

5. A recommendation of a sentence of life imprisonment may be based upon the majority decision of the jury.

Notwithstanding the recommendation of the jury, the trial judge after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if he imposes a sentence of death, he must set forth in writing his findings upon which the sentence of death is based, including whether sufficient aggravating circumstances exist or whether there are insufficient mitigating circumstances to outweigh the aggravating circumstances. If the judge does not make the findings requiring the death sentence, he shall impose a sentence of life imprisonment.

Senate Bill 106 also sets out a new appellate procedure for reviewing the findings and sentences of the trial court whenever the death penalty is imposed.

All cases in which the death penalty is imposed are to be automatically appealed directly to the Court of Appeals which shall have the power to review the punishment and consider any other errors enumerated by way of appeal. With regard to the sentence, the Court of Appeals shall determine whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance; and whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

The Court of Appeals is required to include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding the correction of errors on appeal, the Court, with regard to the review of death sentences, is authorized to affirm the sentence of death or set aside and remand the case for resentencing by the trial judge based on the record and argument of counsel.

From our previous analysis of the Supreme Court decisions on capital punishment we may conclude that the states have been afforded reasonable latitude in enacting laws relating to the death penalty. The statutes of Florida, Georgia and Texas utilized three distinct and different procedures for imposition of the death penalty and each was upheld. Three broad requirements run through the Supreme Court analysis of these statutes which govern the constitutional acceptability of a death penalty statute, viz: (1) a bifurcated hearing on the issue of guilt and penalty, (2) most importantly (and what we judge to be an absolute prerequisite), a