

REFERENCE TITLE: death penalty; juries

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2284

Introduced by
Representatives Sinema: Ableser, Gallardo, Lopes, Lujan, Meza, Prezelski

AN ACT

AMENDING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3; AMENDING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4; RELATING TO SENTENCING; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-703.01, Arizona Revised Statutes, as amended by
3 Laws 2005, chapter 325, section 3, is amended to read:

4 13-703.01. Sentences of death, life imprisonment or natural
5 life; imposition; sentencing proceedings;
6 definitions

7 A. If the state has filed a notice of intent to seek the death penalty
8 and the defendant is convicted of first degree murder, the trier of fact at
9 the sentencing proceeding shall determine whether to impose a sentence of
10 death, LIFE OR NATURAL LIFE in accordance with the procedures provided in
11 this section. If the ~~trier of fact determines that a sentence of death is~~
12 ~~not appropriate, or if the~~ state has not filed a notice of intent to seek the
13 death penalty, and the defendant is convicted of first degree murder, the
14 court shall determine whether to impose a sentence of life or natural life.

15 B. Before trial, the prosecution shall notice one or more of the
16 aggravating circumstances under section 13-703, subsection F.

17 C. If the trier of fact finds the defendant guilty of first degree
18 murder, the trier of fact shall then immediately determine whether one or
19 more alleged aggravating circumstances have been proven. This proceeding is
20 the aggravation phase of the sentencing proceeding.

21 D. If the trier of fact finds that one or more of the alleged
22 aggravating circumstances have been proven, the trier of fact shall then
23 immediately determine whether the death penalty should be imposed. This
24 proceeding is the penalty phase of the sentencing proceeding.

25 E. At the aggravation phase, the trier of fact shall make a special
26 finding on whether each alleged aggravating circumstance has been proven
27 based on the evidence that was presented at the trial or at the aggravation
28 phase. If the trier of fact is a jury, a unanimous verdict is required to
29 find that the aggravating circumstance has been proven. If the trier of fact
30 unanimously finds that an aggravating circumstance has not been proven, the
31 defendant is entitled to a special finding that the aggravating circumstance
32 has not been proven. If the trier of fact unanimously finds no aggravating
33 circumstances, the ~~court~~ TRIER OF FACT shall then determine whether to impose
34 a sentence of life or natural life on the defendant AFTER A HEARING PURSUANT
35 TO SUBSECTIONS G AND Q OF THIS SECTION.

36 F. The penalty phase shall be held immediately after the trier of fact
37 finds at the aggravation phase that one or more of the aggravating
38 circumstances under section 13-703, subsection F have been proven. A finding
39 by the trier of fact that any of the remaining aggravating circumstances
40 alleged has not been proven or the inability of the trier of fact to agree on
41 the issue of whether any of the remaining aggravating circumstances alleged
42 has been proven shall not prevent the holding of the penalty phase.

1 G. At the penalty phase, the defendant and the state may present any
2 evidence that is relevant to the determination of whether there is mitigation
3 that is sufficiently substantial to call for leniency. In order for the
4 trier of fact to make this determination, the state may present any evidence
5 that demonstrates that the defendant should not be shown leniency.

6 H. The trier of fact shall determine unanimously whether death is the
7 appropriate sentence. If the trier of fact is a jury and the jury
8 unanimously determines that the death penalty is not appropriate, the ~~court~~
9 JURY shall determine whether to impose a sentence of life or natural life
10 PURSUANT TO SUBSECTION Q OF THIS SECTION.

11 I. If the trier of fact at any prior phase of the trial is the same
12 trier of fact at the subsequent phase, any evidence that was presented at any
13 prior phase of the trial shall be deemed admitted as evidence at any
14 subsequent phase of the trial.

15 J. At the aggravation phase, if the trier of fact is a jury, the jury
16 is unable to reach a verdict on any of the alleged aggravating circumstances
17 and the jury has not found that at least one of the alleged aggravating
18 circumstances has been proven, the court shall dismiss the jury and shall
19 impanel a new jury. The new jury shall not retry the issue of the
20 defendant's guilt or the issue regarding any of the aggravating circumstances
21 that the first jury found not proved by unanimous verdict. If the new jury
22 is unable to reach a unanimous verdict, the ~~court~~ JURY shall impose a
23 sentence of life or natural life on the defendant AFTER A HEARING PURSUANT TO
24 SUBSECTIONS K AND Q OF THIS SECTION.

25 K. At the penalty phase, if the trier of fact is a jury and the jury
26 is unable to reach a verdict, the court shall dismiss the jury and shall
27 impanel a new jury. The new jury shall not retry the issue of the
28 defendant's guilt or the issue regarding any of the aggravating circumstances
29 that the first jury found by unanimous verdict to be proved or not proved.
30 If the new jury is unable to reach a unanimous verdict AS TO THE IMPOSITION
31 OF THE DEATH PENALTY, the ~~court~~ JURY shall impose a sentence of life or
32 natural life on the defendant PURSUANT TO SUBSECTION Q OF THIS SECTION. IF
33 THE JURY IS UNABLE TO REACH A UNANIMOUS VERDICT AS TO LIFE OR NATURAL LIFE,
34 THE COURT SHALL IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE ON THE DEFENDANT.

35 L. If the jury that rendered a verdict of guilty is not the jury first
36 impaneled for the aggravation phase, the jury impaneled in the aggravation
37 phase shall not retry the issue of the defendant's guilt. If the jury
38 impaneled in the aggravation phase is unable to reach a verdict on any of the
39 alleged aggravating circumstances and the jury has not found that at least
40 one of the alleged aggravating circumstances has been proven, the court shall
41 dismiss the jury and shall impanel a new jury. The new jury shall not retry
42 the issue of the defendant's guilt or the issue regarding any of the
43 aggravating circumstances that the first jury found not proved by unanimous
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45 IMPOSITION OF THE DEATH PENALTY, the ~~court~~ JURY shall impose a sentence of

1 life or natural life on the defendant PURSUANT TO SUBSECTION Q OF THIS
2 SECTION. IF THE JURY IS UNABLE TO REACH A UNANIMOUS VERDICT AS TO LIFE OR
3 NATURAL LIFE, THE COURT SHALL IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE ON
4 THE DEFENDANT.

5 M. Alternate jurors who are impaneled for the trial in a case in which
6 the offense is punishable by death shall not be excused from the case until
7 the completion of the sentencing proceeding.

8 N. If the sentence of a person who was sentenced to death is
9 overturned, the person shall be resentenced pursuant to this section by a
10 jury that is specifically impaneled for this purpose as if the original
11 sentencing had not occurred.

12 O. In any case that requires sentencing or resentencing in which the
13 defendant has been convicted of an offense that is punishable by death and in
14 which the trier of fact was a judge or a jury that has since been discharged,
15 the defendant shall be sentenced or resentenced pursuant to this section by a
16 jury that is specifically impaneled for this purpose.

17 P. The trier of fact shall make all factual determinations required by
18 this section or the Constitution of the United States or this state to impose
19 a death sentence. If the defendant bears the burden of proof, the issue
20 shall be determined in the penalty phase. If the state bears the burden of
21 proof, the issue shall be determined in the aggravation phase.

22 Q. If the death penalty was not alleged or was alleged but not
23 imposed, the ~~court~~ TRIER OF FACT shall determine whether to impose a sentence
24 of life or natural life. In determining whether to impose a sentence of life
25 or natural life, the ~~court~~ TRIER OF FACT:

26 1. May consider any evidence introduced before sentencing or at any
27 other sentencing proceeding.

28 2. Shall consider the aggravating and mitigating circumstances listed
29 in section 13-702 and any statement made by a victim.

30 R. Subject to the provisions of section 13-703, subsection B, a victim
31 has the right to be present at the aggravation phase and to present any
32 information that is relevant to the proceeding. A victim has the right to be
33 present and to present information at the penalty phase. At the penalty
34 phase, the victim may present information about the murdered person and the
35 impact of the murder on the victim and other family members and may submit a
36 victim impact statement in any format to the trier of fact.

37 S. For the purposes of this section:

38 1. "Trier of fact" means a jury unless the defendant and the state
39 waive a jury, in which case the trier of fact shall be the court.

40 2. "Victim" means the murdered person's spouse, parent, child,
41 grandparent or sibling, any other person related to the murdered person by
42 consanguinity or affinity to the second degree or any other lawful
43 representative of the murdered person, except if the spouse, parent, child,
44 grandparent, sibling, other person related to the murdered person by

1 consanguinity or affinity to the second degree or other lawful representative
2 is in custody for an offense or is the accused.

3 Sec. 2. Section 13-703.01, Arizona Revised Statutes, as amended by
4 Laws 2005, chapter 325, section 4, is amended to read:

5 13-703.01. Sentences of death, life imprisonment or natural
6 life; imposition; sentencing proceedings;
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8 A. If the state has filed a notice of intent to seek the death penalty
9 and the defendant is convicted of first degree murder, the trier of fact at
10 the sentencing proceeding shall determine whether to impose a sentence of
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14 death penalty, and the defendant is convicted of first degree murder, the
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16 B. Before trial, the prosecution shall notice one or more of the
17 aggravating circumstances under section 13-703, subsection F.

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19 murder, the trier of fact shall then immediately determine whether one or
20 more alleged aggravating circumstances have been proven. This proceeding is
21 the aggravation phase of the sentencing proceeding.

22 D. If the trier of fact finds that one or more of the alleged
23 aggravating circumstances have been proven, the trier of fact shall then
24 immediately determine whether the death penalty should be imposed. This
25 proceeding is the penalty phase of the sentencing proceeding.

26 E. At the aggravation phase, the trier of fact shall make a special
27 finding on whether each alleged aggravating circumstance has been proven
28 based on the evidence that was presented at the trial or at the aggravation
29 phase. If the trier of fact is a jury, a unanimous verdict is required to
30 find that the aggravating circumstance has been proven. If the trier of fact
31 unanimously finds that an aggravating circumstance has not been proven, the
32 defendant is entitled to a special finding that the aggravating circumstance
33 has not been proven. If the trier of fact unanimously finds no aggravating
34 circumstances, the ~~court~~ TRIER OF FACT shall then determine whether to impose
35 a sentence of life or natural life on the defendant AFTER A HEARING PURSUANT
36 TO SUBSECTIONS G AND Q OF THIS SECTION.

37 F. The penalty phase shall be held immediately after the trier of fact
38 finds at the aggravation phase that one or more of the aggravating
39 circumstances under section 13-703, subsection F have been proven. A finding
40 by the trier of fact that any of the remaining aggravating circumstances
41 alleged has not been proven or the inability of the trier of fact to agree on
42 the issue of whether any of the remaining aggravating circumstances alleged
43 has been proven shall not prevent the holding of the penalty phase.

1 G. At the penalty phase, the defendant and the state may present any
2 evidence that is relevant to the determination of whether there is mitigation
3 that is sufficiently substantial to call for leniency. In order for the
4 trier of fact to make this determination, the state may present any evidence
5 that demonstrates that the defendant should not be shown leniency.

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17 and the jury has not found that at least one of the alleged aggravating
18 circumstances has been proven, the court shall dismiss the jury and shall
19 impanel a new jury. The new jury shall not retry the issue of the
20 defendant's guilt or the issue regarding any of the aggravating circumstances
21 that the first jury found not proved by unanimous verdict. If the new jury
22 is unable to reach a unanimous verdict, the ~~court~~ JURY shall impose a
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24 SUBSECTIONS K AND Q OF THIS SECTION.

25 K. At the penalty phase, if the trier of fact is a jury and the jury
26 is unable to reach a verdict, the court shall dismiss the jury and shall
27 impanel a new jury. The new jury shall not retry the issue of the
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33 THE JURY IS UNABLE TO REACH A UNANIMOUS VERDICT AS TO LIFE OR NATURAL LIFE,
34 THE COURT SHALL IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE ON THE DEFENDANT.

35 L. If the jury that rendered a verdict of guilty is not the jury first
36 impaneled for the aggravation phase, the jury impaneled in the aggravation
37 phase shall not retry the issue of the defendant's guilt. If the jury
38 impaneled in the aggravation phase is unable to reach a verdict on any of the
39 alleged aggravating circumstances and the jury has not found that at least
40 one of the alleged aggravating circumstances has been proven, the court shall
41 dismiss the jury and shall impanel a new jury. The new jury shall not retry
42 the issue of the defendant's guilt or the issue regarding any of the
43 aggravating circumstances that the first jury found not proved by unanimous
44 verdict. If the new jury is unable to reach a unanimous verdict AS TO THE
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3 NATURAL LIFE, THE COURT SHALL IMPOSE A SENTENCE OF LIFE OR NATURAL LIFE ON
4 THE DEFENDANT.

5 M. Alternate jurors who are impaneled for the trial in a case in which
6 the offense is punishable by death shall not be excused from the case until
7 the completion of the sentencing proceeding.

8 N. If the sentence of a person who was sentenced to death is
9 overturned, the person shall be resentenced pursuant to this section by a
10 jury that is specifically impaneled for this purpose as if the original
11 sentencing had not occurred.

12 O. In any case that requires sentencing or resentencing in which the
13 defendant has been convicted of an offense that is punishable by death and in
14 which the trier of fact was a judge or a jury that has since been discharged,
15 the defendant shall be sentenced or resentenced pursuant to this section by a
16 jury that is specifically impaneled for this purpose.

17 P. The trier of fact shall make all factual determinations required by
18 this section or the Constitution of the United States or this state to impose
19 a death sentence. If the defendant bears the burden of proof, the issue
20 shall be determined in the penalty phase. If the state bears the burden of
21 proof, the issue shall be determined in the aggravation phase.

22 Q. If the death penalty was not alleged or was alleged but not
23 imposed, the ~~court~~ TRIER OF FACT shall determine whether to impose a sentence
24 of life or natural life. In determining whether to impose a sentence of life
25 or natural life, the ~~court~~ TRIER OF FACT:

26 1. May consider any evidence introduced before sentencing or at any
27 other sentencing proceeding.

28 2. Shall consider the aggravating and mitigating circumstances listed
29 in section 13-702 and any statement made by a victim.

30 R. Subject to the provisions of section 13-703, subsection B, a victim
31 has the right to be present at the aggravation phase and to present any
32 information that is relevant to the proceeding. A victim has the right to be
33 present at the penalty phase. At the penalty phase, the victim has the right
34 to be heard pursuant to section 13-4426.

35 S. For the purposes of this section:

36 1. "Trier of fact" means a jury unless the defendant and the state
37 waive a jury, in which case the trier of fact shall be the court.

38 2. "Victim" means the murdered person's spouse, parent, child,
39 grandparent or sibling, any other person related to the murdered person by
40 consanguinity or affinity to the second degree or any other lawful
41 representative of the murdered person, except if the spouse, parent, child,
42 grandparent, sibling, other person related to the murdered person by
43 consanguinity or affinity to the second degree or other lawful representative
44 is in custody for an offense or is the accused.

1 Sec. 3. Conditional enactment

2 Section 13-703.01, Arizona Revised Statutes, as amended by Laws 2005,
3 chapter 325, section 4 and this act, does not take effect unless the
4 condition prescribed by Laws 2003, chapter 255, section 8, relating to victim
5 sentencing recommendations, is met.