

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(a)(1), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

(1) If a defendant is tried for a capital offense in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(c) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that is [the court deems] relevant to the defendant's punishment or the commission of offense [sentence], including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The introduction of evidence of extraneous conduct is governed by the

1 notice requirements of Section 3(g), Article 37.07 [~~The court, the~~
2 ~~attorney representing the state, the defendant, or the defendant's~~
3 ~~counsel may not inform a juror or a prospective juror of the effect~~
4 ~~of a failure of a jury to agree on issues submitted under Subsection~~
5 ~~(c) or (e) of this article~~].

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

9 (b) The [~~On conclusion of the presentation of the evidence,~~
10 ~~the~~] court shall submit [~~the following issues~~] to the jury the issue
11 of, [+

12 [~~(1) whether there is a probability that the defendant~~
13 ~~would commit criminal acts of violence that would constitute a~~
14 ~~continuing threat to society; and~~

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

22 (c) On conclusion of the presentation of the evidence, the
23 jury shall deliberate and render a verdict based on the following
24 considerations:

25 (1) whether at least one aggravating factor listed in
26 Section 4 has been proven;

27 (2) whether sufficient aggravating factors exist

1 which outweigh any mitigating factors found to exist; and

2 (3) based on the considerations in Subdivisions (1)
3 and (2), whether the defendant should be sentenced to death or life
4 imprisonment. [The state must prove each issue submitted under
5 Subsection (b) of this article beyond a reasonable doubt, and the
6 jury shall return a special verdict of "yes" or "no" on each issue
7 submitted under Subsection (b) of this Article.]

8 (d) If no aggravating factors listed in Section 4 are found
9 to exist, the jury shall return a verdict indicating the defendant
10 is guilty of a capital offense for which the jury recommends life
11 imprisonment, and the court shall sentence the defendant to life
12 imprisonment. The jury may not recommend a sentence of death unless
13 the jury unanimously finds and specifies in writing that:

14 (1) at least one aggravating factor has been proven;
15 and

16 (2) the aggravating factors are sufficient to outweigh
17 the mitigating factors that were proven, if any.

18 (d-1) If the jury's recommendation of a sentence of death is
19 not unanimous, the jury shall be discharged and the court shall
20 sentence the defendant to life imprisonment. [The court shall
21 charge the jury that:

22 [(1) in deliberating on the issues submitted under
23 Subsection (b) of this article, it shall consider all evidence
24 admitted at the guilt or innocence stage and the punishment stage,
25 including evidence of the defendant's background or character or
26 the circumstances of the offense that militates for or mitigates
27 against the imposition of the death penalty,

1 ~~[(2) it may not answer any issue submitted under~~
2 ~~Subsection (b) of this article "yes" unless it agrees unanimously~~
3 ~~and it may not answer any issue "no" unless 10 or more jurors agree,~~
4 ~~and~~

5 ~~[(3) members of the jury need not agree on what~~
6 ~~particular evidence supports a negative answer to any issue~~
7 ~~submitted under Subsection (b) of this article.]~~

8 SECTION 3. Article 37.071, Code of Criminal Procedure, is
9 amended by adding Sections 3, 4, 5, 6, and 7 to read as follows:

10 Sec. 3. (a) For purposes of this article, mitigating
11 factors consist of the following:

12 (1) the age of the defendant at the time of the
13 offense;

14 (2) significant impairment of the defendant's capacity
15 to appreciate the wrongfulness of the defendant's conduct or the
16 defendant's ability to conform the defendant's conduct to the
17 requirements of law at the time of the offense;

18 (3) the defendant was under duress at the time of the
19 offense;

20 (4) the defendant could not reasonably have foreseen
21 that the defendant's conduct in the commission of the offense would
22 create a risk of causing death to another person;

23 (5) the emotional state of the defendant at the time of
24 the offense;

25 (6) the absence of any significant prior conviction;

26 (7) the extent of the defendant's cooperation with law
27 enforcement officers or agencies and with the office of the

1 attorney representing the state;

2 (8) the influence of controlled substances at the time
3 of the offense;

4 (9) the good faith belief by the defendant at the time
5 of the offense that circumstances existed that constituted a moral
6 justification for the defendant's conduct;

7 (10) the defendant is not a continuing threat to
8 society; or

9 (11) any other evidence that the court considers to be
10 relevant to the question of mitigation.

11 (b) A burden of proof does not exist with respect to proving
12 or disproving mitigating factors.

13 Sec. 4. (a) For purposes of this article, aggravating
14 factors consist of the following:

15 (1) the defendant was previously convicted of a felony
16 of the first or second degree involving violence, or was previously
17 convicted of an offense with substantially similar elements and a
18 similar degree of punishment under the laws of another state or the
19 United States;

20 (2) because of the defendant's use of a deadly weapon
21 or other device which would normally be considered hazardous to the
22 lives of more than one person, the defendant knowingly created a
23 risk of death to more than one person in a public place;

24 (3) in the commission of the offense, the defendant
25 knowingly created a risk of death to another person in addition to
26 the victim of the offense; or

27 (4) the defendant committed capital murder against the

1 victim because of the victim's race, color, ancestry, religion, or
2 national origin.

3 (b) The burden of proof for the aggravating factors listed
4 in this section is beyond a reasonable doubt.

5 Sec. 5. (a) When a sentence of death is imposed on the
6 defendant under this article, the court shall review the propriety
7 of that sentence considering the:

8 (1) nature of the offense;

9 (2) character and record of the defendant;

10 (3) public interest; and

11 (4) manner in which the sentence was imposed,
12 including the sufficiency and accuracy of the information on which
13 it was based.

14 (b) A sentence of death may not be imposed under this
15 article if the court determines that:

16 (1) the sentence was imposed under the influence of
17 passion or prejudice or other arbitrary factor; or

18 (2) the evidence presented does not support the
19 finding of statutory aggravating circumstances.

20 (c) If a death sentence imposed under this article is held
21 invalid based on unconstitutionality of the death penalty or
22 insufficiency of the evidence to support the sentence, the
23 defendant shall be sentenced to life imprisonment.

24 Sec. 6. The court, on the written request of the attorney
25 representing the defendant, shall charge the jury in writing as
26 follows:

27 "Under the law applicable in this case, if the defendant is

1 sentenced to imprisonment in the institutional division of the
2 Texas Department of Criminal Justice for life, the defendant will
3 become eligible for release on parole, but not until the actual time
4 served by the defendant equals 40 years, without consideration of
5 any good conduct time. It cannot accurately be predicted how the
6 parole laws might be applied to this defendant if the defendant is
7 sentenced to a term of imprisonment for life because the
8 application of those laws will depend on decisions made by prison
9 and parole authorities, but eligibility for parole does not
10 guarantee that parole will be granted."

11 Sec. 7. The judgment of conviction and sentence of death is
12 subject to automatic review by the court of criminal appeals.

13 SECTION 4. Sections 2(e)-(i), Article 37.071, Code of
14 Criminal Procedure, are repealed.

15 SECTION 5. The change in law made by this Act applies only
16 to an offense committed on or after the effective date of this Act.
17 An offense committed before the effective date of this Act is
18 covered by the law in effect when the offense was committed, and the
19 former law is continued in effect for that purpose. For purposes of
20 this section, an offense was committed before the effective date of
21 this Act if any element of the offense was committed before that
22 date.

23 SECTION 6. This Act takes effect September 1, 2005.