

By: Dutton

H.B. No. 797

A BILL TO BE ENTITLED

AN ACT

relating to jury selection in capital 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:

(a)(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 without parole. The proceeding shall be conducted as soon as practicable in the trial court and, except as provided by Section 3 or 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 the court deems relevant to 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 notice requirements of

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

5 SECTION 2. Section 2(d), Article 37.071, Code of Criminal
6 Procedure, is amended to read as follows:

7 (d) The court shall charge the jury that:

8 (1) in deliberating on the issues submitted under
9 Subsection (b) ~~[of this article]~~, the jury ~~[it]~~ shall consider all
10 evidence admitted at any stage of the trial for which the jury is
11 impaneled ~~[the guilt or innocence stage and the punishment stage]~~,
12 including evidence of the defendant's background or character or
13 the circumstances of the offense that militates for or mitigates
14 against the imposition of the death penalty;

15 (2) the jury ~~[it]~~ may not answer any issue submitted
16 under Subsection (b) ~~[of this article]~~ "yes" unless the jury ~~[it]~~
17 agrees unanimously and the jury ~~[it]~~ may not answer any issue "no"
18 unless 10 or more jurors agree; and

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

22 SECTION 3. Article 37.071, Code of Criminal Procedure, is
23 amended by adding Section 3 to read as follows:

24 Sec. 3. (a) If a defendant is tried for a capital offense in
25 which the state seeks the death penalty, at any time before trial
26 commences the defendant may file a sworn motion requesting the
27 court to impanel a separate jury for the punishment stage of the

1 trial.

2 (b) On the jury's finding that the defendant is guilty of a
3 capital offense, if the defendant filed a motion under Subsection
4 (a), the court shall:

5 (1) discharge the jury that returned the finding of
6 guilt; and

7 (2) impanel a separate jury for the punishment stage
8 of the trial.

9 (c) The court shall impanel the jury for the punishment
10 stage of the trial in the same manner that the court impaneled the
11 jury for the guilt or innocence stage.

12 (d) The court shall exclude from the jury impaneled for the
13 punishment stage any person who served on the jury for the guilt or
14 innocence stage.

15 SECTION 4. Section 3(a)(1), Article 37.0711, Code of
16 Criminal Procedure, is amended to read as follows:

17 (a)(1) If a defendant is tried for a capital offense in
18 which the state seeks the death penalty, on a finding that the
19 defendant is guilty of a capital offense, the court shall conduct a
20 separate sentencing proceeding to determine whether the defendant
21 shall be sentenced to death or life imprisonment. The proceeding
22 shall be conducted as soon as practicable in the trial court and,
23 except as provided by Section 4 or Article 44.29(c) [of this code],
24 before the trial jury [~~as soon as practicable~~]. In the proceeding,
25 evidence may be presented as to any matter that the court deems
26 relevant to sentence. This subdivision shall not be construed to
27 authorize the introduction of any evidence secured in violation of

1 the Constitution of the United States or of this state. The state
2 and the defendant or the defendant's counsel shall be permitted to
3 present argument for or against sentence of death.

4 SECTION 5. Article 37.0711, Code of Criminal Procedure, is
5 amended by adding Section 4 to read as follows:

6 Sec. 4. (a) If a defendant is tried for a capital offense in
7 which the state seeks the death penalty, at any time before trial
8 commences the defendant may file a sworn motion requesting the
9 court to impanel a separate jury for the punishment stage of the
10 trial.

11 (b) On the jury's finding that the defendant is guilty of a
12 capital offense, if the defendant filed a motion under Subsection
13 (a), the court shall:

14 (1) discharge the jury that returned the finding of
15 guilt; and

16 (2) impanel a separate jury for the punishment stage
17 of the trial.

18 (c) The court shall impanel the jury for the punishment
19 stage of the trial in the same manner that the court impaneled the
20 jury for the guilt or innocence stage.

21 (d) The court shall exclude from the jury impaneled for the
22 punishment stage any person who served on the jury for the guilt or
23 innocence stage.

24 SECTION 6. The changes in law made by this Act apply only to
25 an offense committed on or after the effective date of this Act. An
26 offense committed before the effective date of this Act is covered
27 by the law in effect at the time the offense was committed, and the

1 former law is continued in effect for that purpose. For purposes of
2 this section, an offense was committed before the effective date of
3 this Act if any element of the offense was committed before that
4 date.

5 SECTION 7. This Act takes effect September 1, 2007.