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Referred: Health, Education and
Social Services and Judiciary

5-0129A

1 IN THE SENATE

BY FISCHER, KELLY
AND FAIKS

2

SENATE BILL NO. 31

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; and providing for an effective date."

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

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

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(b) Murder in the first degree is a capital [AN UNCLASSIFIED]

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felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

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* Sec. 2. AS 12.30.040(b) is amended to read:

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(b) Notwithstanding the provisions of (a) of this section, if a

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person has been convicted of an offense that [WHICH] is a capital

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felony, an unclassified felony or a class A felony, the person may not

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be released on bail either before sentencing or pending appeal.

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

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Sec. 12.55.117. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a)

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A judgment of conviction of a capital felony for which a sentence of

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death is imposed is subject to automatic review by the supreme court

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within 60 days after imposition of the sentence. This time limit may

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be extended by the supreme court. A review under this section has

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priority over all other cases and the case shall be heard in accor-

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dance with rules adopted by the supreme court. On review, the court

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shall determine whether

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(1) the sentence was imposed under the influence of pas-

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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 cause a death warrant to be drawn.
8 The death warrant, together with a written opinion of the court, shall
9 be delivered to the commissioner of corrections. The commissioner
10 shall specify the time, place and manner of execution after determin-
11 ing whether the defendant chooses to be executed by lethal injection
12 or by firing squad.

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

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

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

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

1 (g) The commissioner of corrections shall permit at an execution
2 the attendance of not more than six members of the print and broadcast
3 news media selected by the commissioner in accordance with regulations
4 adopted by the Department of Corrections. The selected news media
5 members shall serve as a pool for other members of the news media as a
6 condition of attendance.

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

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

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

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

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

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

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

27 Sec. 12.55.177. SENTENCING PROCEDURE FOR CAPITAL FELONY. (a)
28 If, after a trial by jury, a defendant is convicted of a capital
29 felony, the court shall conduct a separate sentencing proceeding

1 before the trial jury as soon as practicable. If the defendant waived
2 a jury trial or pleaded guilty the sentencing proceeding shall be held
3 before a jury impaneled for the purpose.

4 (b) In the sentencing proceeding evidence may be presented as to
5 any aggravating or mitigating factor that the court determines has
6 probative value regardless of the admissibility of the evidence at
7 trial, provided that the defendant has an opportunity to rebut hearsay
8 statements and to assert any evidentiary privileges available under
9 the Alaska Rules of Evidence. The state and the defendant or the
10 defendant's counsel shall be permitted to present oral argument. This
11 subsection does not authorize the introduction of evidence secured in
12 violation of the Constitution of the State of Alaska or the Constitu-
13 tion of the United States.

14 Sec. 12.55.178. ADVISORY SENTENCE FOR CAPITAL FELONY. After
15 hearing the evidence, the jury shall deliberate and give an advisory
16 sentence to the court. The advisory sentence shall include findings
17 whether

18 (1) aggravating factors exist to justify the death sen-
19 tence;

20 (2) mitigating factors exist that outweigh the aggravating
21 factors; and

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

24 Sec. 12.55.179. SENTENCE FOR CAPITAL FELONY. (a) The court,
25 after considering the evidence and the advisory sentence shall enter a
26 sentence of death or a term of imprisonment in accordance with AS 12.-
27 55.125(a). If the court imposes a sentence of death, it shall make
28 written findings of

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

1 and

2 (2) mitigating factors considered by the court.

3 (b) A judgment of conviction for which a sentence of death is
4 imposed is subject to automatic review under AS 12.55.117.

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

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

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

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

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

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

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

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

28 Sec. 12.55.181. MITIGATING FACTORS. The death sentence may not
29 be imposed if mitigating factors are found to outweigh aggravating

1 factors. All mitigating factors shall be considered including the
2 following:

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

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

8 (3) the defendant acted with serious provocation from the
9 victim;

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

12 Sec. 12.55.182. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
13 DEATH. (a) If, after imposing a sentence of death, there is reason
14 to believe the defendant has become incompetent to proceed with the
15 execution, or is pregnant, the commissioner of corrections shall
16 immediately give written notice to the court in which the sentence of
17 death was imposed, the prosecuting attorney and counsel for the defen-
18 dant, and the execution of sentence shall be stayed pending further
19 order of the court.

20 (b) On receipt of the notice that the defendant is believed to
21 be incompetent, the mental condition of the defendant shall be ex-
22 amined in the same manner as provided for examining persons for compe-
23 tency to stand trial under AS 12.47.070. If it is found that the de-
24 fendant is incompetent, the sentencing court shall immediately trans-
25 mit a certificate of findings to the supreme court and the commis-
26 sioner of corrections, and shall enter an order for commitment in the
27 same manner as provided for commitment under AS 12.47.110. If it is
28 found that the defendant is competent, the sentencing court shall
29 immediately transmit a certificate of the findings to the supreme

1 court and the commissioner. The supreme court shall draw and have
2 delivered another warrant to the commissioner under AS 12.55.117,
3 together with a copy of the certificate of the findings. The warrant
4 shall specify a date of execution not less than 30 days nor more than
5 60 days after the date of the drawing of the warrant.

6 (c) If the defendant is pregnant, the sentencing court shall
7 immediately transmit a certificate making that finding to the supreme
8 court and the commissioner of corrections. The supreme court shall
9 issue an order staying the execution of the sentence of death during
10 the pregnancy. When the defendant is no longer pregnant, the sentenc-
11 ing court shall immediately transmit a certificate of the finding to
12 the supreme court and the commissioner of corrections. The supreme
13 court shall draw and have delivered another warrant under AS 12.55.-
14 117, together with a copy of the certificate of the finding. The
15 warrant shall specify a date of execution not less than 30 days nor
16 more than 60 days after the date of the drawing of the warrant.

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

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

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

22 (2) post-conviction relief;

23 (3) children's court matters under AS 47.10.010(a)(1)
24 including waiver of children's court jurisdiction over a minor under
25 AS 47.10;

26 (4) extradition;

27 (5) habeas corpus;

28 (6) probation and parole; and

29 (7) bail.

1 * Sec. 7. The lieutenant governor shall place before the qualified
2 voters of the state at the next statewide election the question advisory to
3 the legislature of whether capital punishment for murder in the first
4 degree as now authorized by law should go into effect on August 15, 1989.
5 The question shall appear on the ballot in substantially the following
6 form:

7 Q U E S T I O N

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

10 Yes [] No []

11 * Sec. 8. Sections 1 - 6 of this Act take effect August 15, 1989.

12 * Sec. 9. Section 7 of this Act takes effect immediately under AS 01.-
13 10.070(c).