

Offered: 2/27/89
Referred: Finance

6-0343J

Original sponsors: Fischer, Kelly,
Pearce, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 17 (Judiciary)

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. FINDINGS. The legislature finds that imposition of the
17 death penalty for the crime of murder in the first degree

18 (1) is consistent with the criminal sentencing goal of deter-
19 rence in that, by the example of its imposition, a member of the community
20 who calculates a murder would rationally consider the harsh consequences of
21 that act;

22 (2) is consistent with the criminal sentencing goal of community
23 condemnation in that, by its use, the state affirms society's norms and
24 condemns most severely the premeditative taking of human life or the taking
25 of life under circumstances manifesting extreme indifference to its value;

26 (3) does not violate state constitutional guarantees against the
27 imposition of cruel and unusual punishment, but rather is fully consistent
28 with those guarantees;

29 (4) conforms to contemporary standards of decency in that there

1 is no evidence that Alaska's tradition and history suggest a significantly
2 different attitude toward capital punishment in this state from those that
3 prevail nationwide, and there is a widely held belief in the society that
4 capital punishment is an appropriate penalty for murder in the first
5 degree;

6 (5) serves the state's interest in justice by punishing the
7 person who is guilty according to what is deserved for the most morally
8 offensive conduct with a sentence more stringent than an extended term of
9 life imprisonment;

10 (6) serves the state's interest in public protection by assuring
11 that the most serious offenders will never again pose a threat to the
12 public; and

13 (7) is consistent with due process requirements in that the
14 circumstances in which the death penalty may be imposed provide guidance to
15 the court and jury that safeguard against the elements of arbitrariness and
16 capriciousness condemned by the United States Supreme Court in cases con-
17 cerning the death penalty statutes of other states.

18 * Sec. 2. AS 11.31.100(d) is amended to read:

19 (d) An attempt is

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

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

25 (3) a class B felony if the crime attempted is a class A
26 felony;

27 (4) a class C felony if the crime attempted is a class B
28 felony;

29 (5) a class A misdemeanor if the crime attempted is a class

1 C felony;

2 (6) a class B misdemeanor if the crime attempted is a class
3 A or class B misdemeanor.

4 * Sec. 3. AS 11.31.110(c) is amended to read:

5 (c) Solicitation is a

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

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

10 (3) class C felony if the crime solicited is a class B
11 felony;

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

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

16 * Sec. 4. AS 11.41.100(b) is amended to read:

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

19 * Sec. 5. AS 12.30.020(a) is amended to read:

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

1 the prosecuting attorney up to 48 hours to demonstrate that release of
2 the person on the person's personal recognizance or upon the execution
3 of an unsecured appearance bond will not reasonably assure the appear-
4 ance of the person, or will pose a danger to other persons and the
5 community.

6 * Sec. 6. AS 12.30.040(b) is amended to read:

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

11 * Sec. 7. AS 12.47.110(b) is amended to read:

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

1 the expiration of the additional six-month period, the charges shall
2 be dismissed without prejudice and either civil commitment proceedings
3 shall be instituted or the court shall order the release of the defen-
4 dant. If the defendant remains incompetent for five years after the
5 charges have been dismissed under this subsection, the defendant may
6 not be charged again for an offense arising out of the facts alleged
7 in the original charges, except if the original charge is a class A
8 felony, [OR] unclassified felony, or capital felony.

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

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

14 * Sec. 9. AS 12 is amended by adding a new chapter to read:

15 CHAPTER 58. CAPITAL PUNISHMENT.

16 ARTICLE 1. ELECTION TO SEEK DEATH PENALTY.

17 Sec. 12.58.010. PROSECUTOR'S ELECTION TO SEEK DEATH PENALTY.

18 The district attorney assigned to the prosecution of a capital felony
19 shall determine whether to seek the death penalty against the defen-
20 dant. If the prosecutor elects to seek the death penalty, the pros-
21 ecutor shall give notice of election to the court, the defendant, and
22 the defendant's attorney within 10 days of arraignment of the defen-
23 dant on the capital felony indictment, or within 10 days of arraign-
24 ment of the defendant if indictment has been waived.

25 ARTICLE 2. IMPOSITION OF SENTENCE.

26 Sec. 12.58.100. SENTENCING PROCEDURE FOR A CAPITAL FELONY. (a)

27 If, after trial by jury, the defendant is convicted of a capital
28 felony in which the district attorney has elected under AS 12.58.010
29 to seek the death penalty, the court shall conduct a separate

1 sentencing proceeding before the trial jury as soon as practicable.
2 If a jury trial has been waived or if the defendant pleads guilty, the
3 sentencing proceeding shall be held before a jury impaneled for the
4 purpose.

5 (b) During the sentencing proceeding, evidence may be presented
6 as to any matter relevant to the nature of the crime, the character of
7 the defendant, or any aggravating or mitigating factor that the court
8 considers to have probative value, regardless of the admissibility of
9 the evidence under the rules of evidence. The defendant shall have an
10 opportunity to rebut hearsay evidence that is admitted. The state and
11 the defendant or the defendant's counsel shall be permitted to present
12 oral statements. This subsection does not authorize the introduction
13 of evidence secured in violation of the Constitution of the State of
14 Alaska or the Constitution of the United States.

15 (c) After hearing the evidence, the jury shall deliberate and
16 recommend a sentence to the court. The recommended sentence must
17 include written findings of 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 death.

23 Sec. 12.58.110. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a) In
24 a case in which the district attorney has elected under AS 12.58.010
25 to seek the death penalty, after considering the evidence and the
26 recommended sentence, the court shall enter a sentence of death or a
27 term of imprisonment in accordance with AS 12.55.125(a).

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

29 (1) finds at least one aggravating factor that is not

1 outweighed by the mitigating factors; and
2 (2) recommends that the defendant be sentenced to death.
3 (c) The court may not impose the death sentence
4 (1) if the jury findings do not include an aggravating
5 factor;
6 (2) if the jury findings include an aggravating factor that
7 is outweighed by one or more of the mitigating factors; or
8 (3) if the jury does not recommend a sentence of death.
9 (d) If the court enters a sentence of death, it shall make
10 written findings of
11 (1) aggravating factors that exist to justify the sentence;
12 and
13 (2) mitigating factors considered by the court.
14 (e) A judgment of conviction for which a sentence of death is
15 imposed is subject to automatic review under AS 12.58.200.
16 Sec. 12.58.120. AGGRAVATING FACTORS. In determining whether to
17 impose a sentence of death, the following aggravating factors may be
18 considered:
19 (1) the defendant's conduct during the commission of the
20 offense manifested deliberate cruelty to another person in that it
21 involved sexual assault in the first degree, kidnapping, assault in
22 the first degree, torture, or an aggravated battery;
23 (2) the defendant's conduct caused the death of two or more
24 persons, other than accomplices;
25 (3) the defendant's conduct created a risk of imminent
26 physical injury to three or more persons, other than accomplices;
27 (4) the defendant has a prior conviction for a felony that
28 involved the use of violence against a person or for murder under
29 AS 11.41.100 - 11.41.110, former AS 11.15.010 or 11.15.030, or the law

1 of another jurisdiction with substantially similar elements;

2 (5) the defendant knowingly directed the conduct constitut-
3 ing the offense at the President of the United States or the governor
4 of this state;

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

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

12 (8) the defendant was on release under AS 12.30.020 -
13 12.30.040 for another felony charge or conviction having assault as a
14 necessary element.

15 Sec. 12.58.130. MITIGATING FACTORS. In determining whether to
16 impose the death sentence, all mitigating factors shall be considered,
17 including, but not limited to, the following:

18 (1) the defendant committed the offense under a degree of
19 duress, coercion, threat, or compulsion that was insufficient to
20 constitute a defense but that significantly affected the defendant's
21 conduct;

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

24 (3) the defendant acted with serious provocation from the
25 victim;

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

28 ARTICLE 3. SENTENCE REVIEW.

29 Sec. 12.58.200. REVIEW OF JUDGMENT OF CONVICTION OF A CAPITAL

1 FELONY. (a) A judgment of conviction of a capital felony for which a
2 sentence of death is imposed shall automatically be reviewed by the
3 supreme court within 60 days after imposition of the sentence. This
4 time limit may be extended by the supreme court for good cause.

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

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

10 (2) the evidence supports the finding of an aggravating
11 factor under AS 12.58.120 and whether the court has properly consider-
12 ed mitigating factors under AS 12.58.130;

13 (3) the sentence is excessive or disproportionate to the
14 penalty imposed in similar cases, considering both the crime and the
15 defendant; and

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

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

20 (1) may not require the defendant to file a notice of
21 appeal, unless the defendant raises an issue as a point on appeal
22 under (b)(4) of this section;

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

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

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

28 (5) may not require the defendant to submit and file a
29 brief, unless the defendant raises an issue as a point on appeal under

1 (b)(4) of this section.

2 Sec. 12.58.210. ISSUANCE OF DEATH WARRANT. If the supreme court
3 upholds a judgment of conviction and sentence of death, the court
4 shall issue a death warrant that specifies a date of execution. The
5 specified date of execution must be not less than 30 days nor more
6 than 60 days after the date of the warrant. The death warrant shall
7 be delivered to the commissioner of corrections.

8 ARTICLE 4. EXECUTION.

9 Sec. 12.58.300. EXECUTION UNDER SUPREME COURT DEATH WARRANT.
10 After receiving a supreme court warrant issued under AS 12.58.210, the
11 commissioner shall specify the time and place of execution.

12 Sec. 12.58.310. EXECUTION BY LETHAL INJECTION. After consulting
13 a licensed physician, the commissioner shall select a method of in-
14 jection and a drug or combination of drugs to be used for an execution
15 by lethal injection.

16 Sec. 12.58.320. WITNESSES. The commissioner and a licensed
17 physician chosen by the commissioner shall be present at an execution
18 under this chapter.

19 Sec. 12.58.330. INVITEES. The commissioner may invite not more
20 than nine citizens, who are 19 years of age or older, to be present at
21 an execution, including the prosecuting attorney, the defense attor-
22 ney, relatives and friends of the defendant, or religious representa-
23 tives designated by the defendant. A person who is invited by the
24 commissioner may not attend an execution as a matter of right.

25 Sec. 12.58.340. COVERAGE BY NEWS MEDIA. (a) The commissioner
26 shall permit at an execution the attendance of not more than six
27 members of the print and broadcast news media selected by the commis-
28 sioner in accordance with regulations adopted by the department. The
29 selected news media members shall serve as a pool for other members of

1 the news media as a condition of attendance.

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

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

9 Sec. 12.58.350. PROVISIONS GOVERNING ATTENDANCE AT EXECUTION.

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

12 (b) Persons other than the physician and necessary staff desig-
13 nated by the commissioner and others permitted under AS 12.58.330 -
14 12.58.340 may not be permitted to attend an execution, nor may any
15 person under the age of 19 attend.

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

18 Sec. 12.58.360. RETURN OF DEATH WARRANT. After the execution
19 the commissioner shall make a return upon the death warrant, showing
20 the time and place in which the defendant was executed.

21 ARTICLE 5. STAY OF EXECUTION.

22 Sec. 12.58.400. INCOMPETENCY OR PREGNANCY OF PERSON SENTENCED TO
23 DEATH. If, after a sentence of death is imposed, the commissioner has
24 reason to believe that the defendant has become incompetent to proceed
25 with the execution or that the defendant is pregnant, the commissioner
26 shall immediately give written notice to the court in which the sen-
27 tence of death was imposed, the prosecuting attorney, and counsel for
28 the defendant. The execution of sentence shall be stayed pending
29 further order of the court.

1 Sec. 12.58.410. EXAMINATION INTO COMPETENCY. (a) On receipt of
2 notice under AS 12.58.400 that the defendant is believed to be incom-
3 petent, the sentencing court shall examine the mental condition of the
4 defendant in the same manner as provided for examining persons for
5 competency to stand trial under AS 12.47.070.

6 (b) If the sentencing court finds that the defendant is incompe-
7 tent, the court shall immediately certify that finding to the supreme
8 court and the commissioner, and shall enter an order for commitment in
9 the same manner as provided for commitment under AS 12.47.110.

10 (c) If the sentencing court finds that the defendant is compe-
11 tent, the court shall immediately certify the finding to the supreme
12 court and the commissioner. The supreme court shall issue and deliver
13 another warrant to the commissioner under AS 12.58.210, together with
14 a copy of the certified finding. Unless the sentencing court's find-
15 ing is appealed in accordance with applicable court rule, the warrant
16 shall specify a date of execution that is not less than 30 days nor
17 more than 60 days after the date of the warrant.

18 Sec. 12.58.420. DISPOSITION PENDING PREGNANCY. (a) If the
19 defendant is pregnant, the sentencing court shall immediately certify
20 that finding to the supreme court and the commissioner. The supreme
21 court shall issue an order staying the execution of the sentence of
22 death during the pregnancy.

23 (b) When the defendant is no longer pregnant, the sentencing
24 court shall immediately certify the finding to the supreme court and
25 the commissioner. The supreme court shall issue and deliver another
26 warrant under AS 12.58.210, together with a copy of the certified
27 finding. Unless the sentencing court's finding is appealed under
28 applicable court rule, the warrant shall specify a date of execution
29 not less than 30 days nor more than 60 days after the date of the

1 warrant.

2 ARTICLE 6. GENERAL PROVISIONS.

3 Sec. 12.58.900. DEFINITIONS. In this chapter,

4 (1) "commissioner" means the commissioner of corrections;

5 (2) "department" means the Department of Corrections.

6 * Sec. 10. AS 22.07.020(a) is amended to read:

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

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

11 (2) post-conviction relief;

12 (3) children's court matters under AS 47.10.010(a)(1),
13 including waiver of children's court jurisdiction over a minor under
14 AS 47.10;

15 (4) extradition;

16 (5) habeas corpus;

17 (6) probation and parole; and

18 (7) bail.

19 * Sec. 11. AS 22.07.020(b) is amended to read:

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

25 * Sec. 12. ADVISORY VOTE AUTHORIZED. The lieutenant governor shall
26 place before the qualified voters of the state at the next statewide gen-
27 eral election the question advisory to the legislature of whether capital
28 punishment for murder in the first degree as now authorized by law should
29 go into effect on August 15, 1991. The question shall appear on the ballot

1 in substantially the following form:

2

Q U E S T I O N

3

Shall capital punishment for murder in the first degree

4

as now authorized by law go into effect on August 15, 1991?

5

Yes []

No []

6

* Sec. 13. APPLICABILITY TO CRIMINAL RULES. AS 12.58, added by sec. 9 of this Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska Supreme Court.

12 * Sec. 14. APPLICABILITY TO APPELLATE RULES. AS 12.58.200, added by sec. 9 of this Act, has the effect of amending Rules 204, 210, and 212, Alaska Rules of Appellate Procedure, by establishing procedures and limitations on procedures relating to the filing and disposition of appeals of sentences in cases in which the death penalty is imposed.

17 * Sec. 15. Except for sec. 12 of this Act, this Act takes effect August 15, 1991.

19 * Sec. 16. Section 12 of this Act takes effect immediately under AS 01.10.070(c).