

By: Walle

H.B. No. 3400

A BILL TO BE ENTITLED

AN ACT

relating to certain sentencing procedures in a capital case.

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 without parole. 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 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 Section 3(g), Article

1 37.07. ~~[The court, the attorney representing the state, the~~
2 ~~defendant, or the defendant's counsel may not inform a juror or a~~
3 ~~prospective juror of the effect of a failure of a jury to agree on~~
4 ~~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]~~, it shall consider all evidence
10 admitted at the guilt or innocence stage and the punishment stage,
11 including evidence of the defendant's background or character or
12 the circumstances of the offense that militates for or mitigates
13 against the imposition of the death penalty;

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

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

21 SECTION 3. Section 2(f), Article 37.071, Code of Criminal
22 Procedure, is amended to read as follows:

23 (f) The court shall charge the jury that in answering the
24 issue submitted under Subsection (e) ~~[of this article]~~, the jury:

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

26 (2) may not answer the issue "no" unless it agrees
27 unanimously ~~[and may not answer the issue "yes" unless 10 or more~~

1 ~~jurors agree~~];

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

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

7 SECTION 4. The change in law made by this Act applies only
8 to a criminal proceeding that commences on or after the effective
9 date of this Act. A criminal proceeding that commenced before the
10 effective date of this Act is governed by the law in effect on the
11 date the proceeding commenced, and the former law is continued in
12 effect for that purpose.

13 SECTION 5. This Act takes effect September 1, 2011.