

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0943.01 Julie Pelegrin

SENATE BILL 01-207

SENATE SPONSORSHIP

Chlouber, and Hernandez

HOUSE SPONSORSHIP

(None),

Senate Committees

Judiciary

House Committees

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. Instructs a minimum 10-person majority of the trial jury to render an advisory verdict as to death or 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.

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 *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, 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 JUDGE
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
12 to be a mentally retarded defendant pursuant to part 4 of article 9 of this
13 title, in either of which cases, the defendant shall be sentenced to life
14 imprisonment. THE SENTENCING HEARING SHALL BE CONDUCTED BY THE
15 TRIAL JUDGE BEFORE THE TRIAL JURY, AS SOON AS PRACTICABLE.
16 ALTERNATE JURORS SHALL NOT BE EXCUSED FROM THE CASE PRIOR TO
17 SUBMISSION OF THE ISSUE OF GUILT TO THE TRIAL JURY AND SHALL REMAIN
18 SEPARATELY SEQUESTERED UNTIL A VERDICT IS ENTERED BY THE TRIAL
19 JURY. IF THE VERDICT OF THE TRIAL JURY IS THAT THE DEFENDANT IS
20 GUILTY OF A CLASS 1 FELONY, THE ALTERNATE JURORS SHALL SIT AS
21 ALTERNATE JURORS ON THE ISSUE OF PUNISHMENT. IF, FOR ANY REASON
22 SATISFACTORY TO THE TRIAL JUDGE, ANY MEMBER OR MEMBERS OF THE
23 TRIAL JURY ARE EXCUSED FROM PARTICIPATION IN THE SENTENCING
24 HEARING, THE TRIAL JUDGE SHALL REPLACE SUCH JUROR OR JURORS WITH
25 AN ALTERNATE JUROR OR JURORS. IF A TRIAL JURY WAS WAIVED OR IF THE
26 DEFENDANT PLED GUILTY, THE SENTENCING HEARING SHALL BE

1 CONDUCTED BEFORE THE TRIAL JUDGE.

2 (a.5) ~~(I) The panel of judges that conducts the sentencing hearing~~
3 ~~shall consist of the judge who presided at the trial or before whom the~~
4 ~~guilty plea was entered, or a replacement for said judge in the event he or~~
5 ~~she dies, resigns, is incapacitated, or is otherwise disqualified, and two~~
6 ~~additional district court judges designated by the chief justice of the~~
7 ~~Colorado supreme court. The chief justice may select the two additional~~
8 ~~district court judges, and any necessary replacement for the trial judge,~~
9 ~~from any judicial district in the state but is encouraged to select from the~~
10 ~~judicial district in which the case was filed or from adjoining judicial~~
11 ~~districts. In selecting the district court judges for the panel, the chief~~
12 ~~justice shall select only those district court judges who are regularly~~
13 ~~sitting judges; except that the chief justice, pursuant to section 5 (3) of~~
14 ~~article VI of the state constitution, may select a retired justice of the~~
15 ~~supreme court or a retired judge as one of the additional judges for the~~
16 ~~panel.~~

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

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

24 (a.7) ~~At the sentencing hearing, in addition to the evidence~~
25 ~~presented by the parties, the three-judge panel shall consider the certified~~
26 ~~transcripts of the trial. The sentencing hearing shall be held as soon as~~
27 ~~practicable following the trial, but not later than sixty days after the trial~~

1 ~~verdict is returned, unless for good cause shown.~~

2 (b) All admissible evidence presented by either the prosecuting
3 attorney or the defendant that the ~~panel of judges~~ TRIAL JUDGE deems
4 relevant to the nature of the crime, and the character, background, and
5 history of the defendant, including any evidence presented in the guilt
6 phase of the trial, any matters relating to any of the aggravating or
7 mitigating factors enumerated in subsections (4) and (5) of this section,
8 and any matters relating to the personal characteristics of the victim and
9 the impact of the crimes on the victim's family may be presented. Any
10 such evidence, including but not limited to the testimony of members of
11 the victim's immediate family, as defined in section 24-4.1-302 (6),
12 C.R.S., which the ~~panel of judges~~ TRIAL JUDGE deems to have probative
13 value may be received, as long as each party is given an opportunity to
14 rebut such evidence. The prosecuting attorney and the defendant or the
15 defendant's counsel shall be permitted to present arguments for or against
16 a sentence of death.

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

26 (d) The burden of proof as to the aggravating factors enumerated
27 in subsection (5) of this section shall be beyond a reasonable doubt.

1 There shall be no burden of proof as to proving or disproving mitigating
2 factors.

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

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

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

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

15 (b) (I) In the event ~~that~~ AT LEAST TEN JURORS DETERMINE no
16 aggravating factors are found to exist as enumerated in subsection (5) of
17 this section, the ~~panel of judges shall sentence the defendant to life~~
18 ~~imprisonment~~ JURY SHALL RENDER AN ADVISORY VERDICT OF LIFE
19 IMPRISONMENT.

20 (II) The ~~panel of judges shall not impose a death sentence~~ JURY
21 SHALL NOT RENDER AN ADVISORY VERDICT OF DEATH unless, BY THE
22 AGREEMENT OF AT LEAST TEN JURORS, it ~~unanimously~~ finds and specifies
23 in writing that:

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

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

27 (c) ~~The sentence of the panel of judges, whether to death or to life~~

1 ~~in prison, shall be supported by specific written findings of fact based~~
2 ~~upon the circumstances as set forth in subsections (4) and (5) of this~~
3 ~~section and upon the records of the trial and the sentencing hearing.~~

4 (d) ~~If the panel of judges cannot unanimously agree on a sentence,~~
5 ~~it shall make a record of each judge's position and shall then sentence the~~
6 ~~defendant to life imprisonment~~ AT LEAST TEN JURORS CANNOT AGREE ON
7 A VERDICT, THE JURY SHALL SO NOTIFY THE TRIAL JUDGE AND THE JURY
8 SHALL BE DISCHARGED.

9 (3.3) THE TRIAL JUDGE SHALL TAKE INTO CONSIDERATION THE
10 ADVISORY VERDICT RENDERED BY THE JURY, IF ANY, AND SHALL
11 DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH
12 OR LIFE IMPRISONMENT. THE TRIAL JUDGE SHALL DETERMINE WHETHER
13 THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT
14 IN THE SAME MANNER IN WHICH A JURY DETERMINES ITS VERDICT UNDER
15 PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. THE
16 SENTENCE OF THE TRIAL JUDGE SHALL BE SUPPORTED BY SPECIFIC WRITTEN
17 FINDINGS OF FACT BASED UPON CIRCUMSTANCES AS SET FORTH IN
18 SUBSECTIONS (4) AND (5) OF THIS SECTION AND UPON THE RECORDS OF THE
19 TRIAL AND THE SENTENCING HEARING.

20 (7) (b) If any death sentence imposed upon a defendant pursuant
21 to the provisions of this section and the imposition of such death sentence
22 upon such defendant is held invalid for reasons other than
23 unconstitutionality of the death penalty or insufficiency of the evidence
24 to support the sentence, the case shall be remanded to the trial court to set
25 a new sentencing hearing; except that, if the prosecutor informs the ~~panel~~
26 ~~of judges~~ TRIAL JUDGE that, in the opinion of the prosecutor, capital
27 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 held
3 invalid based on unconstitutionality of the death penalty or insufficiency
4 of the evidence to support the sentence, said defendant shall be returned
5 to the trial court and shall then be sentenced to life 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~~ TRIAL JUDGE passing such sentence shall appoint and designate in
12 the warrant of conviction a week of time within which the sentence must
13 be executed; the end of such week so appointed shall be not ~~less~~ FEWER
14 than ninety days nor more than one hundred twenty days from the day of
15 passing the sentence. Said warrant shall be directed to the executive
16 director of the department of corrections or the executive director's
17 designee commanding said executive director or designee to execute the
18 sentence imposed upon some day within the week of time designated in
19 the warrant and shall be delivered to the sheriff of the county in which
20 such conviction is had, who, within three days thereafter, shall proceed to
21 the correctional facilities at Canon City and deliver the convicted person,
22 together with the warrant, to said executive director or designee, who shall
23 keep the convict in confinement until ~~infliction~~ IMPOSITION of the death
24 penalty. Persons shall be permitted access to the inmate pursuant to
25 prison rules. Such rules shall provide, at a minimum, for the inmate's
26 attendants, counsel, and physician, a spiritual adviser selected by the
27 inmate, and members of the inmate's family to have access to the inmate.

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

3 **16-12-204. Stay of execution - postconviction review.** (1) The
4 ~~three-judge panel or the trial court, whichever is applicable,~~ upon the
5 imposition of a death sentence, shall set the time of execution pursuant to
6 section 16-11-403 and enter an order staying execution of the judgment
7 and sentence until receipt of an order from the Colorado supreme court.
8 The trial court shall direct the clerk of the trial court to mail to the
9 Colorado supreme court, within seven days after the date upon which the
10 sentence of death is imposed, a copy of the judgment, sentence, and
11 mittimus.

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

14 **18-1-105. Felonies classified - presumptive penalties.** (4) A
15 person who has been convicted of a class 1 felony shall be punished by
16 life imprisonment unless a ~~panel of judges~~ JUDGE imposes a death
17 sentence pursuant to the procedure set forth in section 16-11-103, C.R.S.
18 As to any person sentenced for a class 1 felony, for an act committed on
19 or after July 1, 1985, life imprisonment shall mean imprisonment without
20 the possibility of parole for forty calendar years. As to any person
21 sentenced for a class 1 felony, for an act committed on or after July 1,
22 1990, life imprisonment shall mean imprisonment without the possibility
23 of parole.

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

26 **18-3-107. First degree murder of a peace officer or firefighter**
27 **- legislative declaration.** (3) A person convicted of first degree murder

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

8 **SECTION 6. Effective date - applicability.** This act shall take
9 effect July 1, 2001, and shall apply to offenses committed on or after said
10 date.

11 **SECTION 7. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.