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Referred: Health, Education &  
Social Services, Judiciary  
and Finance

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1 IN THE HOUSE

2 HOUSE BILL NO. 163

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH 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 is amended by adding a new section to read:

15 Sec. 12.55.115. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)  
16 In every case in which the jury has returned a verdict or finding  
17 imposing the death penalty, the defendant shall be considered to have  
18 made an application for modification of the verdict or finding under  
19 Criminal Rule 35. In ruling on the application, the judge shall  
20 review the evidence, consider, take into account, and be guided by the  
21 aggravating and mitigating circumstances referred to in AS 12.55.180 -  
22 12.55.181, and shall make a determination as to whether the jury's  
23 findings and verdicts that the aggravating circumstances outweigh the  
24 mitigating circumstances are contrary to law or the evidence present-  
25 ed. The judge shall set out the reasons for these findings.

26 (b) A judgment of conviction of a capital felony for which a  
27 sentence of death is imposed is subject to automatic review by the  
28 supreme court within 60 days after imposition of the sentence. This  
29 time limit may be extended by the supreme court. A review under this

1 section has priority over all other cases and the case shall be heard  
2 in accordance with rules adopted by the supreme court. The review  
3 shall include a determination of whether

4 (1) the sentence was imposed under the influence of pas-  
5 sion, prejudice, or other arbitrary factor;

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

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

11 (c) If the supreme court upholds a judgment of conviction and  
12 sentence of death, the court shall specify the time of execution and  
13 the correctional facility in which the execution shall take place.

14 \* Sec. 3. 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. 4. AS 12.55 is amended by adding new sections to read:

20 Sec. 12.55.177. SENTENCING PROCEDURE FOR CAPITAL FELONY. (a)  
21 When, after a trial by jury, a defendant is convicted of a capital  
22 felony, the court shall conduct a separate sentencing proceeding  
23 before the trial jury as soon as practicable. If a jury trial has  
24 been waived, or if the defendant pled guilty, the sentencing proceed-  
25 ing shall be held before a jury impaneled for the purpose.

26 (b) In the sentencing proceeding evidence may be presented as to  
27 any aggravating or mitigating factor that the court considers to have  
28 probative value regardless of the admissibility of the evidence under  
29 the exclusionary rules of evidence, provided the defendant has an

1 opportunity to rebut hearsay statements. The state and the defendant  
2 or the defendant's counsel shall be permitted to present oral argu-  
3 ment. This subsection does not authorize the introduction of evidence  
4 secured in violation of the Constitution of the State of Alaska or the  
5 Constitution of the United States.

6 Sec. 12.55.179. SENTENCE FOR CAPITAL FELONY. (a) The jury,  
7 after considering the evidence shall enter a sentence of death or a  
8 term of imprisonment in accordance with AS 12.55.125(a). If the jury  
9 enters a sentence of death, it shall make written findings of

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

12 (2) mitigating factors considered by the jury.

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 the defendant either pay or be paid for the commission  
27 of the 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 constitut-  
2 ing the offense at an active officer of the court or at an active or  
3 former judicial officer, prosecuting attorney, law enforcement offi-  
4 cer, correctional employee, or fireman during or because of the exer-  
5 cise of official duties;

6           (7) the defendant was a member of an organized group of  
7 five or more persons, and the offense was committed to further the  
8 criminal 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  
14 of duress, coercion, threat, or compulsion insufficient to constitute  
15 a defense, but which significantly affected the defendant's 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 appre-  
21 hend other persons who committed the offense with the defendant.

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,

1        may modify the sentence as provided by law and the state constitution.  
2        \* Sec. 7. AS 33.30 is amended by adding a new section to read:  
3                Sec. 33.30.095. ADMINISTRATION OF THE DEATH PENALTY. (a)    The  
4        commissioner shall establish a procedure for the execution of a sen-  
5        tence of death ordered by the state supreme court, at the time and  
6        place legally appointed.  
7                (b) The punishment of death shall be inflicted either by hanging  
8        by the neck until death is pronounced by a licensed physician or, at  
9        the election of the defendant, by continuous, intravenous administra-  
10       tion of a lethal dose of sodium thiopental until death is pronounced  
11       by a licensed physician.  
12                (c) A death sentence shall be carried out within a state correc-  
13       tional facility.  
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