

1 **CAPITAL FELONY SENTENCING**
2 **PROCEDURES**

3 2002 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Gordon E. Snow**

6 **This act modifies the Criminal Code to provide procedures regarding determining if**
7 **sentences for more than one conviction are to be consecutive or concurrent, when one of the**
8 **convictions is for life with or without parole.**

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **76-3-207**, as last amended by Chapter 209, Laws of Utah 2001

12 *Be it enacted by the Legislature of the state of Utah:*

13 Section 1. Section **76-3-207** is amended to read:

14 **76-3-207. Capital felony -- Sentencing proceeding.**

15 (1) (a) When a defendant has pled guilty to or been found guilty of a capital felony, there
16 shall be further proceedings before the court or jury on the issue of sentence.

17 (b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall be
18 conducted before a jury or, upon request of the defendant and with the approval of the court and
19 the consent of the prosecution, by the court which accepted the plea.

20 (c) (i) When a defendant has been found guilty of a capital felony, the proceedings shall
21 be conducted before the court or jury which found the defendant guilty, provided the defendant
22 may waive hearing before the jury with the approval of the court and the consent of the
23 prosecution, in which event the hearing shall be before the court.

24 (ii) If, however, circumstances make it impossible or impractical to reconvene the same
25 jury for the sentencing proceedings, the court may dismiss that jury and convene a new jury for the
26 proceedings.

27 (d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand



28 from an appellate court, the sentencing authority shall be determined as provided in Subsection
29 [~~5~~] (6).

30 (2) (a) In capital sentencing proceedings, evidence may be presented on:

31 (i) the nature and circumstances of the crime;

32 (ii) the defendant's character, background, history, and mental and physical condition;

33 (iii) the victim and the impact of the crime on the victim's family and community without
34 comparison to other persons or victims; and

35 (iv) any other facts in aggravation or mitigation of the penalty that the court considers
36 relevant to the sentence.

37 (b) Any evidence the court considers to have probative force may be received regardless
38 of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant
39 shall be permitted to present argument for or against the sentence of death.

40 (3) Aggravating circumstances include those outlined in Section 76-5-202.

41 (4) Mitigating circumstances include:

42 (a) the defendant has no significant history of prior criminal activity;

43 (b) the homicide was committed while the defendant was under the influence of mental
44 or emotional disturbance;

45 (c) the defendant acted under duress or under the domination of another person;

46 (d) at the time of the homicide, the capacity of the defendant to appreciate the
47 wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as
48 a result of mental disease, intoxication, or influence of drugs;

49 (e) the youth of the defendant at the time of the crime;

50 (f) the defendant was an accomplice in the homicide committed by another person and the
51 defendant's participation was relatively minor; and

52 (g) any other fact in mitigation of the penalty.

53 [~~4~~] (5) (a) The court or jury, as the case may be, shall retire to consider the penalty.

54 Except as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this
55 section, it shall be instructed as to the punishment to be imposed upon a unanimous decision for
56 death and that the penalty of either an indeterminate prison term of not less than 20 years and
57 which may be for life or life in prison without parole, shall be imposed if a unanimous decision
58 for death is not found.

59 (b) The death penalty shall only be imposed if, after considering the totality of the
60 aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that
61 total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt,
62 that the imposition of the death penalty is justified and appropriate in the circumstances. If the jury
63 reports unanimous agreement to impose the sentence of death, the court shall discharge the jury
64 and shall impose the sentence of death.

65 (c) If the jury is unable to reach a unanimous decision imposing the sentence of death or
66 the state is not seeking the death penalty, the jury shall then determine whether the penalty of life
67 in prison without parole shall be imposed, except as provided in Subsection 76-3-207.5(2). The
68 penalty of life in prison without parole shall only be imposed if the jury determines that the
69 sentence of life in prison without parole is appropriate. If the jury reports agreement by ten jurors
70 or more to impose the sentence of life in prison without parole, the court shall discharge the jury
71 and shall impose the sentence of life in prison without parole. If ten jurors or more do not agree
72 upon a sentence of life in prison without parole, the court shall discharge the jury and impose an
73 indeterminate prison term of not less than 20 years and which may be for life.

74 (d) If the defendant waives hearing before the jury as to sentencing, with the approval of
75 the court and the consent of the prosecution, the court shall determine the appropriate penalty
76 according to the standards of this Subsection [~~(4)~~] (5)(d).

77 (e) If the defendant is sentenced to more than one term of life in prison with or without the
78 possibility of parole, or in addition to a sentence of life in prison with or without the possibility
79 of parole the defendant is sentenced for other offenses which result in terms of imprisonment, the
80 judge shall determine whether the terms of imprisonment shall be imposed as concurrent or
81 consecutive sentences in accordance with Section 76-3-401.

82 [~~(5)~~] (6) Upon any appeal by the defendant where the sentence is of death, the appellate
83 court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of
84 death and remand the case to the trial court for new sentencing proceedings to the extent necessary
85 to correct the error or errors. [~~No~~] An error in the sentencing proceedings [~~shall~~] may not result
86 in the reversal of the conviction of a capital felony. In cases of remand for new sentencing
87 proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in
88 the prior trial and sentencing proceedings [~~shall be~~] are admissible in the new sentencing
89 proceedings, and if the sentencing proceeding was before a:

90 (a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the
91 defendant waives the hearing before the jury with the approval of the court and the consent of the
92 prosecution, in which case the proceeding shall be held according to Subsection [~~(5)~~] (6)(b) or (c),
93 as applicable;

94 (b) judge, the original trial judge shall conduct the new sentencing proceeding; or

95 (c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing
96 proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and
97 the new proceeding will be before a jury unless the defendant waives the hearing before the jury
98 with the approval of the court and the consent of the prosecution.

99 [~~(6)~~] (7) In the event the death penalty is held to be unconstitutional by the Utah Supreme
100 Court or the United States Supreme Court, the court having jurisdiction over a person previously
101 sentenced to death for a capital felony shall cause the person to be brought before the court, and
102 the court shall sentence the person to:

103 (a) an indeterminate prison term of not less than 20 years and which may be for life, if the
104 death penalty is held unconstitutional prior to April 27, 1992^[7]; or

105 (b) life in prison without parole if the death penalty is held unconstitutional on or after
106 April 27, 1992, and any person who is thereafter convicted of a capital felony shall be sentenced
107 to an indeterminate prison term of not less than 20 years and which may be for life or life in prison
108 without parole.

Legislative Review Note
as of 11-16-01 10:57 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel