

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

HOUSE BILL 1731

4
5 By: Representatives Underwood, Pilkington
6 By: Senator Hester

For An Act To Be Entitled

9 AN ACT CONCERNING THE SENTENCING PROCEDURE DURING A
10 CAPITAL MURDER TRIAL IN THE EVENT OF ERROR OCCURRING
11 DURING THE SENTENCING PHASE OF THE TRIAL; AND FOR
12 OTHER PURPOSES.

Subtitle

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15 CONCERNING THE SENTENCING PROCEDURE
16 DURING A CAPITAL MURDER TRIAL IN THE
17 EVENT OF ERROR OCCURRING DURING THE
18 SENTENCING PHASE OF THE TRIAL.

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 SECTION 1. Arkansas Code § 5-4-602 is amended to read as follows:
25 5-4-602. Capital murder charge – Trial procedure.

26 The following procedures govern a trial of a person charged with
27 capital murder:

28 (1) The jury shall first hear all evidence relevant to the
29 charge and shall then retire to reach a verdict of guilt or innocence;

30 (2) If the defendant is found not guilty of the capital offense
31 charged but guilty of a lesser included offense, the sentence shall be
32 determined and imposed as provided by law;

33 (3)(A)(i) If the defendant is found guilty of capital murder,
34 ~~the same jury shall sit again in order to~~ the sentencing hearing shall be
35 conducted before the same jury unless it is impossible or impracticable to
36 conduct the sentencing hearing before the same jury.



1 (ii) If it is impossible or impracticable to conduct
2 the sentencing hearing before the same jury, if a mistrial occurs during the
3 sentencing phase, or if the case is remanded under § 5-4-616, the sentencing
4 hearing shall be conducted before a new jury.

5 (iii) The selection of the new jury shall be
6 according to the laws and rules governing the selection of a jury for the
7 trial of capital cases;

8 (4)(A) A sentencing jury shall sit in order to:

9 (i) Hear additional evidence as provided by
10 subdivisions ~~(4)~~ and (5) and (6) of this section; and

11 (ii) Determine the sentence in the manner provided
12 by § 5-4-603.

13 (B) However, if the state waives the death penalty,
14 stipulates that no aggravating circumstance exists, or stipulates that
15 mitigating circumstances outweigh aggravating circumstances, then:

16 (i) A hearing under subdivision ~~(3)(A)~~(4)(A) of this
17 section is not required; and

18 (ii) The trial court shall sentence the defendant to
19 life imprisonment without parole.

20 (C) If the defendant was less than eighteen (18) years of
21 age at the time of the offense, then a hearing under subdivision ~~(3)(A)~~(4)(A)
22 of this section is not required;

23 ~~(4)(A)~~(5)(A) If the defendant and the state are accorded an
24 opportunity to rebut the evidence, in determining the sentence evidence may
25 be presented to the jury as to any:

26 (i) Matter relating to an aggravating circumstance
27 enumerated in § 5-4-604;

28 (ii) Mitigating circumstance; or

29 (iii) Other matter relevant to punishment,
30 including, but not limited to, victim impact evidence.

31 (B)(i) Evidence as to any mitigating circumstance may be
32 presented by either the state or the defendant regardless of the evidence's
33 admissibility under the rules governing admission of evidence in a trial of a
34 criminal matter.

35 (ii) However, mitigating circumstance evidence shall
36 be relevant to the issue of punishment, including, but not limited to, the

1 nature and circumstances of the crime, and the defendant's character,
 2 background, history, and mental and physical condition as set forth in § 5-4-
 3 605.

4 (C) The admissibility of evidence relevant to an
 5 aggravating circumstance set forth in § 5-4-604 is governed by the rules
 6 governing the admission of evidence in a trial of a criminal matter.

7 (D) Any evidence admitted at the trial relevant to
 8 punishment may be considered by the jury without the necessity of
 9 reintroducing the evidence at the sentencing proceeding; and

10 ~~(5)~~(6) The state and the defendant or his or her counsel are
 11 permitted to present argument respecting sentencing:

12 (A) The state shall open the argument;

13 (B) The defendant is permitted to reply; and

14 (C) The state is then permitted to reply in rebuttal.

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