

1 IN THE SENATE

BY FISCHER, KELLY AND
PEARCE

2

SENATE BILL NO. 17

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH 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; directing an advisory vote on whether the
10 capital punishment law should take effect; amending
11 Rules 32, 32.1, and 32.3, Alaska Rules of Criminal
12 Procedure, and Rules 204, 210, and 212, Alaska Rules
13 of Appellate Procedure; and providing for an effec-
14 tive date."

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

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

17 (d) An attempt is

18 (1) an unclassified felony if the crime attempted is a
19 capital felony [MURDER IN THE FIRST DEGREE];

20 (2) a class A felony if the crime attempted is an unclas-
21 sified felony other than a capital felony [MURDER IN THE FIRST DE-
22 GREE];

23 (3) a class B felony if the crime attempted is a class A
24 felony;

25 (4) a class C felony if the crime attempted is a class B
26 felony;

27 (5) a class A misdemeanor if the crime attempted is a class
28 C felony;

29 (6) a class B misdemeanor if the crime attempted is a class

1 A or class B misdemeanor.

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

3 (c) Solicitation is a

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

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

8 (3) class C felony if the crime solicited is a class B
9 felony;

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

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

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

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

17 * Sec. 4. AS 12.30.020(a) is amended to read:

18 (a) A person charged with an offense shall, at that person's
19 first appearance before a judicial officer, be ordered released pend-
20 ing trial on the person's personal recognizance or upon the execution
21 of an unsecured appearance bond in an amount specified by the judicial
22 officer unless the offense is a capital felony, an unclassified
23 felony, or a class A felony or unless the officer determines that the
24 release of the person will not reasonably assure the appearance of the
25 person as required, or will pose a danger to other persons and the
26 community. If the offense with which a person is charged is a felony,
27 on motion of the prosecuting attorney, the judicial officer may allow
28 the prosecuting attorney up to 48 hours to demonstrate that release of
29 the person on the person's personal recognizance or upon the execution

1 of an unsecured appearance bond will not reasonably assure the appear-
2 ance of the person, or will pose a danger to other persons and the
3 community.

4 * Sec. 5. AS 12.30.040(b) is amended to read:

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

9 * Sec. 6. AS 12.47.110(b) is amended to read:

10 (b) On or before the expiration of the initial 90-day period of
11 commitment the court shall conduct a hearing to determine whether or
12 not the defendant remains incompetent. If the court finds by a pre-
13 ponderance of the evidence that the defendant remains incompetent, the
14 court may recommit the defendant for a second period of 90 days. The
15 court shall determine at the expiration of the second 90-day period
16 whether the defendant has become competent. If at the expiration of
17 the second 90-day period the court determines that the defendant
18 continues to be incompetent to stand trial, the charges against the
19 defendant shall be dismissed without prejudice and continued commit-
20 ment of the defendant shall be governed by the provisions relating to
21 civil commitments under AS 47.30.700 - 47.30.915 unless the defendant
22 is charged with a crime involving force against a person and the court
23 finds that the defendant presents a substantial danger of physical
24 injury to other persons and that there is a substantial probability
25 that the defendant will regain competency within a reasonable period
26 of time, in which case the court may extend the period of commitment
27 for an additional six months. If the defendant remains incompetent at
28 the expiration of the additional six-month period, the charges shall
29 be dismissed without prejudice and either civil commitment proceedings

1 shall be instituted or the court shall order the release of the defen-
2 dant. If the defendant remains incompetent for five years after the
3 charges have been dismissed under this subsection, the defendant may
4 not be charged again for an offense arising out of the facts alleged
5 in the original charges, except if the original charge is a class A
6 felony, [OR] unclassified felony, or capital felony.

7 * Sec. 7. AS 12.55 is amended by adding a new section to read:

8 Sec. 12.55.117. REVIEW OF JUDGMENT OF CONVICTION OF A CAPITAL
9 FELONY. (a) A judgment of conviction of a capital felony for which a
10 sentence of death is imposed shall automatically be reviewed by the
11 supreme court within 60 days after imposition of the sentence. This
12 time limit may be extended by the supreme court for good cause.

13 (b) A review under this section has priority over all other
14 cases and the case shall be heard in accordance with rules adopted by
15 the supreme court. On review, the court shall determine whether

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

18 (2) the evidence supports the finding of an aggravating
19 factor under AS 12.55.179 and whether the court has properly consider-
20 ed mitigating factors under AS 12.55.180;

21 (3) the sentence is excessive or disproportionate to the
22 penalty imposed in similar cases, considering both the crime and the
23 defendant; and

24 (4) any other issue that the defendant may raise as a point
25 on appeal.

26 (c) In its consideration of an automatic appeal under (a) and
27 (b) of this section, the supreme court

28 (1) may not require the defendant to file a notice of
29 appeal, unless the defendant raises an issue as a point on appeal

1 under (b)(4) of this section;

2 (2) may not require the defendant to pay a fee;

3 (3) shall designate the entire record of the proceedings
4 before the sentencing court as the record on appeal;

5 (4) shall prepare the transcript of the proceedings for the
6 record on appeal at public expense; and

7 (5) may not require the defendant to submit and file a
8 brief, unless the defendant raises an issue as a point on appeal under
9 (b)(4) of this section.

10 (d) If the supreme court upholds a judgment of conviction and
11 sentence of death, the court shall issue a death warrant that spec-
12 ifies a date of execution. The specified date of execution must be
13 not less than 30 days nor more than 60 days after the date of the
14 warrant. The death warrant shall be delivered to the commissioner of
15 corrections.

16 * Sec. 8. AS 12.55.125(a) is amended to read:

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

21 * Sec. 9. AS 12.55 is amended by adding new sections to read:

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

28 (b) During the sentencing proceeding, evidence may be presented
29 as to any matter relevant to the nature of the crime, the character of

1 the defendant, or any aggravating or mitigating factor that the court
2 considers to have probative value, regardless of the admissibility of
3 the evidence under the rules of evidence. The defendant shall have an
4 opportunity to rebut hearsay evidence that is admitted. The state and
5 the defendant or the defendant's counsel shall be permitted to present
6 oral statements. This subsection does not authorize the introduction
7 of evidence secured in violation of the Constitution of the State of
8 Alaska or the Constitution of the United States.

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

12 (1) aggravating factors exist to justify the death sen-
13 tence;

14 (2) mitigating factors exist that outweigh the aggravating
15 factors; and

16 (3) the defendant should be sentenced to death.

17 Sec. 12.55.178. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)
18 After considering the evidence and the recommended sentence, the court
19 shall enter a sentence of death or a term of imprisonment in accor-
20 dance with AS 12.55.125(a).

21 (b) The court may not impose the death sentence unless the jury

22 (1) finds at least one aggravating factor that is not
23 outweighed by the mitigating factors; and

24 (2) recommends that the defendant be sentenced to death.

25 (c) The court may not impose the death sentence if the jury

26 (1) findings do not include an aggravating factor, or
27 include an aggravating factor that is not outweighed by the mitigating
28 factors; or

29 (2) does not recommend a sentence of death.

1 (d) If the court enters a sentence of death, it shall make
2 written findings of

3 (1) aggravating factors that exist to justify the sentence;
4 and

5 (2) mitigating factors considered by the court.

6 (e) A judgment of conviction for which a sentence of death is
7 imposed is subject to automatic review under AS 12.55.117.

8 Sec. 12.55.179. AGGRAVATING FACTORS. In determining whether to
9 impose a sentence of death, the following aggravating factors may be
10 considered:

11 (1) the defendant's conduct during the commission of the
12 offense manifested deliberate cruelty to another person in that it
13 involved sexual assault in the first degree, kidnapping, assault in
14 the first degree, torture, or an aggravated battery;

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

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

19 (4) the defendant has a prior conviction for a felony that
20 involved the use of violence against a person or for murder under
21 AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law
22 of another jurisdiction with substantially similar elements;

23 (5) 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 (6) the defendant knowingly directed the conduct constitut-
27 ing the offense at an active or former law enforcement officer, pros-
28 ecuting attorney, fireman, judicial officer, or correctional officer
29 during or because of the exercise of official duties;

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

4 (8) the defendant was on release under AS 12.30.020 -
5 12.30.040 for another felony charge or conviction having assault as a
6 necessary element.

7 Sec. 12.55.180. MITIGATING FACTORS. In determining whether to
8 impose the death sentence, all mitigating factors shall be considered,
9 including, but not limited to, the following:

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

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

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

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

20 * Sec. 10. AS 12 is amended by adding a new chapter to read:

21 CHAPTER 58. IMPOSITION OF DEATH PENALTY.

22 ARTICLE 1. EXECUTION.

23 Sec. 12.58.010. EXECUTION UNDER SUPREME COURT DEATH WARRANT.
24 After providing a person who has been sentenced to death by a supreme
25 court warrant issued under AS 12.55.117 an opportunity to choose to be
26 executed by lethal injection or by firing squad, the commissioner
27 shall specify the time, place, and manner of execution. If the person
28 fails or refuses to make a choice, the commissioner shall determine
29 the manner of execution.

1 Sec. 12.58.020. EXECUTION BY FIRING SQUAD. An execution by
2 firing squad shall be carried out at a state prison designated by the
3 commissioner. The commissioner shall select a firing squad of six
4 peace officers. They shall be compensated in an amount determined by
5 the commissioner.

6 Sec. 12.58.030. EXECUTION BY LETHAL INJECTION. After consulting
7 a licensed physician, the commissioner shall select a method of in-
8 jection and a drug or combination of drugs to be used for an execution
9 by lethal injection.

10 Sec. 12.58.040. WITNESSES. The commissioner and a licensed
11 physician chosen by the commissioner shall be present at an execution
12 under this chapter.

13 Sec. 12.58.050. INVITEES. The commissioner may invite not more
14 than nine citizens, who are 19 years of age or older, to be present at
15 an execution, including the prosecuting attorney, the defense attor-
16 ney, relatives and friends of the defendant, or religious representa-
17 tives designated by the defendant. A person who is invited by the
18 commissioner may not attend an execution as a matter of right.

19 Sec. 12.58.060. COVERAGE BY NEWS MEDIA. (a) The commissioner
20 shall permit at an execution the attendance of not more than six
21 members of the print and broadcast news media selected by the commis-
22 sioner in accordance with regulations adopted by the department. The
23 selected news media members shall serve as a pool for other members of
24 the news media as a condition of attendance.

25 (b) The use of photographic or recording equipment may not be
26 permitted at the execution site until the execution is completed, the
27 body is removed and the site has been restored to an orderly condi-
28 tion. The physical arrangements for the execution may not be dis-
29 turbed.

1 (c) A person who violates (b) of this section is guilty of a
2 class B misdemeanor.

3 Sec. 12.58.070. PROVISIONS GOVERNING ATTENDANCE AT EXECUTION.

4 (a) Persons attending an execution are subject to a reasonable search
5 as a condition of attendance.

6 (b) Persons other than the necessary staff designated by the
7 commissioner and others permitted under AS 12.58.050 - 12.58.060 may
8 not be permitted to attend an execution, nor may any person under the
9 age of 19 attend.

10 (c) The department shall adopt regulations governing the atten-
11 dance of persons at an execution.

12 Sec. 12.58.080. RETURN OF DEATH WARRANT. After the execution
13 the commissioner shall make a return upon the death warrant, showing
14 the time, place, and manner in which the defendant was executed.

15 ARTICLE 2. STAY OF EXECUTION.

16 Sec. 12.58.200. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
17 DEATH. If, after a sentence of death is imposed, the commissioner has
18 reason to believe that the defendant has become incompetent to proceed
19 with the execution or that the defendant is pregnant, the commissioner
20 shall immediately give written notice to the court in which the sen-
21 tence of death was imposed, the prosecuting attorney, and counsel for
22 the defendant. The execution of sentence shall be stayed pending
23 further order of the court.

24 Sec. 12.58.210. EXAMINATION INTO COMPETENCY. (a) On receipt of
25 notice under AS 12.58.200 that the defendant is believed to be incom-
26 petent, the sentencing court shall examine the mental condition of the
27 defendant in the same manner as provided for examining persons for
28 competency to stand trial under AS 12.47.070.

29 (b) If the sentencing court finds that the defendant is

1 incompetent, the court shall immediately certify that finding to the
2 supreme court and the commissioner, and shall enter an order for
3 commitment in the same manner as provided for commitment under AS
4 12.47.110.

5 (c) If the sentencing court finds that the defendant is compe-
6 tent, the court shall immediately certify the finding to the supreme
7 court and the commissioner. The supreme court shall issue and deliver
8 another warrant to the commissioner under AS 12.55.117, together with
9 a copy of the certified finding. Unless the sentencing court's find-
10 ing is appealed in accordance with applicable court rule, the warrant
11 shall specify a date of execution that is not less than 30 days nor
12 more than 60 days after the date of the warrant.

13 Sec. 12.58.220. DISPOSITION PENDING PREGNANCY. (a) If the
14 defendant is pregnant, the sentencing court shall immediately certify
15 that finding to the supreme court and the commissioner. The supreme
16 court shall issue an order staying the execution of the sentence of
17 death during the pregnancy.

18 (b) When the defendant is no longer pregnant, the sentencing
19 court shall immediately certify the finding to the supreme court and
20 the commissioner. The supreme court shall issue and deliver another
21 warrant under AS 12.55.117, together with a copy of the certified
22 finding. Unless the sentencing court's finding is appealed under
23 applicable court rule, the warrant shall specify a date of execution
24 not less than 30 days nor more than 60 days after the date of the
25 warrant.

26 ARTICLE 3. GENERAL PROVISIONS.

27 Sec. 12.58.900. DEFINITIONS. In this chapter,

- 28 (1) "commissioner" means the commissioner of corrections;
29 (2) "department" means the Department of Corrections.

1 * Sec. 11. AS 22.07.020(a) is amended to read:

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

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

6 (2) post-conviction relief;

7 (3) children's court matters under AS 47.10.010(a)(1),
8 including waiver of children's court jurisdiction over a minor under
9 AS 47.10;

10 (4) extradition;

11 (5) habeas corpus;

12 (6) probation and parole; and

13 (7) bail.

14 * Sec. 12. AS 22.07.020(b) is amended to read:

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

20 * Sec. 13. ADVISORY VOTE AUTHORIZED. The lieutenant governor shall
21 place before the qualified voters of the state at the next statewide elec-
22 tion the question advisory to the legislature of whether capital punishment
23 for murder in the first degree as now authorized by law should go into
24 effect on August 15, 1991. The question shall appear on the ballot in
25 substantially the following form:

26 Q U E S T I O N

27 Shall capital punishment for murder in the first degree
28 as now authorized by law go into effect on August 15, 1991?

29 Yes []

No []

1 * Sec. 14. APPLICABILITY TO CRIMINAL RULES. The amendments to AS 12.55
2 made by secs. 7 and 9 of this Act, and AS 12.58, added by sec. 10 of this
3 Act, have the effect of modifying the sentencing provisions of Rules 32,
4 32.1, and 32.3, Alaska Rules of Criminal Procedure, by establishing exclu-
5 sive procedures for imposition of death sentence by trial court and by
6 authorizing automatic appeal of those sentences to the Alaska Supreme
7 Court.

8 * Sec. 15. APPLICABILITY TO APPELLATE RULES. AS 12.55.117(c), added by
9 sec. 7 of this Act, has the effect of amending Rules 204, 210, and 212,
10 Alaska Rules of Appellate Procedure, by establishing procedures and limita-
11 tions on procedures relating to the filing and disposition of appeals of
12 sentences in cases in which the death penalty is imposed.

13 * Sec. 16. Except for sec. 13 of this Act, this Act takes effect
14 August 15, 1991.

15 * Sec. 17. Section 13 of this Act takes effect immediately under
16 AS 01.10.070(c).