

REFERENCE TITLE: death penalty; juries

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## HB 2298

Introduced by  
Representatives Sinema, Ableser, Prezelski: Bradley, Lopes, Meza

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  
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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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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  
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42 the issue of whether any of the remaining aggravating circumstances alleged  
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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,  
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17 P. The trier of fact shall make all factual determinations required by  
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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, becomes effective on the date prescribed  
4 by Laws 2003, chapter 255, section 8 but only on the occurrence of the  
5 condition prescribed by Laws 2003, chapter 255, section 8.