

Second Regular Session

Sixty-second General Assembly

LLS NO. 00-0556.01 Matthew Dawkins

SENATE BILL 00-028

STATE OF COLORADO

BY SENATOR Wham;  
also REPRESENTATIVE Kaufman.

A BILL FOR AN ACT

101 CONCERNING IMPOSITION OF THE DEATH PENALTY BY A JURY.

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**Bill Summary**

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

Provides that the trial jury in a death penalty case, not a 3-judge panel, shall determine whether to sentence a defendant to death or to life imprisonment, using the same procedures required of a 3-judge panel under current law.

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

2       **SECTION 1.** 16-11-103 (1), (2), and (7), Colorado Revised  
3 Statutes, are amended, and the said 16-11-103 is further amended BY  
4 THE ADDITION OF A NEW SUBSECTION, to read:

5       **16-11-103. Imposition of sentence in class 1 felonies - appellate**  
6 **review.** (1) (a) Upon conviction of guilt of a defendant of a class 1  
7 felony, ~~a panel of three judges, as soon as practicable,~~ THE TRIAL COURT  
8 shall conduct a separate sentencing hearing to determine whether the  
9 defendant should be sentenced to death or life imprisonment, unless the  
10 defendant was under the age of eighteen years at the time of the  
11 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. THE SENTENCING HEARING SHALL BE CONDUCTED BY THE  
4 TRIAL JUDGE BEFORE THE TRIAL JURY AS SOON AS PRACTICABLE.  
5 ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO  
6 SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN  
7 SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL  
8 JURY. IF THE VERDICT OF THE TRIAL JURY IS THAT THE DEFENDANT IS  
9 GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS  
10 ALTERNATE JURORS ON THE ISSUE OF PUNISHMENT. IF, FOR ANY REASON  
11 SATISFACTORY TO THE COURT, ANY MEMBER OR MEMBERS OF THE TRIAL  
12 JURY ARE EXCUSED FROM PARTICIPATION IN THE SENTENCING HEARING,  
13 THE TRIAL JUDGE SHALL REPLACE SUCH JUROR OR JURORS WITH AN  
14 ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE  
15 DEFENDANT PLEADED GUILTY, THE SENTENCING HEARING SHALL BE  
16 CONDUCTED BEFORE THE TRIAL JUDGE.

17 ~~(a.5) (f) The panel of judges that conducts the sentencing hearing~~  
18 ~~shall consist of the judge who presided at the trial or before whom the~~  
19 ~~guilty plea was entered, or a replacement for said judge in the event he or~~  
20 ~~she dies, resigns, is incapacitated, or is otherwise disqualified, and two~~  
21 ~~additional district court judges designated by the chief justice of the~~  
22 ~~Colorado supreme court. The chief justice may select the two additional~~  
23 ~~district court judges, and any necessary replacement for the trial judge,~~  
24 ~~from any judicial district in the state but is encouraged to select from the~~  
25 ~~judicial district in which the case was filed or from adjoining judicial~~  
26 ~~districts. In selecting the district court judges for the panel, the chief~~

1 ~~justice shall select only those district court judges who are regularly~~  
2 ~~sitting judges; except that the chief justice, pursuant to section 5 (3) of~~  
3 ~~article VI of the state constitution, may select a retired justice of the~~  
4 ~~supreme court or a retired judge as one of the additional judges for the~~  
5 ~~panel.~~

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

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

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

18 (b) All admissible evidence presented by either the prosecuting  
19 attorney or the defendant that the ~~panel of judges~~ COURT deems relevant  
20 to the nature of the crime, and the character, background, and history of  
21 the defendant, including any evidence presented in the guilt phase of the  
22 trial, any matters relating to any of the aggravating or mitigating factors  
23 enumerated in subsections (4) and (5) of this section, and any matters  
24 relating to the personal characteristics of the victim and the impact of the  
25 crimes on the victim's family may be presented. Any such evidence,  
26 including but not limited to the testimony of members of the victim's

1 immediate family, as defined in section 24-4.1-302 (6), C.R.S., which the  
2 ~~panel of judges~~ COURT deems to have probative value may be received,  
3 as long as each party is given an opportunity to rebut such evidence. The  
4 prosecuting attorney and the defendant or the defendant's counsel shall  
5 be permitted to present arguments for or against a sentence of death. FOR  
6 OFFENSES COMMITTED BEFORE JULY 1, 1985, THE JURY SHALL BE  
7 INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE  
8 POSSIBILITY OF PAROLE FOR TWENTY CALENDAR YEARS. FOR OFFENSES  
9 COMMITTED ON OR AFTER JULY 1, 1985, THE JURY SHALL BE INSTRUCTED  
10 THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE POSSIBILITY OF  
11 PAROLE FOR FORTY CALENDAR YEARS. FOR OFFENSES WITHIN THE  
12 PURVIEW OF SECTION 17-22.5-104 (2) (d), C.R.S., THE JURY SHALL BE  
13 INSTRUCTED THAT LIFE IMPRISONMENT MEANS LIFE WITHOUT THE  
14 POSSIBILITY OF PAROLE.

15 (c) Both the prosecuting attorney and the defense shall notify each  
16 other of the names and addresses of any witnesses to be called in the  
17 sentencing hearing and the subject matter of such testimony. Such  
18 discovery shall be provided within a reasonable amount of time as  
19 determined by order of the ~~panel of judges~~ COURT and shall be provided  
20 not less than twenty-four hours prior to the commencement of the  
21 sentencing hearing. Unless good cause is shown, noncompliance with  
22 this paragraph (c) shall result in the exclusion of such evidence without  
23 further sanction.

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

1 factors.

2 (2) (a) After hearing all the evidence and arguments of the  
3 prosecuting attorney and the defendant, the ~~panel of judges shall~~  
4 ~~unanimously determine whether to impose a sentence of death~~ JURY  
5 SHALL DELIBERATE AND RENDER A VERDICT based upon the following  
6 considerations:

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

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

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

14 (b) (I) In the event that no aggravating factors are found to exist  
15 as enumerated in subsection (5) of this section, the ~~panel of judges~~ JURY  
16 SHALL RENDER A VERDICT OF LIFE IMPRISONMENT, AND THE COURT shall  
17 sentence the defendant to life imprisonment.

18 (II) The ~~panel of judges shall not impose a death sentence~~ JURY  
19 SHALL NOT RENDER A VERDICT OF DEATH unless it ~~unanimously~~ finds and  
20 specifies in writing that:

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

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

24 (c) ~~The sentence of the panel of judges, whether to death or to life~~  
25 ~~in prison, shall be supported by specific written findings of fact based~~  
26 ~~upon the circumstances as set forth in subsections (4) and (5) of this~~

1 ~~section and upon the records of the trial and the sentencing hearing.~~ IN  
2 THE EVENT THAT THE JURY'S VERDICT IS TO SENTENCE TO DEATH, SUCH  
3 VERDICT SHALL BE UNANIMOUS AND SHALL BE BINDING UPON THE COURT  
4 UNLESS THE COURT DETERMINES, AND SETS FORTH IN WRITING THE BASIS  
5 AND REASONS FOR SUCH DETERMINATION, THAT THE VERDICT OF THE JURY  
6 IS CLEARLY ERRONEOUS AS CONTRARY TO THE WEIGHT OF THE EVIDENCE,  
7 IN WHICH CASE THE COURT SHALL SENTENCE THE DEFENDANT TO LIFE  
8 IMPRISONMENT.

9 (d) ~~If the panel of judges cannot unanimously agree on a sentence,~~  
10 ~~it shall make a record of each judge's position and shall then~~ JURY'S  
11 VERDICT IS NOT UNANIMOUS, THE JURY SHALL BE DISCHARGED, AND THE  
12 COURT SHALL sentence the defendant to life imprisonment.

13 (3.3) IN ALL CASES WHERE THE SENTENCING HEARING IS HELD  
14 BEFORE THE COURT ALONE, THE COURT SHALL DETERMINE WHETHER THE  
15 DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT IN  
16 THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER  
17 PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE  
18 SENTENCE OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN  
19 FINDINGS OF FACT BASED UPON CIRCUMSTANCES AS SET FORTH IN  
20 SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE  
21 TRIAL AND THE SENTENCING HEARING.

22 (7) (a) If any provision of this section or the application thereof  
23 to any person or circumstances is held invalid or unconstitutional, such  
24 invalidity or unconstitutionality shall not affect other provisions or  
25 applications of this section, which can be given effect without the invalid  
26 or unconstitutional provision or application, and to this end the provisions

1 of this section are declared to be severable.

2 (b) If any death sentence imposed upon a defendant pursuant to  
3 the provisions of this section and the imposition of such death sentence  
4 upon such defendant is held invalid for reasons other than  
5 unconstitutionality of the death penalty or insufficiency of the evidence  
6 to support the sentence, the case shall be remanded to the trial court to set  
7 a new sentencing hearing; except that, if the prosecutor informs the ~~panel~~  
8 ~~of judges~~ COURT that, in the opinion of the prosecutor, capital punishment  
9 would no longer be in the interest of justice, said defendant shall be  
10 returned to the trial court and shall then be sentenced to life  
11 imprisonment. If a death sentence imposed pursuant to this section is  
12 held invalid based on unconstitutionality of the death penalty or  
13 insufficiency of the evidence to support the sentence, said defendant shall  
14 be returned to the trial court and shall then be sentenced to life  
15 imprisonment.

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

18 **16-11-403. Week of execution - warrant.** When a person is  
19 convicted of a class 1 felony, the punishment for which is death, and the  
20 convicted person is sentenced to suffer the penalty of death, the ~~panel of~~  
21 ~~judges~~ JUDGE passing such sentence shall appoint and designate in the  
22 warrant of conviction a week of time within which the sentence must be  
23 executed; the end of such week so appointed shall be not less than ninety  
24 days nor more than one hundred twenty days from the day of passing the  
25 sentence. Said warrant shall be directed to the executive director of the  
26 department of corrections or the executive director's designee

1 commanding said executive director or designee to execute the sentence  
2 imposed upon some day within the week of time designated in the  
3 warrant and shall be delivered to the sheriff of the county in which such  
4 conviction is had, who, within three days thereafter, shall proceed to the  
5 correctional facilities at Canon City and deliver the convicted person,  
6 together with the warrant, to said executive director or designee, who  
7 shall keep the convict in confinement until infliction of the death penalty.  
8 Persons shall be permitted access to the inmate pursuant to prison rules.  
9 Such rules shall provide, at a minimum, for the inmate's attendants,  
10 counsel, and physician, a spiritual adviser selected by the inmate, and  
11 members of the inmate's family to have access to the inmate.

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

14 **16-12-204. Stay of execution - postconviction review.** (1) ~~The~~  
15 ~~three-judge panel or The trial court whichever is applicable,~~ upon the  
16 imposition of a death sentence, shall set the time of execution pursuant  
17 to section 16-11-403 and enter an order staying execution of the judgment  
18 and sentence until receipt of an order from the Colorado supreme court.  
19 The trial court shall direct the clerk of the trial court to mail to the  
20 Colorado supreme court, within seven days after the date upon which the  
21 sentence of death is imposed, a copy of the judgment, sentence, and  
22 mittimus.

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

25 **18-1-105. Felonies classified - presumptive penalties.** (4) A  
26 person who has been convicted of a class 1 felony shall be punished by

1 life imprisonment unless ~~a panel of judges imposes a death sentence~~  
2 ~~pursuant to~~ THE PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING  
3 TO the procedure set forth in section 16-11-103, C.R.S., RESULTS IN A  
4 VERDICT THAT REQUIRES IMPOSITION OF THE DEATH PENALTY, IN WHICH  
5 EVENT SUCH PERSON SHALL BE SENTENCED TO DEATH. As to any person  
6 sentenced for a class 1 felony, for an act committed on or after July 1,  
7 1985, life imprisonment shall mean imprisonment without the possibility  
8 of parole for forty calendar years. As to any person sentenced for a class  
9 1 felony, for an act committed on or after July 1, 1990, life imprisonment  
10 shall mean imprisonment without the possibility of parole.

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

13 **18-3-107. First degree murder of a peace officer or firefighter**  
14 **- legislative declaration.** (3) A person convicted of first degree murder  
15 of a peace officer or firefighter shall be punished by life imprisonment  
16 without the possibility of parole for the rest of his or her natural life,  
17 unless ~~a panel of judges imposes a death sentence pursuant~~ THE  
18 PROCEEDING HELD TO DETERMINE SENTENCE ACCORDING to the procedure  
19 set forth in section 16-11-103, C.R.S., RESULTS IN A VERDICT THAT  
20 REQUIRES IMPOSITION OF THE DEATH PENALTY, IN WHICH EVENT SUCH  
21 PERSON SHALL BE SENTENCED TO DEATH. Nothing in this subsection (3)  
22 shall be construed as limiting the power of the governor to grant  
23 reprieves, commutations, and pardons pursuant to section 7 of article IV  
24 of the Colorado constitution.

25 **SECTION 6. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.