

CHAPTER 122

Original Senate File No. 202

MURDER PENALTY

AN ACT to create W.S. 6-54.1 through 6-54.3; and to repeal W.S. 6-54 relating to murder in the first degree; establishing specific aggravating and mitigating circumstances which shall be considered before a judge sitting without a jury or a jury can recommend the sentence of death for the crime of first degree murder; providing for automatic review of conviction and sentence of death by the Wyoming Supreme Court; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 6-54.1 through 6-54.3 are created to read:

6-54.1. Murder in the first degree.

(a) Whoever purposely and with premeditated malice, or in the perpetration of, or attempt to perpetrate any rape, sexual assault, arson, robbery or burglary, or by administering poison or causing the same to be done, kills any human being, or whoever purposely and with premeditated malice kills any peace officer, corrections employee or fireman acting in the line of duty, is guilty of murder in the first degree.

(b) A person convicted of murder in the first degree shall be punished by death or life imprisonment according to law.

6-54.2. Presentence hearing for murder in the first degree; mitigating and aggravating circumstances.

(a) Upon conviction of a person for murder in the first degree the judge shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment. The hearing shall be conducted before the judge alone if:

- (i) The defendant was convicted by a judge sitting without a jury;
- (ii) The defendant has pled guilty; or
- (iii) The defendant waives a jury with respect to the sentence.

(b) In all other cases the sentencing hearing shall be conducted before the jury which determined the defendant's guilt or, if the judge for good cause shown discharges that jury, with a new jury impaneled for that purpose.

(c) The judge or jury shall hear evidence as to any matter that the court deems relevant to a determination of the sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (h) and (j) of this section. Any evidence which the court deems to have probative value may be received regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements, and provided further that only such evidence in aggravation as the state has made known to the defendant or his counsel prior to his trial shall be admissible.

(d) Upon conclusion of the evidence and arguments the judge shall give the jury appropriate instructions, including instructions as to any aggravating or mitigating circumstances, as defined in subsections (h) and (j) of this section, or proceed as provided by paragraph (ii) of this subsection:

(i) After hearing all the evidence, the jury shall deliberate and render a recommendation of sentence to the judge, based upon the following:

(A) Whether one (1) or more sufficient aggravating circumstances exist as set forth in subsection (h) of this section;

(B) Whether sufficient mitigating circumstances exist as set forth in subsection (j) of this section which outweigh the aggravating circumstances found to exist; and

(C) Based upon these considerations, whether the defendant should be sentenced to death or life imprisonment.

(ii) In nonjury cases, the judge shall determine if any aggravating or mitigating circumstances exist and impose sentence within the limits prescribed by law, based upon the considerations enumerated in (A), (B) and (C) of this subsection.

(e) The death penalty shall not be imposed unless at least one (1) of the aggravating circumstances set forth in subsection (h) of this section is found. The jury, if its verdict is a recommendation of death, shall designate in writing signed by the foreman of the jury the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases the judge shall make such designation. If the jury cannot, within a reasonable time, agree on the punishment to be imposed, the judge shall impose a life sentence.

(f) Unless the jury trying the case recommends the death sentence in its verdict, the judge shall not sentence the defendant to death but shall sentence the defendant to life imprisonment as provided by law. Where a recommendation of death is made, the court shall sentence the defendant to death.

(g) If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment.

(h) Aggravating circumstances are limited to the following:

(i) The murder was committed by a person under sentence of imprisonment;

(ii) The defendant was previously convicted of another murder in the first degree or a felony involving the use or threat of violence to the person;

(iii) The defendant knowingly created a great risk of death to two (2) or more persons;

(iv) The murder was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight

after committing or attempting to commit, any robbery, rape, sexual assault, arson, burglary, kidnapping or aircraft piracy or the unlawful throwing, placing or discharging of a destructive device or bomb;

(v) The murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(vi) The murder was committed for pecuniary gain;

(vii) The murder was especially heinous, atrocious or cruel;

(viii) The murder of a judicial officer, former judicial officer, county attorney, or former county attorney, during or because of the exercise of his official duty.

(j) Mitigating circumstances shall be the following:

(i) The defendant has no significant history of prior criminal activity;

(ii) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(iii) The victim was a participant in the defendant's conduct or consented to the act;

(iv) The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor;

(v) The defendant acted under extreme duress or under the substantial domination of another person;

(vi) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;

(vii) The age of the defendant at the time of the crime.

6-54.3. Review of death sentences.

(a) The judgment of conviction and sentence of death is subject to automatic review by the supreme court of Wyoming within sixty (60) days after certification by the sentencing court of the entire record, unless the time is

extended for an additional period not to exceed thirty (30) days by the supreme court for good cause shown. Such review by the supreme court shall have priority over all other cases.

(b) Within ten (10) days after receiving the transcript, the clerk of the trial court shall transmit the entire record and transcript to the supreme court of Wyoming together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the

case, the name of the defendant and the name and address of his attorney, a statement of the judgment, the offense and punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Wyoming.

(c) The supreme court of Wyoming shall consider the punishment as well as any errors enumerated by way of appeal.

(d) With regard to the sentence, the court shall determine if:

(i) The sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor;

(ii) The evidence supports the jury's or judge's finding of an aggravating circumstance as enumerated in W.S. 6-54.2 and a lack of sufficient mitigating circumstances which outweigh the aggravating circumstances;

(iii) The sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(e) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, may:

(i) Affirm the sentence of death;

(ii) Set the sentence aside and impose a sentence of life imprisonment;
or

(iii) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel.

Section 2. W.S. 6-54 is repealed.

Section 3. In the event it is determined by the Wyoming supreme court or the United States supreme court that a sentence of death may not be imposed, constitutionally or otherwise, for the offense of first degree murder for which the death penalty may be imposed as provided by this act, the punishment for this offense shall be life imprisonment without further proceedings by the court.

Section 4. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 5. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

Approved February 28, 1977.