

**PROVISIONS OF STATE AND FEDERAL STATUTES CONCERNING
SENTENCE IF CAPITAL SENTENCING JURY CANNOT AGREE**

Jurisdictions providing for court-imposed life sentence if capital sentencing jury is unable to reach a unanimous verdict.

Arkansas

Ark. Code Ann. § 5-4-603(c) (2014) ("If the jury does not make any finding required by subsection (a) of this section, the court shall impose a sentence of life imprisonment without parole.")

Colorado

Col. Rev. Stat. Ann. § 18-1.3-1201 (2)(d) (2013) ("If the jury's verdict is not unanimous, the jury shall be discharged, and the court shall sentence the defendant to life imprisonment.")

Georgia

Ga. Code Ann. § 17-10-31(c) (2013) ("If the jury is unable to reach a unanimous verdict as to sentence, the judge shall dismiss the jury and shall impose a sentence of either life imprisonment or imprisonment for life without parole.")

Idaho

Idaho Code § 19-2515(7)(b) (2014) ("If the jury . . . cannot unanimously agree on whether the existence of mitigating circumstances makes the imposition of the death penalty unjust, the defendant will be sentenced to a term of life imprisonment without the possibility of parole . . ."), *id.* at 19-2515(7)(c) ("If the jury . . . cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years.")

Illinois

720 Ill. Comp. Stat. Ann. 5/9-1(g) (2014) ("If after weighing the factors in aggravation and mitigation, one or more jurors determines that death is not the appropriate sentence, the court shall sentence the defendant to a term of imprisonment * * *")

Kansas

Kan. Stat. Ann. § 21-6617(c) (2013) ("If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of life without the possibility of parole . . .")

Louisiana

La. Code Crim. Proc. Ann. art. 905.8 (2013) ("If the jury is unable to unanimously agree on a determination, the court shall impose a sentence of life imprisonment without benefit of probation, parole or suspension of sentence.")

Mississippi

Miss. Code Ann. § 99-19-101(3)(c) (2014) ("If, after the trial of the penalty phase, the jury does not make the findings requiring the death sentence or life imprisonment without eligibility for parole, or is unable to reach a decision, the court shall impose a sentence of life imprisonment."); *id.* § 99-19-103 ("If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life.")

New Hampshire

N.H. Rev. Stat. Ann. § 630:5(IX) (2013) ("If the jury cannot agree on the punishment within a reasonable time, the judge shall impose the sentence of life imprisonment without possibility of parole.")

North Carolina

N.C. Gen. Stat. § 15A-2000(b) (2013) ("If the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment; provided, however, that the judge shall in no instance impose the death penalty when the jury cannot agree unanimously to its sentence recommendation.")

Oklahoma

21 Okla. Stat. Ann. § 701.11 (2013) ("If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life without parole or imprisonment for life.")

Ohio

Ohio Rev. Code Ann. § 2929.03(D)(2) (2013) ("If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following" non-capital sentences.)

Oregon

Or. Rev. Stat. § 163.150(2)(a) (2012) ("Upon the conclusion of the presentation of the evidence, the court shall also instruct the jury that if it reaches a negative finding on any issue under subsection (1)(b) of this section, [which includes whether the defendant should receive a death sentence], the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole . . ."); *id.* at § 163.150(1)(c)(B) ("The court shall instruct the jury to answer the question [whether the defendant should receive a death sentence] "no" if . . . one or more of the jurors believe that the defendant should not receive a death sentence.")

Pennsylvania

42 Pa. Cons. Stat. Ann. § 9711(c)(1)(v) (2014) ("The court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment.")

South Carolina

S.C. Code Ann. § 16-3-20 (C) (2013) ("If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).")

South Dakota

S.D. Codified Laws § 23A-27A-4 (2014) ("If a sentence of death is not recommended by the jury, the court shall sentence the defendant to life imprisonment.")

Tennessee

Tenn. Code Ann. § 39-13-204(h) (2013) ("If the jury is divided over imposing a sentence of death, the judge shall instruct the jury that in further deliberations, the jury shall only consider the sentences of imprisonment for life without possibility of parole and imprisonment of life. If, after further deliberations, the jury still cannot agree as to sentence, the trial judge shall dismiss the jury and such judge shall impose a sentence of imprisonment for life.")

Texas

Tex. Code Crim. Proc. Ann., art. 37.071.2(g) (2013) ("If the jury . . . is unable to answer any issue submitted under Subsection (b) or (e) of this article, the court shall sentence the defendant to confinement . . . for life imprisonment without parole.")

Utah

Utah Code Ann. § 76-3-207(5)(c) (2013) ("If the jury is unable to reach a unanimous decision imposing the sentence of death, the jury shall then determine whether the penalty of life in prison without parole shall be imposed. . . . If the jury reports agreement by ten jurors or more to impose the sentence of life in prison without parole, the court shall discharge the jury and shall impose the sentence of life imprisonment without parole. If ten jurors or more do not agree upon a sentence of life in prison without parole, the court shall discharge the jury and impose an indeterminate prison term of not less than 20 years and which may be for life.")

Virginia

Va. Code Ann. § 19.2-264.4(D) (2014) ("In the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life.")

Washington

Wa. Rev. Code Ann. § 10.95.080(2) (2013) ("If the jury does not return an affirmative answer to the question posed in RCW 10.95.060(4) [i.e., whether jury is convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to warrant a sentence less severe than death], the defendant shall be sentenced to life imprisonment as provided in RCW 10.95.030(1)."); id. § 10.95.060(4) ("In order to return an affirmative answer to the question posed by this subsection, the jury must so find unanimously.")

Wyoming

Wyo. Stat. Ann. § 6-2-102(d)(ii) (2013) ("If the jury is unable to reach a unanimous verdict imposing the sentence of death within a reasonable time, the court shall instruct the jury to determine by a unanimous vote whether the penalty of life imprisonment without parole shall be imposed. If the jury is unable to reach a unanimous verdict imposing the penalty of life imprisonment without parole within a reasonable time, the court shall discharge the jury and impose the sentence of life imprisonment.")

Federal

18 U.S.C. § 3594 (2014) ("Upon a recommendation under section 3593(e) that the defendant should be sentenced to death or life imprisonment without the possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law. Notwithstanding any other law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without possibility of release.")

Jurisdictions providing that juries do not make the final sentencing decision.

Alabama

Ala. Code § 13A-5-46(g) (2013) ("If the jury is unable to reach an advisory verdict recommending a sentence, or for other manifest necessity, the trial court may declare a mistrial of the sentence hearing. Such a mistrial shall not affect the conviction. After such a mistrial or mistrials another sentence hearing shall be conducted before another jury, selected according to the laws and rules governing the selection of a jury for the trial of a capital case. Provided, however, that, subject to the provisions of Section 13A-4-55(c), after one or more mistrials both parties with the consent of the court may waive the right to have an advisory

verdict from a jury, in which event the issue of sentence shall be submitted to the trial court without a recommendation from a jury.”)

Delaware

Del. Code Ann., tit. 11, § 4209(c)(3)(b)(1) (2014) (“As to any statutory aggravating circumstances enumerated in subsection (e) of this section which were alleged but for which the jury is not unanimous, the jury shall report the number of the affirmative and negative votes on each such circumstance.”), *id.* at § 4209(c)(3)(b)(2) (“The jury shall report to the Court by the number of the affirmative and negative votes its recommendation on the question as to whether, by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bear upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.”).

Florida

Fla. Stat. Ann. § 921.141(2) (2013) (“After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters: (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5); (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.”), *id.* at § 921.141(3) (“Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death . . .”).

Indiana

Ind. Code Ann. § 35-50-2-9(f) (2014) (“If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.”).

Montana

Mont. Code Ann. § 46-18-305 (2013) (“In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if the trier of fact found beyond a reasonable doubt, or the defendant pleaded guilty to the offense and admitted to, one or more aggravating circumstances and the court finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.”)

Nebraska

R.R.S. Neb. § 29-2520(4)(f) (2013) ("The jury at the aggravation hearing shall deliberate and return a verdict as to the existence or nonexistence of each alleged aggravating circumstance. Each aggravating circumstance shall be proved beyond a reasonable doubt. Each verdict with respect to each alleged aggravating circumstance shall be unanimous. If the jury is unable to reach a unanimous verdict with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding as provided in section 29-2521 [providing for final sentencing decision by three-judge panel].")

Jurisdiction authorizing judge to determine sentence if jury is unable to reach a unanimous verdict.

Missouri

Mo. Rev. Stat. § 565.030.4(4) (2009) ("If the trier is a jury it shall be instructed before the case is submitted that if it is unable to decide or agree upon the punishment the court shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor or death.")

Jurisdictions authorizing new penalty trial by statute if capital sentencing jury is unable to reach a unanimous verdict.

Arizona

Ariz. Rev. Stat. § 13-752(K) (2013) ("At the penalty phase, if the trier of fact is a jury and the jury is unable to reach a verdict, the court shall dismiss the jury and shall impanel a new jury. The new jury shall not retry the issue of the defendant's guilt or the issue regarding any of the aggravating circumstances that the first jury found by unanimous verdict to be proved or not proved. If the new jury is unable to reach a unanimous verdict, the court shall impose a sentence of life or natural life on the defendant.")

California

Cal. Penal Code § 190.4(a) (2014) ("In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach a unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years."), *id.* at 190.4(b) ("If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.")

Nevada

Nev. Rev. Stat. Ann. § 175.556(1) (2013) ("In a case in which the death penalty is sought, if a jury is unable to reach a unanimous verdict upon the sentence to be imposed, the district judge who conducted the trial or accepted the plea of guilty shall sentence the defendant to life imprisonment without the possibility of parole or impanel a new jury to determine the sentence.")

Jurisdictions authorizing new penalty trial by court decision if capital sentencing jury is unable to reach a unanimous verdict.

Connecticut

State v. Daniels, 207 Conn. 374, 304 (1988) (statutory construction of prior version of Conn. Gen. Stat. § 53a-46a); State v. Peeler, 271 Conn. 338, 428-29 (2004) (following Daniels to allow new penalty trial under current version of Conn. Gen. Stat. § 53a-46a).

Kentucky

Skaggs v. Commonwealth, 694 S.W.2d 672, 681 (Ky. 1985), vacated on other grounds by Skaggs v. Parker, 235 F.3d 261 (6th Cir. 2000).