

Introduced: 1/28/83
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY PESTINGER, WARD, FLOOD
AND LISKA

2

HOUSE BILL NO. 140

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH 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 felo-
9 nies."

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)
21 A 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
24 be extended by the supreme court. A review under this section has
25 priority over all other cases and the case shall be heard in accor-
26 dance with rules adopted by the supreme court. On review, the court
27 shall determine if

28 (1) the sentence was imposed under the influence of pas-
29 sion, 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
13 before the trial jury as soon as practicable. If a jury trial has
14 been waived, or if the defendant pled guilty, the sentencing proceed-
15 ing shall be 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 that 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 the defendant's counsel shall be permitted to present oral argu-
22 ment. This subsection does not authorize the introduction of evidence
23 secured in violation of the Constitution of the State of Alaska or the
24 Constitution 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

1 sentence;

2 (2) mitigating factors exist that outweigh the aggravating
3 factors;

4 (3) the defendant should be sentenced to a term of impri-
5 sonment or to death.

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

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

13 (2) mitigating factors considered by the court.

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

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

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

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

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

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

29 (5) the defendant was on release for another felony charge

1 or conviction having assault as a necessary element;

2 (6) the defendant knowingly directed the conduct constitut-
3 ing the offense at an active officer of the court or at an active or
4 former judicial officer, prosecuting attorney, law enforcement offi-
5 cer, correctional employee, or fireman during or because of the exer-
6 cise of official duties;

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

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

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

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

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

21 (4) the defendant assisted authorities to detect or appre-
22 hend other persons who committed the offense with the defendant.

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

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

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

27 (b) Except for appeals of a death sentence, the [THE] court of
28 appeals has jurisdiction to hear appeals of sentences of imprisonment
29 imposed by the superior court on the grounds that the sentence is

1 excessive or too lenient and, in the exercise of this jurisdiction,
2 may modify the sentence as provided by law and the state constitution.