

Second Regular Session

Sixty-second General Assembly

LLS NO. 00-0053.01 Julie Pelegrin

SENATE BILL 00-070

STATE OF COLORADO

BY SENATORS Powers, Andrews, Blickensderfer, Chlouber, Congrove, Dyer, Epps, Evans, Hillman, Lacy, Lamborn, Musgrave, Owen, Tebedo, and Teck;
also REPRESENTATIVE McPherson.

A BILL FOR AN ACT

101 CONCERNING SENTENCING IN CASES INVOLVING CLASS 1 FELONIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

In any class 1 felony case in which the district attorney seeks the death penalty, requires the trial judge, rather than a 3-judge panel, to determine whether the defendant shall be sentenced to death or to life imprisonment. Allows for appointment of a replacement judge in the event the trial judge dies, resigns, is incapacitated, or is disqualified.

Makes conforming amendments.

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

2 **SECTION 1.** 16-11-103 (1), (2), and (7) (b), Colorado Revised
3 Statutes, are amended to read:

4 **16-11-103. Imposition of sentence in class 1 felonies - appellate**
5 **review.** (1) (a) Upon conviction of guilt of a defendant of a class 1
6 felony, ~~a panel of three judges, as soon as practicable,~~ THE TRIAL JUDGE
7 shall conduct a separate sentencing hearing to determine whether the
8 defendant should be sentenced to death or life imprisonment, unless the
9 defendant was under the age of eighteen years at the time of the
10 commission of the offense or unless the defendant has been determined

1 to be a mentally retarded defendant pursuant to part 4 of article 9 of this
2 title, in either of which cases, the defendant shall be sentenced to life
3 imprisonment.

4 (a.5) ~~(f) The panel of judges that conducts the sentencing hearing~~
5 ~~shall consist of the judge who presided at the trial or before whom the~~
6 ~~guilty plea was entered, or a replacement for said judge in the event he or~~
7 ~~she dies, resigns, is incapacitated, or is otherwise disqualified, and two~~
8 ~~additional district court judges designated by the chief justice of the~~
9 ~~Colorado supreme court. The chief justice may select the two additional~~
10 ~~district court judges, and any necessary replacement for the trial judge,~~
11 THE TRIAL JUDGE, PURSUANT TO THE PROVISIONS OF THIS SECTION, SHALL
12 DETERMINE WHETHER THE DEFENDANT SHALL BE SENTENCED TO DEATH OR
13 LIFE IMPRISONMENT; EXCEPT THAT A REPLACEMENT JUDGE MAY MAKE
14 SUCH DETERMINATION IN THE EVENT THE TRIAL JUDGE DIES, RESIGNS, IS
15 INCAPACITATED, OR IS OTHERWISE DISQUALIFIED AS PROVIDED IN SECTION
16 16-6-201. IN THE EVENT A REPLACEMENT JUDGE IS REQUIRED, HE OR SHE
17 SHALL BE DESIGNATED BY THE CHIEF JUSTICE OF THE COLORADO SUPREME
18 COURT. THE CHIEF JUSTICE MAY SELECT A REPLACEMENT JUDGE, IF
19 NECESSARY, from any judicial district in the state but is encouraged to
20 select from the judicial district in which the case was filed or from
21 adjoining judicial districts. ~~In selecting the district court judges for the~~
22 ~~panel, the chief justice shall select only those district court judges who~~
23 ~~are regularly sitting judges; except that the chief justice, pursuant to~~
24 ~~section 5 (3) of article VI of the state constitution, may select a retired~~
25 ~~justice of the supreme court or a retired judge as one of the additional~~
26 ~~judges for the panel.~~ FOR PURPOSES OF THIS SECTION, REFERENCES TO THE

1 "TRIAL JUDGE" SHALL BE CONSTRUED TO APPLY TO A REPLACEMENT JUDGE
2 IF ONE IS DESIGNATED PURSUANT TO THIS PARAGRAPH (a.5).

3 ~~(II) The judge who presided at the trial and any district court~~
4 ~~judge who is appointed to serve on the panel may be subject to~~
5 ~~disqualification as provided in section 16-6-201.~~

6 ~~(III) The trial judge shall be the presiding judge for purposes of~~
7 ~~the sentencing hearing. If a replacement judge has been appointed for the~~
8 ~~trial judge, the district court judges appointed to the panel shall choose a~~
9 ~~presiding judge from among themselves.~~

10 (a.7) At the sentencing hearing, in addition to the evidence
11 presented by the parties, the ~~three-judge panel~~ TRIAL JUDGE shall consider
12 the certified transcripts of the trial. The sentencing hearing shall be held
13 as soon as practicable following the trial, but not later than sixty days
14 after the trial verdict is returned, unless for good cause shown.

15 (b) All admissible evidence presented by either the prosecuting
16 attorney or the defendant that the ~~panel of judges~~ TRIAL JUDGE deems
17 relevant to the nature of the crime, and the character, background, and
18 history of the defendant, including any evidence presented in the guilt
19 phase of the trial, any matters relating to any of the aggravating or
20 mitigating factors enumerated in subsections (4) and (5) of this section,
21 and any matters relating to the personal characteristics of the victim and
22 the impact of the crimes on the victim's family may be presented. Any
23 such evidence, including but not limited to the testimony of members of
24 the victim's immediate family, as defined in section 24-4.1-302 (6),
25 C.R.S., which the ~~panel of judges~~ TRIAL JUDGE deems to have probative
26 value may be received, as long as each party is given an opportunity to

1 rebut such evidence. The prosecuting attorney and the defendant or the
2 defendant's counsel shall be permitted to present arguments for or against
3 a sentence of death.

4 (c) Both the prosecuting attorney and the defense shall notify each
5 other of the names and addresses of any witnesses to be called in the
6 sentencing hearing and the subject matter of such testimony. Such
7 discovery shall be provided within a reasonable amount of time as
8 determined by order of the ~~panel of judges~~ TRIAL JUDGE and shall be
9 provided not less than twenty-four hours prior to the commencement of
10 the sentencing hearing. Unless good cause is shown, noncompliance with
11 this paragraph (c) shall result in the exclusion of such evidence without
12 further sanction.

13 (d) The burden of proof as to the aggravating factors enumerated
14 in subsection (5) of this section shall be beyond a reasonable doubt.
15 There shall be no burden of proof as to proving or disproving mitigating
16 factors.

17 (2) (a) After hearing all the evidence and arguments of the
18 prosecuting attorney and the defendant, the ~~panel of judges~~ TRIAL JUDGE
19 shall ~~unanimously~~ determine whether to impose a sentence of death based
20 upon the following considerations:

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

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

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

1 life imprisonment.

2 (b) (I) In the event that no aggravating factors are found to exist
3 as enumerated in subsection (5) of this section, the ~~panel of judges~~ TRIAL
4 JUDGE shall sentence the defendant to life imprisonment.

5 (II) The ~~panel of judges~~ TRIAL JUDGE shall not impose a death
6 sentence unless ~~it unanimously~~ HE OR SHE finds and specifies in writing
7 that:

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

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

11 (c) The sentence of the ~~panel of judges~~ TRIAL JUDGE, whether to
12 death or to life in prison, shall be supported by specific written findings
13 of fact based upon the circumstances as set forth in subsections (4) and
14 (5) of this section and upon the records of the trial and the sentencing
15 hearing.

16 (d) ~~If the panel of judges cannot unanimously agree on a sentence,~~
17 ~~it shall make a record of each judge's position and shall then sentence the~~
18 ~~defendant to life imprisonment.~~

19 (7) (b) If any death sentence imposed upon a defendant pursuant
20 to the provisions of this section and the imposition of such death sentence
21 upon such defendant is held invalid for reasons other than
22 unconstitutionality of the death penalty or insufficiency of the evidence
23 to support the sentence, the case shall be remanded to the trial court to set
24 a new sentencing hearing; except that, if the prosecutor informs the ~~panel~~
25 ~~of judges~~ TRIAL JUDGE that, in the opinion of the prosecutor, capital
26 punishment would no longer be in the interest of justice, said defendant

1 shall be returned to the trial court and shall then be sentenced to life
2 imprisonment. If a death sentence imposed pursuant to this section is
3 held invalid based on unconstitutionality of the death penalty or
4 insufficiency of the evidence to support the sentence, said defendant shall
5 be returned to the trial court and shall then be sentenced to life
6 imprisonment.

7 **SECTION 2.** 16-11-403, Colorado Revised Statutes, is amended
8 to read:

9 **16-11-403. Week of execution - warrant.** When a person is
10 convicted of a class 1 felony, the punishment for which is death, and the
11 convicted person is sentenced to suffer the penalty of death, the ~~panel of~~
12 ~~judges~~ JUDGE passing such sentence shall appoint and designate in the
13 warrant of conviction a week of time within which the sentence must be
14 executed; the end of such week so appointed shall be not less than ninety
15 days nor more than one hundred twenty days from the day of passing the
16 sentence. Said warrant shall be directed to the executive director of the
17 department of corrections or the executive director's designee
18 commanding said executive director or designee to execute the sentence
19 imposed upon some day within the week of time designated in the
20 warrant and shall be delivered to the sheriff of the county in which such
21 conviction is had, who, within three days thereafter, shall proceed to the
22 correctional facilities at Canon City and deliver the convicted person,
23 together with the warrant, to said executive director or designee, who
24 shall keep the convict in confinement until ~~infliction~~ imposition of the
25 death penalty. Persons shall be permitted access to the inmate pursuant
26 to prison rules. Such rules shall provide, at a minimum, for the inmate's

1 attendants, counsel, and physician, a spiritual adviser selected by the
2 inmate, and members of the inmate's family to have access to the inmate.

3 **SECTION 3.** 16-12-204 (1), Colorado Revised Statutes, is
4 amended to read:

5 **16-12-204. Stay of execution - postconviction review.** (1) The
6 ~~three-judge panel or the trial court, whichever is applicable,~~ upon the
7 imposition of a death sentence, shall set the time of execution pursuant
8 to section 16-11-403 and enter an order staying execution of the judgment
9 and sentence until receipt of an order from the Colorado supreme court.
10 The trial court shall direct the clerk of the trial court to mail to the
11 Colorado supreme court, within seven days after the date upon which the
12 sentence of death is imposed, a copy of the judgment, sentence, and
13 mittimus.

14 **SECTION 4.** 18-1-105 (4), Colorado Revised Statutes, is
15 amended to read:

16 **18-1-105. Felonies classified - presumptive penalties.** (4) A
17 person who has been convicted of a class 1 felony shall be punished by
18 life imprisonment unless a ~~panel of judges~~ JUDGE imposes a death
19 sentence pursuant to the procedure set forth in section 16-11-103, C.R.S.
20 As to any person sentenced for a class 1 felony, for an act committed on
21 or after July 1, 1985, life imprisonment shall mean imprisonment without
22 the possibility of parole for forty calendar years. As to any person
23 sentenced for a class 1 felony, for an act committed on or after July 1,
24 1990, life imprisonment shall mean imprisonment without the possibility
25 of parole.

26 **SECTION 5.** 18-3-107 (3), Colorado Revised Statutes, is

1 amended to read:

2 **18-3-107. First degree murder of a peace officer or firefighter**
3 **- legislative declaration.** (3) A person convicted of first degree murder
4 of a peace officer or firefighter shall be punished by life imprisonment
5 without the possibility of parole for the rest of his or her natural life,
6 unless a ~~panel of judges~~ JUDGE imposes a death sentence pursuant to the
7 procedure set forth in section 16-11-103, C.R.S. Nothing in this
8 subsection (3) shall be construed as limiting the power of the governor to
9 grant reprieves, commutations, and pardons pursuant to section 7 of
10 article IV of the Colorado constitution.

11 **SECTION 6. Effective date.** This act shall take effect at 12:01
12 a.m. on the day following the expiration of the ninety-day period after
13 final adjournment of the general assembly that is allowed for submitting
14 a referendum petition pursuant to article V, section 1 (3) of the state
15 constitution; except that, if a referendum petition is filed against this act
16 or an item, section, or part of this act within such period, then the act,
17 item, section, or part, if approved by the people, shall take effect on the
18 date of the official declaration of the vote thereon by proclamation of the
19 governor.