

By: Dunnam

H.B. No. 2165

A BILL TO BE ENTITLED

AN ACT

relating to the sentencing procedure in capital felony cases.

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

SECTION 1. Section 2, Article 37.071, Code of Criminal Procedure, is amended by amending Subsections (b), (d), and (f) and adding Subsection (j) to read as follows:

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether the state has proven beyond a reasonable doubt [~~there is a probability~~] that the defendant will [~~would~~] commit criminal acts of violence that would constitute a continuing threat to members of the general public or to persons who are imprisoned in correctional facilities and persons who work in those facilities [~~society~~]; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02(a), Penal Code, whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken and was a major participant in the intentional murder.

(d) The court shall charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) of this article, it shall consider all evidence

1 admitted at the guilt or innocence stage and the punishment stage,
2 including evidence of the defendant's background or character or
3 the circumstances of the offense that militates for or mitigates
4 against the imposition of the death penalty;

5 (2) it may not answer any issue submitted under
6 Subsection (b) of this article "yes" unless it agrees unanimously
7 and it must answer the issue "no" if one or more jurors finds that
8 the issue has not been proven beyond a reasonable doubt [~~may not~~
9 ~~answer any issue "no" unless 10 or more jurors agree~~]; and

10 (3) members of the jury need not agree on what
11 particular evidence supports a negative answer to any issue
12 submitted under Subsection (b) of this article.

13 (f) The court shall charge the jury that in answering the
14 issue submitted under Subsection (e) of this article, the jury:

15 (1) shall answer the issue "yes" or "no";

16 (2) may not answer the issue "no" unless it agrees
17 unanimously and it must answer the issue "yes" if one or more jurors
18 finds that a circumstance or circumstances warrant that a sentence
19 of life imprisonment rather than a death sentence be imposed [~~may~~
20 ~~not answer the issue "yes" unless 10 or more jurors agree~~];

21 (3) need not agree on what particular evidence
22 supports an affirmative finding on the issue; and

23 (4) shall consider mitigating evidence to be evidence
24 that a juror might regard as reducing the defendant's moral
25 blameworthiness.

26 (j) The jury must inform the trial court of any failure to
27 agree unanimously regarding an issue submitted under this article.

1 SECTION 2. (a) This Act takes effect September 1, 2003.

2 (b) The change in law made by this Act applies only to an
3 offense committed on or after the effective date of this Act. An
4 offense committed before the effective date of this Act is covered
5 by the law in effect when the offense was committed, and the former
6 law is continued in effect for that purpose. For purposes of this
7 subsection, an offense was committed before the effective date of
8 this Act if any element of the offense was committed before that
9 date.