

Introduced: 1/19/87  
Referred: Health, Education and  
Social Services, Judiciary  
and Finance

5-0092A

1 IN THE SENATE BY ABOOD AND KELLY  
2 SENATE BILL NO. 7  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH 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 12.30.040(b) is amended to read:  
15 (b) Notwithstanding the provisions of (a) of this section, if a  
16 person has been convicted of an offense that [WHICH] is a capital  
17 felony, an unclassified felony or a class A felony, the person may not  
18 be released on bail either before sentencing or pending appeal.  
19 \* Sec. 3. AS 12.55 is amended by adding a new section to read:  
20 Sec. 12.55.117. 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. The case shall be heard in accordance  
26 with rules adopted by the supreme court. On review, the court shall  
27 determine whether  
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 issue a death warrant that spec-  
8 ifies a date of execution. The date of execution shall be not less  
9 than 30 days nor more than 60 days after the date of the warrant. The  
10 death warrant shall be delivered to the commissioner of corrections.  
11 The commissioner shall specify the time, place, and manner of exe-  
12 cution after providing a person sentenced to death an opportunity to  
13 choose to be executed by lethal injection or by firing squad.

14 (c) After the execution, the commissioner of corrections shall  
15 return the death warrant to the court that issued the warrant, with  
16 notations as to the time, place, and manner of execution.

17 (d) The Department of Corrections shall adopt regulations gov-  
18 erning an execution.

19 \* Sec. 4. AS 12.55.125(a) is amended to read:

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

24 \* Sec. 5. AS 12.55 is amended by adding new sections to read:

25 Sec. 12.55.177. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a)  
26 If, after trial by jury, the defendant is convicted of a capital  
27 felony, the court shall conduct a separate sentencing proceeding  
28 before the trial jury as soon as practicable. If a jury trial has  
29 been waived or if the defendant pleads guilty, the sentencing

1 proceeding shall be held before a jury impaneled for the purpose.

2 (b) In the sentencing proceeding evidence may be presented as to  
3 any matter relevant to the nature of the crime, the character of the  
4 defendant, or any aggravating or mitigating factor that the court  
5 considers to have probative value, regardless of the admissibility of  
6 the evidence under the exclusionary rules of evidence, provided the  
7 defendant has an opportunity to rebut hearsay statements. The state  
8 and the defendant or the defendant's counsel shall be permitted to  
9 present oral argument. This subsection does not authorize the intro-  
10 duction of evidence secured in violation of the Constitution of the  
11 State of Alaska or the Constitution of the United States.

12 (c) After hearing the evidence, the jury shall deliberate and  
13 recommend a sentence to the court. The recommended sentence must  
14 include written findings of whether

15 (1) aggravating factors exist to justify the death sen-  
16 tence;

17 (2) mitigating factors exist that outweigh the aggravating  
18 factors; and

19 (3) the defendant should be sentenced to a term of impris-  
20 onment or to death.

21 Sec. 12.55.179. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)  
22 The court, after considering the evidence and the recommended sen-  
23 tence, shall enter a sentence of death or a term of imprisonment in  
24 accordance with AS 12.55.125(a). The death sentence may not be im-  
25 posed unless the jury finds at least one aggravating factor that is  
26 not outweighed by the mitigating factors, and the jury recommends that  
27 the defendant be sentenced to death. If the jury findings include an  
28 aggravating factor that is not outweighed by the mitigating factors,  
29 and the jury recommends that the defendant be sentenced to death, the

1 court shall sentence the defendant to death. If a sentence of death  
2 is not recommended by the jury, the court shall sentence the defendant  
3 to a term of imprisonment.

4 (b) If the court enters a sentence of death, it shall make  
5 written findings of

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

8 (2) mitigating factors considered by the court.

9 (c) A judgment of conviction for which a sentence of death is  
10 imposed is subject to automatic review under AS 12.55.117.

11 Sec. 12.55.180. AGGRAVATING FACTORS. In determining whether to  
12 impose a sentence of death, the following aggravating factors may be  
13 considered:

14 (1) the defendant's conduct during the commission of the  
15 offense manifested deliberate cruelty to another person in that it  
16 involved sexual assault in the first degree, kidnapping, or assault in  
17 the first degree;

18 (2) the defendant's conduct caused the death of two or more  
19 persons, other than accomplices;

20 (3) the defendant has a prior conviction for murder under  
21 AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or a law  
22 from another jurisdiction with substantially similar elements;

23 (4) the defendant knowingly directed the conduct constitut-  
24 ing the offense at the President of the United States or the governor  
25 of this state;

26 (5) the defendant knowingly directed the conduct constitut-  
27 ing the offense at a law enforcement, judicial officer, or correction-  
28 al officer during or because of the exercise of official duties;

29 (6) the defendant killed a child nine years of age or

1 younger during the commission of the offense;

2 (7) the defendant committed the offense under an agreement  
3 that the defendant either pay or be paid for the commission of the  
4 offense, or for other pecuniary gain;

5 (8) the defendant committed the offense while avoiding  
6 lawful arrest or escaping from lawful confinement;

7 (9) the defendant committed the offense after escaping from  
8 the lawful custody of a peace officer or place of lawful confinement.

9 Sec. 12.55.181. MITIGATING FACTORS. In determining whether to  
10 impose the death sentence, all mitigating factors shall be considered,  
11 including, but not limited to, the following:

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

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

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

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

21 Sec. 12.55.182. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO  
22 DEATH. (a) If, after imposing a sentence of death, there is reason  
23 to believe the defendant has become incompetent to proceed with the  
24 execution, or is pregnant, the commissioner of corrections shall  
25 immediately give written notice to the court in which the sentence of  
26 death was imposed, the prosecuting attorney, and counsel for the  
27 defendant. The execution of sentence shall be stayed pending further  
28 order of the court.

29 (b) On receipt of the notice that the defendant is believed to

1 be incompetent, the mental condition of the defendant shall be ex-  
2 amined in the same manner as provided for examining persons for compe-  
3 tency to stand trial under AS 12.47.070. If it is found that the  
4 defendant is incompetent, the sentencing court shall immediately  
5 certify that finding to the supreme court and the commissioner of  
6 corrections, and shall enter an order for commitment in the same  
7 manner as provided for commitment under AS 12.47.110. If it is found  
8 that the defendant is competent, the sentencing court shall immedi-  
9 ately certify the finding to the supreme court and the commissioner of  
10 corrections. The supreme court shall issue and deliver another war-  
11 rant to the commissioner of corrections under AS 12.55.117, together  
12 with a copy of the certified finding. The warrant shall specify a  
13 date of execution not less than 30 days nor more than 60 days after  
14 the date of the warrant.

15 (c) If the defendant is pregnant, the sentencing court shall  
16 immediately certify that finding to the supreme court and the commis-  
17 sioner of corrections. The supreme court shall issue an order staying  
18 the execution of the sentence of death during the pregnancy. When the  
19 defendant is no longer pregnant, the sentencing court shall immedi-  
20 ately certify the finding to the supreme court and the commissioner of  
21 corrections. The supreme court shall issue and deliver another war-  
22 rant under AS 12.55.117, together with a copy of the certified find-  
23 ing. The warrant shall specify a date of execution not less than 30  
24 days nor more than 60 days after the date of the warrant.

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

26 (a) The court of appeals has appellate jurisdiction in actions  
27 and proceedings commenced in the superior court involving:

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

- 1 (2) post-conviction relief;  
2 (3) children's court matters under AS 47.10.010(a)(1)  
3 including waiver of children's court jurisdiction over a minor under  
4 AS 47.10;  
5 (4) extradition;  
6 (5) habeas corpus;  
7 (6) probation and parole; and  
8 (7) bail.

9 \* Sec. 7. AS 22.07.020(b) is amended to read:

10 (b) Except for appeals of a death sentence, the [THE] court of  
11 appeals has jurisdiction to hear appeals of sentences of imprisonment  
12 imposed by the superior court on the grounds that the sentence is  
13 excessive or too lenient and, in the exercise of this jurisdiction,  
14 may modify the sentence as provided by law and the state constitution.

15 \* Sec. 8. AS 33.30 is amended by adding a new section to read:

16 Sec. 33.30.095. ADMINISTRATION OF THE DEATH PENALTY. (a) The  
17 commissioner shall establish a procedure for the execution of a sen-  
18 tence of death ordered by the state supreme court, at the time and  
19 place legally appointed.

20 (b) A death sentence shall be carried out within a state correc-  
21 tional facility.

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