

HOUSE BILL NO. 162

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES SANDERS, Olberg

Introduced: 2/18/93

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing capital punishment, classifying murder in the first degree as  
2 a capital felony, and establishing sentencing procedures for capital felonies;  
3 authorizing an advisory vote on instituting capital punishment; amending Alaska  
4 Rules of Criminal Procedure 32, 32.1, and 32.3 and Alaska Rules of Appellate  
5 Procedure 204, 209, 210, and 212; and providing for an effective date."

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

7 \* Section 1. FINDINGS. The legislature finds that imposition of the death penalty for the  
8 crime of murder in the first degree

9 (1) is consistent with the criminal sentencing goal of deterrence in that, by the  
10 example of its imposition, a member of the community who calculates a murder would  
11 rationally consider the harsh consequences of that act;

12 (2) is consistent with the criminal sentencing goal of community condemnation  
13 in that, by its use, the state affirms society's norms and condemns most severely the

1 premeditative taking of human life or the taking of life under circumstances manifesting  
2 extreme indifference to its value;

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

5 (4) conforms to contemporary standards of decency in that there is no evidence  
6 that Alaska's tradition and history suggest a significantly different attitude toward capital  
7 punishment in this state from those that prevail nationwide, and there is a widely held belief  
8 in the society that capital punishment is an appropriate penalty for murder in the first degree;

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

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

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

18 \* Sec. 2. AS 11.41.100(b) is amended to read:

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

21 \* Sec. 3. AS 12.30.020(a) is amended to read:

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

1 appearance bond will not reasonably assure the appearance of the person, or will pose  
2 a danger to other persons and the community.

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

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

8 \* Sec. 5. AS 12.47.110(b) is amended to read:

9 (b) On or before the expiration of the initial 90-day period of commitment, the  
10 court shall conduct a hearing to determine whether or not the defendant remains  
11 incompetent. If the court finds by a preponderance of the evidence that the defendant  
12 remains incompetent, the court may recommit the defendant for a second period of 90  
13 days. The court shall determine at the expiration of the second 90-day period whether  
14 the defendant has become competent. If at the expiration of the second 90-day period  
15 the court determines that the defendant continues to be incompetent to stand trial, the  
16 charges against the defendant shall be dismissed without prejudice and continued  
17 commitment of the defendant shall be governed by the provisions relating to civil  
18 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a  
19 crime involving force against a person and the court finds that the defendant presents  
20 a substantial danger of physical injury to other persons and that there is a substantial  
21 probability that the defendant will regain competency within a reasonable period of  
22 time, in which case the court may extend the period of commitment for an additional  
23 six months. If the defendant remains incompetent at the expiration of the additional  
24 six-month period, the charges shall be dismissed without prejudice and either civil  
25 commitment proceedings shall be instituted or the court shall order the release of the  
26 defendant. If the defendant remains incompetent for five years after the charges have  
27 been dismissed under this subsection, the defendant may not be charged again for an  
28 offense arising out of the facts alleged in the original charges, except if the original  
29 charge is a class A felony, [OR] unclassified felony, or capital felony.

30 \* Sec. 6. AS 12.55.025(i) is amended to read:

31 (i) Except as provided by AS 12.55.125(a)(3), 12.55.125(k), 12.55.145(d),

1 12.55.155(f), and 12.55.165, or in determining if a sentence of death should be  
2 imposed under AS 12.58, the preponderance of the evidence standard of proof applies  
3 to sentencing proceedings.

4 \* Sec. 7. AS 12.55.125(a) is amended to read:

5 (a) A defendant convicted of murder in the first degree shall be sentenced to  
6 a definite term of imprisonment of at least 20 years but not more than 99 years, or  
7 shall be sentenced to death. A defendant convicted of murder in the first degree, but  
8 not sentenced to death, shall be sentenced to a mandatory term of imprisonment of  
9 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or  
11 otherwise clearly identified peace officer, fire fighter, or correctional officer who was  
12 engaged in the performance of official duties at the time of the murder;

13 (2) the defendant has been previously convicted of

14 (A) murder in the first degree under AS 11.41.100 or former  
15 AS 11.15.010 or 11.15.020;

16 (B) murder in the second degree under AS 11.41.110 or former  
17 AS 11.15.030; or

18 (C) homicide under the laws of another jurisdiction when the  
19 offense of which the defendant was convicted contains elements similar to first  
20 degree murder under AS 11.41.100 or second degree murder under  
21 AS 11.41.110; or

22 (3) the court finds by clear and convincing evidence that the defendant  
23 subjected the murder victim to substantial physical torture.

24 \* Sec. 8. AS 12.55.125(f) is amended to read:

25 (f) If a defendant is sentenced under (a) or (b) of this section,

26 (1) imprisonment for the prescribed minimum term may not be  
27 suspended under AS 12.55.080;

28 (2) imposition of sentence may not be suspended under AS 12.55.085;

29 (3) imprisonment for the prescribed minimum term may not be  
30 otherwise reduced;

31 (4) a sentence of death may not be suspended under AS 12.55.080.

1 \* Sec. 9. AS 12.55.145(a) is amended to read:

2 (a) For purposes of considering prior convictions in imposing sentence under  
3 AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i)

4 (1) a prior conviction may not be considered if a period of 10 or more  
5 years has elapsed between the date of the defendant's unconditional discharge on the  
6 immediately preceding offense and commission of the present offense unless the prior  
7 conviction was for a capital, [AN] unclassified, or class A felony;

8 (2) a conviction in this or another jurisdiction of an offense having  
9 elements similar to those of a felony defined as such under Alaska law at the time the  
10 offense was committed is considered a prior felony conviction;

11 (3) two or more convictions arising out of a single, continuous criminal  
12 episode during which there was no substantial change in the nature of the criminal  
13 objective are considered a single conviction unless the defendant was sentenced to  
14 consecutive sentences for the crimes; offenses committed while attempting to escape  
15 or avoid detection or apprehension after the commission of another offense are not part  
16 of the same criminal episode or objective.

17 \* Sec. 10. AS 12.55.155(f) is amended to read:

18 (f) Under this section, if [IF] the state seeks to establish a factor in  
19 aggravation at sentencing or if the defendant seeks to establish a factor in mitigation  
20 at sentencing, written notice must be served on the opposing party and filed with the  
21 court not later than 10 days before the date set for imposition of sentence. Under this  
22 section, factors [FACTORS] in aggravation and factors in mitigation must be  
23 established by clear and convincing evidence before the court sitting without a jury.  
24 All findings must be set out with specificity.

25 \* Sec. 11. AS 12 is amended by adding a new chapter to read:

26 CHAPTER 58. CAPITAL PUNISHMENT.

27 ARTICLE 1. ELECTION TO SEEK DEATH PENALTY.

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

29 The district attorney assigned to the prosecution of a capital felony shall determine  
30 whether to seek the death penalty against the defendant. If the prosecutor elects to  
31 seek the death penalty, the prosecutor shall give notice of election to the court, the

1 defendant, and the defendant's attorney within 10 days of arraignment of the defendant  
2 on the capital felony indictment, or within 10 days of arraignment of the defendant if  
3 indictment has been waived.

4 **ARTICLE 2. IMPOSITION OF SENTENCE.**

5 **Sec. 12.58.100. SENTENCING PROCEDURE FOR A CAPITAL FELONY.**

6 (a) If, after a trial by jury, a defendant is convicted of a capital felony for which the  
7 district attorney has elected under AS 12.58.010 to seek the death penalty, the court  
8 shall conduct a separate sentencing proceeding before the trial jury as soon as  
9 practicable. If a jury trial has been waived or if the defendant has pled guilty, the  
10 sentencing proceeding shall be held before a jury impaneled for the purpose.

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

19 (c) After hearing the evidence, the jury shall deliberate and recommend a  
20 sentence to the court. The recommended sentence must include written findings of  
21 whether the jury finds

22 (1) unanimously beyond a reasonable doubt that a statutory aggravating  
23 factor or factors exist to justify the death sentence;

24 (2) unanimously by a preponderance of the evidence that the  
25 aggravating factor or factors outweigh any mitigating factors found to exist by a  
26 preponderance of the evidence by one or more of the jurors; and

27 (3) that the defendant should be sentenced to death.

28 **Sec. 12.58.110. SENTENCE IMPOSITION FOR CAPITAL FELONY. (a)**  
29 After considering the evidence and the recommended sentence, the court shall enter  
30 a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a).  
31 The court may not impose the death sentence unless the jury (1) finds beyond a

1 reasonable doubt at least one statutory aggravating factor, (2) finds by a preponderance  
2 of the evidence that that factor or those factors are not outweighed by any mitigating  
3 factors found to exist by a preponderance of the evidence, and (3) recommends that  
4 the defendant be sentenced to death. If the jury findings include a statutory  
5 aggravating factor or factors that are not outweighed by one or more of the mitigating  
6 factors and if the jury recommends a sentence of death, the court shall sentence the  
7 defendant to death. If a sentence of death is not recommended by the jury, the court  
8 shall sentence the defendant to a term of imprisonment under AS 12.55.125(a).

9 (b) When the court enters a sentence of death, it shall state in writing the  
10 jury's findings of

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

12 (2) mitigating factors considered but found insufficient to outweigh the  
13 aggravating factors.

14 (c) A judgment of conviction for which a sentence of death is imposed is  
15 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 considered:

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

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

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

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

29 (5) the defendant knowingly directed the conduct constituting the  
30 offense at the President of the United States or the governor of this state;

31 (6) the defendant knowingly directed the conduct constituting the

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

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

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

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

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

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

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

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

20 (4) the defendant assisted authorities to detect or apprehend other  
21 persons who committed the offense with the defendant.

### 22 ARTICLE 3. SENTENCE REVIEW.

23 Sec. 12.58.200. REVIEW OF JUDGMENT OF CONVICTION OF A  
24 CAPITAL FELONY. (a) A judgment of conviction of a capital felony for which a  
25 sentence of death is imposed shall automatically be reviewed by the supreme court  
26 within 60 days after imposition of the sentence. This time limit may be extended by  
27 the supreme court for good cause.

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

31 (1) the sentence was imposed under the influence of passion, prejudice,

- 1 or other arbitrary factor;
- 2 (2) the evidence supports the finding of an aggravating factor under  
3 AS 12.58.120 and whether the jury has properly considered mitigating factors under  
4 AS 12.58.130;
- 5 (3) the sentence is excessive or disproportionate to the penalty imposed  
6 in similar cases, considering both the crime and the defendant; and
- 7 (4) any other issue that the defendant may raise as a point on appeal.

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

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

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

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

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

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

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

24 ARTICLE 4. ADMINISTRATION OF THE DEATH PENALTY.

25 Sec. 12.58.300. ADMINISTRATION OF THE DEATH PENALTY. The  
26 commissioner shall establish a procedure for the execution of a sentence of death  
27 ordered by the state supreme court at the time and place legally appointed.

28 Sec. 12.58.310. EXECUTION UNDER SUPREME COURT DEATH  
29 WARRANT. After receiving a supreme court warrant issued under AS 12.58.210, the  
30 commissioner shall specify the time and place of execution.

31 Sec. 12.58.320. MANNER OF EXECUTION. (a) The punishment of death

1 shall be inflicted

2 (1) by hanging by the neck until death is pronounced by a licensed  
3 physician; or

4 (2) at the election of the defendant, by continuous, intravenous  
5 administration of a lethal dose of sodium thiopental until death is pronounced by a  
6 licensed physician.

7 (b) A death sentence shall be carried out within a state correctional facility.

8 Sec. 12.58.330. RETURN OF DEATH WARRANT. After the execution the  
9 commissioner shall make a return upon the death warrant showing the time and place  
10 in which the defendant was executed.

11 ARTICLE 5. STAY OF EXECUTION.

12 Sec. 12.58.400. INCOMPETENCY OR PREGNANCY OF PERSON  
13 SENTENCED TO DEATH. If, after a sentence of death is imposed, the commissioner  
14 has reason to believe that the defendant has become incompetent to proceed with the  
15 execution or that the defendant is pregnant, the commissioner shall immediately give  
16 written notice to the court in which the sentence of death was imposed, the prosecuting  
17 attorney, and counsel for the defendant. The execution of sentence shall be stayed  
18 pending further order of the court.

19 Sec. 12.58.410. EXAMINATION INTO COMPETENCY. (a) On receipt of  
20 notice under AS 12.58.400 that the defendant is believed to be incompetent, the  
21 sentencing court shall examine the mental condition of the defendant in the same  
22 manner as provided for examining persons for competency to stand trial under  
23 AS 12.47.070.

24 (b) If the sentencing court finds that the defendant is incompetent, the court  
25 shall immediately certify that finding to the supreme court and the commissioner and  
26 shall enter an order for commitment in the same manner as provided for commitment  
27 under AS 12.47.110.

28 (c) If the sentencing court finds that the defendant is competent, the court shall  
29 immediately certify the finding to the supreme court and the commissioner. The  
30 supreme court shall issue and deliver another warrant to the commissioner under  
31 AS 12.58.210, together with a copy of the certified finding. Unless the sentencing

1 court's finding is appealed in accordance with applicable court rule, the warrant shall  
2 specify a date of execution that is not less than 30 days nor more than 60 days after  
3 the date of the warrant.

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

8 (b) When the defendant is no longer pregnant, the sentencing court shall  
9 immediately certify the finding to the supreme court and the commissioner. The  
10 supreme court shall issue and deliver another warrant under AS 12.58.210, together  
11 with a copy of the certified finding. Unless the sentencing court's finding is appealed  
12 under applicable court rule, the warrant shall specify a date of execution not less than  
13 30 days nor more than 60 days after the date of the warrant.

14 ARTICLE 6. GENERAL PROVISIONS.

15 Sec. 12.58.900. DEFINITIONS. In this chapter,

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

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

18 \* Sec. 12. AS 22.07.020(a) is amended to read:

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

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

23 (2) post-conviction relief;

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

26 (4) extradition;

27 (5) habeas corpus;

28 (6) probation and parole; and

29 (7) bail.

30 \* Sec. 13. AS 22.07.020(b) is amended to read:

31 (b) Except for appeals of a death sentence, the [THE] court of appeals has

1 jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court  
2 on the grounds that the sentence is excessive or too lenient and, in the exercise of this  
3 jurisdiction, may modify the sentence as provided by law and the state constitution.

4 \* Sec. 14. The lieutenant governor shall place before the qualified voters of the state at the  
5 November 1994 general election a question advisory to the legislature of whether capital  
6 punishment should be an authorized sentence for murder in the first degree. The question  
7 shall appear on the ballot in the following form:

8 Q U E S T I O N

9 Should capital punishment for murder in the first degree as now  
10 authorized by law go into effect June 1, 1995?

11 Yes [ ] No [ ]

12 \* Sec. 15. APPLICABILITY TO CRIMINAL RULES. AS 12.58, added by sec. 11 of this  
13 Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska  
14 Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death  
15 sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska  
16 Supreme Court.

17 \* Sec. 16. APPLICABILITY TO APPELLATE RULES. AS 12.58.200, added by sec. 11  
18 of this Act, has the effect of amending Rules 204, 209, 210, and 212, Alaska Rules of  
19 Appellate Procedure, by establishing procedures and limitations on procedures relating to the  
20 filing and disposition of appeals of sentences in cases in which the death penalty is imposed.

21 \* Sec. 17. Section 14 of this Act takes effect immediately under AS 01.10.070(c).

22 \* Sec. 18. Except for sec. 14 of this Act, this Act takes effect June 1, 1995.