

Second Regular Session

Sixty-second General Assembly

LLS NO. 00-0930.01 Julie Pelegrin

HOUSE BILL 00-1299

STATE OF COLORADO

BY REPRESENTATIVE McPherson;  
also SENATOR Powers.

REENGROSSED

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  
11 to be a mentally retarded defendant pursuant to part 4 of article 9 of this

HOUSE  
3rd Reading Unamended  
February 21, 2000

HOUSE  
2nd Reading Unamended  
February 16, 2000

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

1 title, in either of which cases, the defendant shall be sentenced to life  
2 imprisonment.

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

1 IF ONE IS DESIGNATED PURSUANT TO THIS PARAGRAPH (a.5).

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

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

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

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

1 defendant's counsel shall be permitted to present arguments for or against  
2 a sentence of death.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **16-11-403. Week of execution - warrant.** When a person is  
9 convicted of a class 1 felony, the punishment for which is death, and the  
10 convicted person is sentenced to suffer the penalty of death, the ~~panel of~~  
11 ~~judges~~ JUDGE passing such sentence shall appoint and designate in the  
12 warrant of conviction a week of time within which the sentence must be  
13 executed; the end of such week so appointed shall be not less than ninety  
14 days nor more than one hundred twenty days from the day of passing the  
15 sentence. Said warrant shall be directed to the executive director of the  
16 department of corrections or the executive director's designee  
17 commanding said executive director or designee to execute the sentence  
18 imposed upon some day within the week of time designated in the  
19 warrant and shall be delivered to the sheriff of the county in which such  
20 conviction is had, who, within three days thereafter, shall proceed to the  
21 correctional facilities at Canon City and deliver the convicted person,  
22 together with the warrant, to said executive director or designee, who  
23 shall keep the convict in confinement until ~~infliction~~ IMPOSITION of the  
24 death penalty. Persons shall be permitted access to the inmate pursuant  
25 to prison rules. Such rules shall provide, at a minimum, for the inmate's  
26 attendants, counsel, and physician, a spiritual adviser selected by the

1 inmate, and members of the inmate's family to have access to the inmate.

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

4 **16-12-204. Stay of execution - postconviction review.** (1) The  
5 ~~three-judge panel or the trial court, whichever is applicable,~~ upon the  
6 imposition of a death sentence, shall set the time of execution pursuant  
7 to section 16-11-403 and enter an order staying execution of the judgment  
8 and sentence until receipt of an order from the Colorado supreme court.  
9 The trial court shall direct the clerk of the trial court to mail to the  
10 Colorado supreme court, within seven days after the date upon which the  
11 sentence of death is imposed, a copy of the judgment, sentence, and  
12 mittimus.

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

15 **18-1-105. Felonies classified - presumptive penalties.** (4) A  
16 person who has been convicted of a class 1 felony shall be punished by  
17 life imprisonment unless a ~~panel of judges~~ JUDGE imposes a death  
18 sentence pursuant to the procedure set forth in section 16-11-103, C.R.S.  
19 As to any person sentenced for a class 1 felony, for an act committed on  
20 or after July 1, 1985, life imprisonment shall mean imprisonment without  
21 the possibility of parole for forty calendar years. As to any person  
22 sentenced for a class 1 felony, for an act committed on or after July 1,  
23 1990, life imprisonment shall mean imprisonment without the possibility  
24 of parole.

25 **SECTION 5.** 18-3-107 (3), Colorado Revised Statutes, is  
26 amended to read:

1           **18-3-107. First degree murder of a peace officer or firefighter**  
2   **- legislative declaration.** (3) A person convicted of first degree murder  
3 of a peace officer or firefighter shall be punished by life imprisonment  
4 without the possibility of parole for the rest of his or her natural life,  
5 unless a ~~panel of judges~~ JUDGE imposes a death sentence pursuant to the  
6 procedure set forth in section 16-11-103, C.R.S. Nothing in this  
7 subsection (3) shall be construed as limiting the power of the governor to  
8 grant reprieves, commutations, and pardons pursuant to section 7 of  
9 article IV of the Colorado constitution.

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