

CHAPTER 244

CRIMINAL LAW AND PROCEDURE

SENATE BILL 95-054

BY SENATORS R. Powers, Alexander, Blickensderfer, Lacy, Norton, Schroeder, Tebedo, Wattenberg, and Weddig;
also REPRESENTATIVES Adkins, Epps, May, Chlouber, Lamborn, McElhany, Moellenberg, Musgrave, Prinzler, and Schwarz.

AN ACT**CONCERNING IMPOSITION OF THE DEATH PENALTY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 16-11-103 (1) (a), (1) (b), (1) (c), (2), (3), and (7) (b), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 16-11-103 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

16-11-103. Imposition of sentence in class 1 felonies - appellate review.

(1) (a) Upon conviction of guilt of a defendant of a class 1 felony, ~~the trial court~~ A PANEL OF THREE JUDGES, AS SOON AS PRACTICABLE, shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 4 of article 9 of this title, in either of which cases, the defendant shall be sentenced to life imprisonment. ~~The hearing shall be conducted by the trial judge before the trial jury as soon as practicable. Alternate jurors shall not be excused from the case prior to submission of the issue of guilt to the trial jury and shall remain separately sequestered until a verdict is entered by the trial jury. If the verdict of the trial jury is that the defendant is guilty of a class 1 felony, the alternate jurors shall sit as alternate jurors on the issue of punishment. If, for any reason satisfactory to the court, any member or members of the trial jury are excused from participation in the sentencing hearing, the trial judge shall replace such juror or jurors with an alternate juror or jurors. If a trial jury was waived or if the defendant pleaded guilty, the hearing shall be conducted before the trial judge.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(a.5) (I) THE PANEL OF JUDGES THAT CONDUCTS THE SENTENCING HEARING SHALL CONSIST OF THE JUDGE WHO PRESIDED AT THE TRIAL OR BEFORE WHOM THE GUILTY PLEA WAS ENTERED, OR A REPLACEMENT FOR SAID JUDGE IN THE EVENT HE OR SHE DIES, RESIGNS, IS INCAPACITATED, OR IS OTHERWISE DISQUALIFIED, AND TWO ADDITIONAL DISTRICT COURT JUDGES DESIGNATED BY THE CHIEF JUSTICE OF THE COLORADO SUPREME COURT. THE CHIEF JUSTICE MAY SELECT THE TWO ADDITIONAL DISTRICT COURT JUDGES, AND ANY NECESSARY REPLACEMENT FOR THE TRIAL JUDGE, FROM ANY JUDICIAL DISTRICT IN THE STATE BUT IS ENCOURAGED TO SELECT FROM THE JUDICIAL DISTRICT IN WHICH THE CASE WAS FILED OR FROM ADJOINING JUDICIAL DISTRICTS. IN SELECTING THE DISTRICT COURT JUDGES FOR THE PANEL, THE CHIEF JUSTICE SHALL SELECT ONLY THOSE DISTRICT COURT JUDGES WHO ARE REGULARLY SITTING JUDGES; EXCEPT THAT THE CHIEF JUSTICE, PURSUANT TO SECTION 5 (3) OF ARTICLE VI OF THE STATE CONSTITUTION, MAY SELECT A RETIRED JUSTICE OF THE SUPREME COURT OR A RETIRED JUDGE AS ONE OF THE ADDITIONAL JUDGES FOR THE PANEL.

(II) THE JUDGE WHO PRESIDED AT THE TRIAL AND ANY DISTRICT COURT JUDGE WHO IS APPOINTED TO SERVE ON THE PANEL MAY BE SUBJECT TO DISQUALIFICATION AS PROVIDED IN SECTION 16-6-201.

(III) THE TRIAL JUDGE SHALL BE THE PRESIDING JUDGE FOR PURPOSES OF THE SENTENCING HEARING. IF A REPLACEMENT JUDGE HAS BEEN APPOINTED FOR THE TRIAL JUDGE, THE DISTRICT COURT JUDGES APPOINTED TO THE PANEL SHALL CHOOSE A PRESIDING JUDGE FROM AMONG THEMSELVES.

(a.7) AT THE SENTENCING HEARING, IN ADDITION TO THE EVIDENCE PRESENTED BY THE PARTIES, THE THREE-JUDGE PANEL SHALL CONSIDER THE CERTIFIED TRANSCRIPTS OF THE TRIAL. THE SENTENCING HEARING SHALL BE HELD AS SOON AS PRACTICABLE FOLLOWING THE TRIAL, BUT NOT LATER THAN SIXTY DAYS AFTER THE TRIAL VERDICT IS RETURNED, UNLESS FOR GOOD CAUSE SHOWN.

(b) All admissible evidence presented by either the prosecuting attorney or the defendant that the ~~court~~ PANEL OF JUDGES deems relevant to the nature of the crime, and the character, background, and history of the defendant, including any evidence presented in the guilt phase of the trial, and any matters relating to any of the aggravating or mitigating factors enumerated in subsections (4) and (5) of this section may be presented. Any such evidence which the ~~court~~ PANEL OF JUDGES deems to have probative value may be received, as long as each party is given an opportunity to rebut such evidence. The prosecuting attorney and the defendant or the defendant's counsel shall be permitted to present arguments for or against a sentence of death. ~~For offenses committed before July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for twenty calendar years. For offenses committed on or after July 1, 1985, the jury shall be instructed that life imprisonment means life without the possibility of parole for forty calendar years. For offenses within the purview of section 17-22.5-104 (2) (d), C.R.S., the jury shall be instructed that life imprisonment means life without the possibility of parole.~~

(c) Both the prosecuting attorney and the defense shall notify each other of the names and addresses of any witnesses to be called in the sentencing hearing and the subject matter of such testimony. Such discovery shall be provided within a reasonable amount of time as determined by order of the ~~court~~ PANEL OF JUDGES and

shall be provided not less than twenty-four hours prior to the commencement of the sentencing hearing. Unless good cause is shown, noncompliance with this paragraph (c) shall result in the exclusion of such evidence without further sanction.

(2) (a) After hearing all the evidence and arguments of the prosecuting attorney and the defendant, the ~~jury shall deliberate and render a verdict~~ PANEL OF JUDGES SHALL UNANIMOUSLY DETERMINE WHETHER TO IMPOSE A SENTENCE OF DEATH based upon the following considerations:

(I) Whether at least one aggravating factor has been proved as enumerated in subsection (5) of this section;

(II) Whether sufficient mitigating factors exist which outweigh any aggravating factor or factors found to exist; and

(III) Based on the considerations in subparagraphs (I) and (II) of this paragraph (a), whether the defendant should be sentenced to death or life imprisonment.

(b) (I) In the event that no aggravating factors are found to exist as enumerated in subsection (5) of this section, the ~~jury shall render a verdict of life imprisonment, and the court~~ PANEL OF JUDGES shall sentence the defendant to life imprisonment.

(II) The ~~jury shall not render a verdict of death~~ PANEL OF JUDGES SHALL NOT IMPOSE A DEATH SENTENCE unless it UNANIMOUSLY finds and specifies in writing that:

(A) At least one aggravating factor has been proved; and

(B) There are insufficient mitigating factors to outweigh the aggravating factor or factors that were proved.

(c) ~~In the event that the jury's verdict is to sentence to death, such verdict shall be unanimous and shall be binding upon the court unless the court determines, and sets forth in writing the basis and reasons for such determination, that the verdict of the jury is clearly erroneous as contrary to the weight of the evidence, in which case the court shall sentence the defendant to life imprisonment.~~ THE SENTENCE OF THE PANEL OF JUDGES, WHETHER TO DEATH OR TO LIFE IN PRISON, SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT BASED UPON THE CIRCUMSTANCES AS SET FORTH IN SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE TRIAL AND THE SENTENCING HEARING.

(d) ~~If the jury's verdict is not unanimous, the jury shall be discharged, and the court shall~~ PANEL OF JUDGES CANNOT UNANIMOUSLY AGREE ON A SENTENCE, IT SHALL MAKE A RECORD OF EACH JUDGE'S POSITION AND SHALL THEN sentence the defendant to life imprisonment.

(3) ~~In all cases where the sentencing hearing is held before the court alone, the court shall determine whether the defendant should be sentenced to death or life imprisonment in the same manner in which a jury determines its verdict under paragraphs (a) and (b) of subsection (2) of this section. The sentence of the court shall be supported by specific written findings of fact based upon the circumstances~~

~~as set forth in subsections (4) and (5) of this section and upon the records of the trial and the sentencing hearing.~~

(7) (b) If any death sentence imposed upon a defendant pursuant to the provisions of this section and the imposition of such death sentence upon such defendant is held invalid ~~or unconstitutional~~, FOR REASONS OTHER THAN UNCONSTITUTIONALITY OF THE DEATH PENALTY OR INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE SENTENCE, THE CASE SHALL BE REMANDED TO THE TRIAL COURT TO SET A NEW SENTENCING HEARING; EXCEPT THAT, IF THE PROSECUTOR INFORMS THE PANEL OF JUDGES THAT, IN THE OPINION OF THE PROSECUTOR, CAPITAL PUNISHMENT WOULD NO LONGER BE IN THE INTEREST OF JUSTICE, SAID DEFENDANT SHALL BE RETURNED TO THE TRIAL COURT AND SHALL THEN BE SENTENCED TO LIFE IMPRISONMENT. IF A DEATH SENTENCE IMPOSED PURSUANT TO THIS SECTION IS HELD INVALID BASED ON UNCONSTITUTIONALITY OF THE DEATH PENALTY OR INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE SENTENCE, said defendant shall be returned to the trial court and shall then be sentenced to life imprisonment.

SECTION 2. 16-11-403, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-11-403. Week of execution - warrant. When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the ~~judge~~ PANEL OF JUDGES passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not less than ninety days nor more than one hundred twenty days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections or the executive director's designee commanding said executive director or designee to execute the sentence imposed upon some day within the week of time designated in the warrant and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until infliction of the death penalty. Persons shall be permitted access to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.

SECTION 3. 18-1-105 (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-1-105. Felonies classified - presumptive penalties. (4) A person who has been convicted of a class 1 felony shall be punished by life imprisonment unless ~~the proceeding held to determine sentence according to~~ A PANEL OF JUDGES IMPOSES A DEATH SENTENCE PURSUANT TO the procedure set forth in section 16-11-103, C.R.S. ~~results in a verdict which requires imposition of the death penalty, in which event such person shall be sentenced to death.~~ As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1985, life imprisonment shall mean imprisonment without the possibility of parole for forty calendar years. As to any person sentenced for a class 1 felony, for an act committed on or after July 1, 1990, life imprisonment shall mean imprisonment without the possibility of parole.

SECTION 4. 18-3-107 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-3-107. First degree murder of a peace officer or fireman - legislative declaration. (3) A person convicted of first degree murder of a peace officer or fireman shall be punished by life imprisonment without the possibility of parole for the rest of his OR HER natural life, unless ~~the proceeding held to determine sentence according to~~ A PANEL OF JUDGES IMPOSES A DEATH SENTENCE PURSUANT TO the procedure set forth in section 16-11-103, C.R.S. ~~results in a verdict which requires imposition of the death penalty, in which event such person shall be sentenced to death.~~ Nothing in this subsection (3) shall be construed as limiting the power of the governor to grant reprieves, commutations, and pardons pursuant to section 7 of article IV of the Colorado constitution.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to offenses committed on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 1995