28 (11) has violated any code of ethics adopted by regulation by the  
29 board;

30 (12) has denied care or treatment to a patient or person seeking  
31 assistance from the physician if the only reason for the denial is the failure or refusal

1 of the patient to agree to arbitrate as provided in AS 09.55.535(a); or

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

8 \* **Sec. 4.** AS 09.65.210 is amended to read:

9 **Sec. 09.65.210. Damages resulting from commission of a felony or while**  
10 **under the influence of alcohol or drugs.** A person who suffers personal injury or  
11 death or the person's personal representative under AS 09.55.570 or 09.55.580 may  
12 not recover damages for the personal injury or death if the injury or death occurred  
13 while the person was

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

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

22 (A) the felonious conduct; and

23 (B) that the felonious conduct substantially contributed to the  
24 personal injury or death;

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

30 (A) the felonious conduct; and

31 (B) that the conduct during the flight or apprehension

1 substantially contributed to the injury or death;

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

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

10 (A) the violation of AS 28.35.030; and

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

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

14 (d) An attempt is

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

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

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

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

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

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

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

25 (c) Solicitation is

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

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

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

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

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

2 (6) a class B misdemeanor if the crime solicited is a class A or class B  
3 misdemeanor.

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

5 (i) Conspiracy is

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

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

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

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

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

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

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

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

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

23 (D) that is terroristic threatening in the first degree under  
24 AS 11.56.807.

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

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

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

29 (a) A person charged with an offense shall, at that person's first appearance  
30 before a judicial officer, be ordered released pending trial on the person's personal  
31 recognizance or upon the execution of an unsecured appearance bond in an amount

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

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

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

- 14 (1) **a capital felony**, an unclassified felony, or a class A felony; or  
 15 (2) a class B or class C felony if the person has been previously  
 16 convicted of an offense in this state that is **a capital felony**, an unclassified felony, a  
 17 class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 -  
 18 11.41.438 or of an offense in another jurisdiction with elements substantially similar  
 19 to an offense of this state described in this paragraph.

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

21 (b) On or before the expiration of the initial 90-day period of commitment, the  
 22 court shall conduct a hearing to determine whether or not the defendant remains  
 23 incompetent. If the court finds by a preponderance of the evidence that the defendant  
 24 remains incompetent, the court may recommit the defendant for a second period of 90  
 25 days. The court shall determine at the expiration of the second 90-day period whether  
 26 the defendant has become competent. If, at the expiration of the second 90-day period,  
 27 the court determines that the defendant continues to be incompetent to stand trial, the  
 28 charges against the defendant shall be dismissed without prejudice, and continued  
 29 commitment of the defendant shall be governed by the provisions relating to civil  
 30 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a  
 31 crime involving force against a person and the court finds that the defendant presents a

1 substantial danger of physical injury to other persons and that there is a substantial  
 2 probability that the defendant will regain competency within a reasonable period of  
 3 time, in which case the court may extend the period of commitment for an additional  
 4 six months. If the defendant remains incompetent at the expiration of the additional  
 5 six-month period, the charges shall be dismissed without prejudice, and continued  
 6 commitment proceedings shall be governed by the provisions relating to civil  
 7 commitment under AS 47.30.700 - 47.30.915. If the defendant remains incompetent  
 8 for five years after the charges have been dismissed under this subsection, the  
 9 defendant may not be charged again for an offense arising out of the facts alleged in  
 10 the original charges, except if the original charge is a class A felony, an [OR]  
 11 unclassified felony, or a capital felony.

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

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

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

16 (i) Except as provided by AS 12.55.125(a)(3), 12.55.145(d), 12.55.155(f), and  
 17 12.55.165, or in determining if a sentence of death should be imposed under  
 18 AS 12.58, the preponderance of the evidence standard of proof applies to sentencing  
 19 proceedings.

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

21 (a) A defendant convicted of murder in the first degree [OR MURDER OF  
 22 AN UNBORN CHILD UNDER AS 11.41.150(a)(1)] shall be sentenced to a definite  
 23 term of imprisonment of at least 20 years but not more than 99 years, or shall be  
 24 sentenced to death. A defendant convicted of murder of an unborn child under  
 25 AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at  
 26 least 20 years but not more than 99 years. A defendant convicted of murder in the  
 27 first degree, but not sentenced to death, shall be sentenced to a mandatory term of  
 28 imprisonment of 99 years when

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

1 (2) the defendant has been previously convicted of

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

4 (B) murder in the second degree under AS 11.41.110 or former  
5 AS 11.15.030; or

6 (C) homicide under the laws of another jurisdiction when the  
7 offense of which the defendant was convicted contains elements similar to first  
8 degree murder under AS 11.41.100 or second degree murder under  
9 AS 11.41.110;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) AS 12.55.125(l),

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

28 (B) commission of and conviction for offenses relied on as  
29 prior most serious felony offenses must occur in the following order:  
30 conviction for the first offense must occur before commission of the second  
31 offense, and conviction for the second offense must occur before commission

1 of the offense for which the defendant is being sentenced;

2 (3) AS 12.55.135(g),

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

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

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

18 (4) AS 12.55.125(i),

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

22 (B) a felony conviction in another jurisdiction making it a  
23 crime to commit any lewd and lascivious act upon a child under the age of 16  
24 years, with the intent of arousing, appealing to, or gratifying the sexual desires  
25 of the defendant or the victim is a prior conviction for a sexual felony;

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

1 objective.

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

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

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

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

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

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

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

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

27 (10) "most serious felony" means

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

31 (B) an attempt, or conspiracy to commit, or criminal

1 solicitation under AS 11.31.110 of, a capital or an unclassified felony  
 2 prescribed under AS 11.41;

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

4 **Chapter 58. Capital Punishment.**

5 **Article 1. Election to Seek Death Penalty.**

6 **Sec. 12.58.010. Prosecutor's election to seek death penalty.** The district  
 7 attorney of the district in which the prosecution of a capital felony is occurring shall  
 8 determine whether to seek the death penalty against the defendant with the  
 9 concurrence of the attorney general. If the district attorney elects to seek the death  
 10 penalty and the attorney general concurs, the district attorney shall give notice of  
 11 election and the applicable aggravating factor or factors in AS 12.58.040 to the court,  
 12 the defendant, and the defendant's attorney within 10 days of arraignment of the  
 13 defendant on the capital felony indictment, or within 10 days of arraignment of the  
 14 defendant if indictment has been waived.

15 **Article 2. Imposition of Sentence.**

16 **Sec. 12.58.020. Sentencing procedure for a capital felony.** (a) If a defendant  
 17 is convicted of a capital felony, the court shall impanel a new jury to consider the  
 18 sentencing of the defendant under this chapter as soon as practicable.

19 (b) During the sentencing proceeding, evidence that the court considers to  
 20 have probative value may be presented as to any aggravating factor under  
 21 AS 12.58.040 or any mitigating factor, regardless of the admissibility of the evidence  
 22 under the rules of evidence. The defendant shall have an opportunity to rebut hearsay  
 23 evidence that is admitted. The state and the defendant or the defendant's counsel shall  
 24 be permitted to present oral statements. This subsection does not authorize the  
 25 introduction of evidence in violation of the Constitution of the State of Alaska or the  
 26 Constitution of the United States.

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

30 (1) that there is no reasonable doubt that at least one aggravating factor  
 31 under AS 12.58.040 exists to justify the death sentence and the aggravating factor was

1 noticed by the district attorney under AS 12.58.010;

2 (2) that there is no reasonable doubt that the aggravating factor or  
3 factors outweigh any mitigating factors found to exist by a preponderance of the  
4 evidence; and

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

6 **Sec. 12.58.030. Sentence imposition for capital felony.** (a) After considering  
7 the evidence and the recommended sentence, the court shall enter a sentence of death  
8 or a term of imprisonment in accordance with AS 12.55.125(a). The court may not  
9 impose the death sentence unless the jury (1) finds that there is no reasonable doubt  
10 that at least one aggravating factor under AS 12.58.040 exists and the aggravating  
11 factor was noticed by the district attorney or attorney general under AS 12.58.010, (2)  
12 that there is no reasonable doubt that the aggravating factor or factors are not  
13 outweighed by any mitigating factors found to exist by a preponderance of the  
14 evidence, and (3) recommends that the defendant be sentenced to death. If the jury  
15 findings include an aggravating factor or factors under AS 12.58.040 that are not  
16 outweighed by one or more of the mitigating factors and if the jury recommends a  
17 sentence of death, the court shall sentence the defendant to death unless the court finds  
18 the defendant was mentally retarded under AS 12.58.060. If a sentence of death is not  
19 recommended by the jury, the court shall sentence the defendant to a term of  
20 imprisonment under AS 12.55.125(a).

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

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

24 (2) mitigating factors considered but found insufficient to outweigh the  
25 aggravating factors.

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

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

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

1 child, and the defendant

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

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

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

8 (3) at the time of the act resulting in the death, the defendant was  
9 serving a term of imprisonment, had escaped, or was on authorized or unauthorized  
10 leave in or from a state facility or program for the incarceration or treatment of  
11 persons adjudicated guilty of crimes;

12 (4) the defendant committed the murder under an agreement to receive  
13 money or any other thing of value for committing the murder;

14 (5) the defendant solicited another person to commit the murder and  
15 had paid or had agreed to pay money or any other thing of value for the other person's  
16 committing the murder;

17 (6) the defendant committed the murder to obtain or maintain the  
18 defendant's membership or to advance the defendant's position in the hierarchy of an  
19 organization, association, or identifiable group;

20 (7) the victim was a judge, juror or former juror, prospective, current,  
21 or former witness in an adjudicative proceeding, prosecuting attorney, deputy  
22 prosecuting attorney, defense attorney, member of the board of parole, or probation or  
23 parole officer, and the murder was related to the exercise of official duties performed  
24 or to be performed by the victim;

25 (8) the defendant committed the murder to conceal the commission of  
26 a crime or to protect or conceal the identity of any person committing a crime;

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

29 (10) at the time the defendant committed the murder, there existed a  
30 court order, issued in this or any other state, that prohibited the defendant from  
31 contacting the victim, molesting the victim, or disturbing the peace of the victim, and

1 the defendant had knowledge of the existence of that order.

2 **Sec. 12.58.050. Mitigating factors.** In determining whether to impose the  
3 death sentence, all mitigating factors shall be considered, including the following:

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

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

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

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

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

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

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

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

19 (9) the capacity of the defendant to appreciate the wrongfulness of the  
20 defendant's conduct or to conform the defendant's conduct to the requirements of law  
21 was substantially impaired as a result of mental disease or defect; however, a person  
22 found to be mentally retarded under AS 12.58.060 may not be sentenced to death;

23 (10) there is not a likelihood that the defendant will pose a danger to  
24 others in the future.

25 **Sec. 12.58.060. Finding of mental retardation.** If the jury recommends a  
26 sentence of death, the court shall determine if the defendant was mentally retarded  
27 under the definition of mental retardation in this section at the time the crime was  
28 committed. A diagnosis of mental retardation shall be documented by a licensed  
29 psychiatrist or licensed psychologist designated by the court who is an expert in the  
30 diagnosis and evaluation of mental retardation. The defense shall establish mental  
31 retardation by a preponderance of the evidence, and the court shall make a finding as

1 to the existence of mental retardation. If the court makes the finding of mental  
 2 retardation, the court shall proceed to sentence the defendant to a term of  
 3 imprisonment under AS 12.55.125(a). In this section,

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

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

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

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

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

15 (B) both significantly subaverage general intellectual  
 16 functioning and deficits in adaptive behavior that were manifested during the  
 17 developmental period;

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

### 20 **Article 3. Sentence Review.**

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

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

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

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

1 under AS 12.58.050;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4                           **Article 5. Stay of Execution.**

5           **Sec. 12.58.300. Incompetency or pregnancy of person sentenced to death.**  
6 If, after a sentence of death is imposed, the commissioner has reason to believe that  
7 the defendant has become incompetent to proceed with the execution or that the  
8 defendant is pregnant, the commissioner shall immediately give written notice to the  
9 court in which the sentence of death was imposed, the prosecuting attorney, and  
10 counsel for the defendant. The execution of sentence shall be stayed pending further  
11 order of the court.

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

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

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

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

31           (b) When the defendant is no longer pregnant, the sentencing court shall

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

#### 6 **Article 6. General Provisions.**

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

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

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

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

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

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

15 (2) post-conviction relief;

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

18 (4) extradition;

19 (5) habeas corpus;

20 (6) probation and parole; and

21 (7) bail.

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

23 (b) Except as limited in AS 12.55.120 **and in this subsection**, the court of  
 24 appeals has jurisdiction to hear appeals of unsuspended sentences of imprisonment  
 25 exceeding two years for a felony offense or 120 days for a misdemeanor offense  
 26 imposed by the superior court on the grounds that the sentence is excessive, or a  
 27 sentence of any length on the grounds that it is too lenient. The court of appeals, in the  
 28 exercise of this jurisdiction, may modify the sentence as provided by law and the state  
 29 constitution. **The court of appeals does not have jurisdiction to hear appeals of**  
 30 **death sentences.**

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

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

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

17 (2) of arson in the first degree;

18 (3) that is a class B felony and the felony is a crime against a person in  
 19 which the minor is alleged to have used a deadly weapon in the commission of the  
 20 offense and the minor was previously adjudicated as a delinquent or convicted as an  
 21 adult, in this or another jurisdiction, as a result of an offense that involved use of a  
 22 deadly weapon in the commission of a crime against a person or an offense in another  
 23 jurisdiction having elements substantially identical to those of a crime against a  
 24 person, and the previous offense was punishable as a felony; in this paragraph, "deadly  
 25 weapon" has the meaning given in AS 11.81.900(b); or

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

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

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

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

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

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

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

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

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

12 \* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

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

19 (b) AS 12.58.100, added by sec. 21 of this Act, has the effect of amending Rules 204,  
20 209, 210, and 212, Alaska Rules of Appellate Procedure, by establishing procedures and  
21 limitations on procedures relating to the filing and disposition of appeals of sentences in cases  
22 in which the death penalty is imposed.