

Offered: 4/23/87  
Referred: Judiciary & Finance

5-0092B

Original sponsors: Abood, Kelly  
and Faiks

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 7 (HESS)

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  
murder in the first degree as a capital felony, and  
establishing sentencing procedures for capital felo-  
nies; providing for an advisory vote; and providing  
for an effective date."

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

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\* Section 1. AS 11.31.100(d) is amended to read:

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(d) An attempt is a

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(1) class A felony if the crime attempted is an unclas-  
sified or capital felony;

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

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

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

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(5) class B misdemeanor if the crime attempted is a class A  
or class B misdemeanor.

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\* Sec. 2. AS 11.31.110(c) is amended to read:

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(c) Solicitation is a

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(1) class A felony if the crime solicited is an unclas-  
sified or capital felony;

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

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1 (3) class C felony if the crime solicited is a class B  
2 felony;

3 (4) class A misdemeanor if the crime solicited is a class C  
4 felony;

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

7 \* Sec. 3. AS 11.41.100(b) is amended to read:

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

10 \* Sec. 4. AS 12.30.040(b) is amended to read:

11 (b) Notwithstanding the provisions of (a) of this section, if a  
12 person has been convicted of an offense that [WHICH] is a capital  
13 felony, an unclassified felony or a class A felony, the person may not  
14 be released on bail either before sentencing or pending appeal.

15 \* Sec. 5. AS 12.55 is amended by adding a new section to read:

16 Sec. 12.55.117. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)  
17 A judgment of conviction of a capital felony for which a sentence of  
18 death is imposed is subject to automatic review by the supreme court  
19 within 60 days after imposition of the sentence. This time limit may  
20 be extended by the supreme court. A review under this section has  
21 priority over all other cases and the case shall be heard in accor-  
22 dance with rules adopted by the supreme court. On review, the court  
23 shall determine whether

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

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

28 (3) the sentence is excessive or disproportionate to the  
29 penalty imposed in similar cases, considering both the crime and the

1 defendant.

2 (b) If the supreme court upholds a judgment of conviction and  
3 sentence of death, the court shall issue a death warrant that  
4 specifies a date of execution. The date of execution shall be not  
5 less than 30 days nor more than 60 days after the date of the warrant.  
6 The death warrant shall be delivered to the commissioner of  
7 corrections. The commissioner shall specify the time, place, and  
8 manner of execution after providing a person sentenced to death an  
9 opportunity to choose to be executed by lethal injection or by firing  
10 squad.

11 (c) An execution by firing squad shall be carried out at a state  
12 prison designated by the commissioner of corrections. The commis-  
13 sioner shall select a firing squad of six peace officers. They shall  
14 be compensated in an amount determined by the commissioner.

15 (d) After consulting a licensed physician, the commissioner of  
16 corrections shall select a method of injection and a drug or com-  
17 bination of drugs to be used for an execution by lethal injection.

18 (e) The commissioner of corrections and a licensed physician  
19 chosen by the commissioner shall be present at an execution under this  
20 chapter. The commissioner may invite not more than nine citizens 19  
21 years of age or older to be present at an execution, including the  
22 prosecuting attorney, the defense attorney, relatives, friends or  
23 religious representatives designated by the defendant. None of those  
24 invited may attend an execution as a matter of right.

25 (f) After the execution the commissioner of corrections shall  
26 make a return upon the death warrant, showing the time, place and  
27 manner in which the defendant was executed.

28 (g) The commissioner of corrections shall permit at an execution  
29 the attendance of not more than six members of the print and broadcast

1 news media selected by the commissioner in accordance with regulations  
2 adopted by the Department of Corrections. The selected news media  
3 members shall serve as a pool for other members of the news media as a  
4 condition of attendance.

5 (h) The use of photographic or recording equipment may not be  
6 permitted at the execution site until the execution is completed, the  
7 body is removed and the site has been restored to an orderly condi-  
8 tion. The physical arrangements for the execution may not be dis-  
9 turbed. A person who violates this subsection is guilty of a class B  
10 misdemeanor.

11 (i) Persons attending an execution shall be subject to a reason-  
12 able search as a condition of attendance.

13 (j) Persons other than the necessary staff designated by the  
14 commissioner of corrections and others permitted under (e) and (g) of  
15 this section, may not be permitted to attend an execution, nor may any  
16 person under the age of 19 attend.

17 (k) The Department of Corrections shall adopt regulations gov-  
18 erning the attendance of persons at an execution.

19 \* Sec. 6. 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. 7. 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, assault in  
17 the first degree, torture, or an aggravated battery;

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

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

22 (4) the defendant has a prior conviction for a felony that  
23 involved the use of violence to a person or for murder under AS 11.-  
24 41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or a law from  
25 another jurisdiction with substantially similar elements;

26 (5) the defendant knowingly directed the conduct constitut-  
27 ing the offense at the President of the United States or the governor  
28 of this state;

29 (6) the defendant knowingly directed the conduct

1 constituting the offense at an active or former law enforcement  
2 officer, prosecuting attorney, fireman, judicial officer, or  
3 correctional officer during or because of the exercise of official  
4 duties;

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

8 (8) the defendant was on release for another felony charge  
9 or conviction having assault as a necessary element.

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

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

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

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

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

26 \* Sec. 8. AS 22.07.020(a) is amended to read:

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

29           (1) criminal prosecution, except prosecution for a capital

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

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

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

16 \* Sec. 10. The lieutenant governor shall place before the qualified  
17 voters of the state at the next statewide election the question advisory to  
18 the legislature of whether capital punishment for murder in the first  
19 degree as now authorized by law should go into effect on August 15, 1989.  
20 The question shall appear on the ballot in substantially the following  
21 form:

22 Q U E S T I O N

23 Shall capital punishment for murder in the first degree  
24 as now authorized by law go into effect on August 15, 1989?

25 Yes [ ] No [ ]

26 \* Sec. 11. Sections 1 - 9 of this Act take effect August 15, 1989.

27 \* Sec. 12. Section 10 of this Act takes effect immediately under  
28 AS 01.10.070(c).