

CHAPTER 155

CRIMINAL LAW AND PROCEDURE

SENATE BILL 93-138

BY SENATORS Wham, Casey, Feeley, Gallagher, Groff, Hopper, Johnson, Mares, Martinez, Mendez, Owens, Peterson, L. Powers, Ruddick, and Weissmann;
also REPRESENTATIVES Tucker, Benavidez, DeGette, Dyer, Foster, George, Kaufman, Keller, Knox, Romero, Rupert, Strom, Tanner, and Wright.

AN ACT

CONCERNING THE PROHIBITION OF THE IMPOSITION OF THE DEATH PENALTY UPON MENTALLY RETARDED PERSONS.

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

SECTION 1. Article 9 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

**PART 4
PRETRIAL MOTIONS IN CLASS 1 FELONY CASES
WHICH ALLEGE THAT A DEFENDANT IS A
MENTALLY RETARDED DEFENDANT**

16-9-401. Definitions. AS USED IN THIS PART 4:

(1) "DEFENDANT" MEANS ANY PERSON CHARGED WITH A CLASS 1 FELONY.

(2) "MENTALLY RETARDED DEFENDANT" MEANS ANY DEFENDANT WITH SIGNIFICANTLY SUBAVERAGE GENERAL INTELLECTUAL FUNCTIONING EXISTING CONCURRENTLY WITH SUBSTANTIAL DEFICITS IN ADAPTIVE BEHAVIOR AND MANIFESTED AND DOCUMENTED DURING THE DEVELOPMENTAL PERIOD. THE REQUIREMENT FOR DOCUMENTATION MAY BE EXCUSED BY THE COURT UPON A FINDING THAT EXTRAORDINARY CIRCUMSTANCES EXIST.

16-9-402. Pretrial motion by defendant in class 1 felony case - determination whether defendant is mentally retarded - procedure. (1) ANY DEFENDANT MAY FILE A MOTION WITH THE TRIAL COURT IN WHICH THE DEFENDANT MAY ALLEGE THAT

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

SUCH DEFENDANT IS A MENTALLY RETARDED DEFENDANT. SUCH MOTION SHALL BE FILED AT LEAST NINETY DAYS PRIOR TO TRIAL.

(2) THE COURT SHALL HOLD A HEARING UPON ANY MOTION FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION AND SHALL MAKE A DETERMINATION REGARDING SUCH MOTION NO LATER THAN TEN DAYS PRIOR TO TRIAL. AT SUCH HEARING, THE DEFENDANT SHALL BE PERMITTED TO PRESENT EVIDENCE WITH REGARD TO SUCH MOTION AND THE PROSECUTION SHALL BE PERMITTED TO OFFER EVIDENCE IN REBUTTAL. THE DEFENDANT SHALL HAVE THE BURDEN OF PROOF TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT SUCH DEFENDANT IS MENTALLY RETARDED.

(3) THE COURT SHALL ENTER SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING WHETHER OR NOT THE DEFENDANT IS A MENTALLY RETARDED DEFENDANT AS DEFINED IN SECTION 16-9-401.

16-9-403. Mentally retarded defendant - death penalty not imposed thereon.

A SENTENCE OF DEATH SHALL NOT BE IMPOSED UPON ANY DEFENDANT WHO IS DETERMINED TO BE A MENTALLY RETARDED DEFENDANT PURSUANT TO SECTION 16-9-402. IF ANY PERSON WHO IS DETERMINED TO BE A MENTALLY RETARDED DEFENDANT IS FOUND GUILTY OF A CLASS 1 FELONY, SUCH DEFENDANT SHALL BE SENTENCED TO LIFE IMPRISONMENT.

SECTION 2. 16-11-103 (1) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended 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 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 ~~case~~ 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.

SECTION 3. Effective date - applicability. This act shall take effect upon passage and shall apply to offenses committed on or after the effective date of this act.

SECTION 4. 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: April 29, 1993