

Introduced: 4/2/81
Referred: Judiciary

1 IN THE HOUSE

BY HURLBERT

2 HOUSE BILL NO. 458

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing capital punishment, classifying
7 murder in the first degree as a capital felony, and
8 establishing sentencing procedures for capital felon-
9 ies."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 11.41.100(b) is amended to read:

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

14 * Sec. 2. AS 12.55.125(a) is amended to read:

15 (a) A defendant convicted of a capital felony [MURDER IN THE
16 FIRST DEGREE] shall be sentenced to a definite term of imprisonment of
17 at least 20 years but not more than 99 years or shall be sentenced to
18 death.

19 * Sec. 3. AS 12.55 is amended by adding a new section to read:

20 Sec. 12.55.115. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a) A
21 judgment of conviction of a capital felony for which a sentence of
22 death is imposed is subject to automatic review by the supreme court
23 within 60 days after imposition of the sentence. This time limit may be
24 extended by the supreme court. A review under this section has prior-
25 ity over all other cases and the case shall be heard in accordance with
26 rules adopted by the supreme court. On review, the court shall deter-
27 mine if

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

1 (2) the evidence supports the finding of an aggravating
2 factor under AS 12.55.180; and

3 (3) the sentence is excessive or disproportionate to the
4 penalty imposed in similar cases, considering both the crime and the
5 defendant.

6 (b) If the supreme court upholds a judgment of conviction and
7 sentence of death, the court shall specify the time, place, and manner
8 of execution.

9 * Sec. 4. As 12.55 is amended by adding new sections to read:

10 Sec. 12.55.177. SENTENCING PROCEDURE FOR CAPITAL FELONY. (a)
11 When, after a trial by jury, a defendant is convicted of a capital
12 felony, the court shall conduct a separate sentencing proceeding before
13 the trial jury as soon as practicable. If a jury trial has been waived,
14 or if the defendant pled guilty, the sentencing proceeding shall be
15 held before a jury impaneled for the purpose.

16 (b) In the sentencing proceeding evidence may be presented as to
17 any aggravating or mitigating factor which the court considers to have
18 probative value regardless of the admissibility of the evidence under
19 the exclusionary rules of evidence, provided the defendant has an
20 opportunity to rebut hearsay statements. The state and the defendant
21 or his counsel shall be permitted to present oral argument. This
22 subsection does not authorize the introduction of evidence secured in
23 violation of the Constitution of the State of Alaska or the Constitu-
24 tion of the United States.

25 Sec. 12.55.178. ADVISORY SENTENCE FOR CAPITAL FELONY. After
26 hearing the evidence, the jury shall deliberate and give an advisory
27 sentence to the court. The advisory sentence shall include a finding
28 as to whether

29 (1) aggravating factors exist to justify the death sentence;

1 (2) mitigating factors exist which outweigh the aggravating
2 factors;

3 (3) the defendant should be sentenced to a term of imprison-
4 ment or to death.

5 Sec. 12.55.179. SENTENCE FOR CAPITAL FELONY. (a) The court,
6 after considering the evidence and the advisory sentence shall enter a
7 sentence of death or a term of imprisonment in accordance with AS 12.-
8 55.125(a). If the court imposes a sentence of death, it shall make
9 written findings of

10 (1) aggravating factors which exist to justify the sentence;
11 and

12 (2) mitigating factors considered by the court.

13 (b) A judgment of conviction for which a sentence of death is
14 imposed is subject to automatic review under AS 12.55.115.

15 Sec. 12.55.180. AGGRAVATING FACTORS. The death sentence may not
16 be imposed unless at least one of the following aggravating factors is
17 found to exist and is not outweighed by mitigating factors:

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

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

23 (3) the defendant has a prior conviction for a felony that
24 involved the use of violence to a person;

25 (4) the defendant committed the offense pursuant to an
26 agreement that he either pay or be paid for the commission of the
27 offense, or for other pecuniary gain;

28 (5) the defendant was on release for another felony charge
29 or conviction having assault as a necessary element;

1 (6) the defendant knowingly directed the conduct constituting
2 the offense at an active officer of the court or at an active or former
3 judicial officer, prosecuting attorney, law enforcement officer, correc-
4 tional employee, or fireman during or because of the exercise of his
5 official duties;

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

9 Sec. 12.55.181. MITIGATING FACTORS. The death sentence may not
10 be imposed if mitigating factors are found to outweigh aggravating
11 factors. All mitigating factors shall be considered including the
12 following:

13 (1) the defendant committed the offense under some degree of
14 duress, coercion, threat, or compulsion insufficient to constitute a
15 defense, but which significantly affected his conduct;

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

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

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

22 * Sec. 5. AS 22.07.020(a)(1) is amended to read:

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

25 * Sec. 6. AS 22.07.020(b) is amended to read:

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

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modify the sentence as provided by law and the state constitution.