

By: Dutton

H.B. No. 380

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of the death penalty in certain cases where the guilt of the defendant may be in doubt.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Code of Criminal Procedure, is amended by adding Article 1.22 to read as follows:

Art. 1.22. DEATH PENALTY BAR. (a) In a capital case, the attorney representing the state may not seek the death penalty if:

(1) the defendant in the capital case has previously been prosecuted for the same offense, and the jury in the case was unable to return a verdict on guilt or innocence; or

(2) the judge trying the case determines at a hearing held before trial that:

(A) the identity of the person committing the offense is an issue in the case; and

(B) the state's ability to prove the defendant guilty beyond a reasonable doubt depends on the testimony of a sole witness to establish that the defendant is the person who committed the offense.

(b) A defendant in a capital case is entitled to have a hearing described by Subsection (a)(2) only if the defendant requests the hearing in writing to the court not later than the 30th day before the date the voir dire examination commences in the capital case. The attorney representing the state and the attorney

1 representing the defendant are entitled to appear at the hearing
2 and present arguments to the court.

3 SECTION 2. Section 2, Article 37.071, Code of Criminal
4 Procedure, is amended by adding Subsection (j) to read as follows:

5 (j) In addition to other charges required by this article,
6 the court shall charge the jury that after the jury answers all
7 issues required to be answered under this article, if any juror has
8 any doubt as to whether the defendant is guilty of the offense
9 charged, the juror shall immediately notify the court of that fact.
10 The court, on a determination that a juror does have a doubt as to
11 the guilt of the defendant, shall sentence the defendant to
12 confinement in the institutional division of the Texas Department
13 of Criminal Justice for life, regardless of the answers of the jury
14 to issues submitted under this article.

15 SECTION 3. This Act takes effect September 1, 2003, and
16 applies to all capital cases in which the voir dire examination
17 commences on or after that date. Notwithstanding Article 1.22(b),
18 Code of Criminal Procedure, as added by this Act, if the voir dire
19 examination for a defendant in a capital case commences on or after
20 the effective date of this Act but before October 1, 2003, the
21 defendant is entitled to a hearing if the defendant requests the
22 hearing in writing at any time before the voir dire commences.