

By: Lucio

S.B. No. 1065

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) it is the responsibility of each juror separately  
9 to determine the answers to the issues submitted under Subsection  
10 (b) and the appropriate sentence;

11 (2) in deliberating on the issues submitted under  
12 Subsection (b) [~~of this article~~], each juror [~~it~~] shall  
13 independently consider all evidence admitted at the guilt or  
14 innocence stage and the punishment stage, including evidence of the  
15 defendant's background or character, residual doubt, or the  
16 circumstances of the offense that militates for or mitigates  
17 against the imposition of the death penalty, and arrive at the  
18 juror's own conclusion regarding the answers to the issues;

19 (3) the jury [~~(2) it~~] may not answer any issue  
20 submitted under Subsection (b) [~~of this article~~] "yes" unless each  
21 juror individually reaches an answer of "yes" [~~it agrees~~  
22 unanimously and it may not answer any issue "no" unless 10 or more  
23 jurors agree]; and

24 (4) [~~(3)~~] members of the jury need not agree on what  
25 particular evidence supports a negative answer to any issue  
26 submitted under Subsection (b) [~~of this article~~].

27 SECTION 3. Section 2(f), Article 37.071, Code of Criminal

1 Procedure, is amended to read as follows:

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

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

5 (2) each juror shall independently consider all  
6 evidence admitted at the guilt or innocence stage and the  
7 punishment stage, including evidence of the defendant's background  
8 or character, residual doubt, or the circumstances of the offense  
9 that militates for or mitigates against the imposition of the death  
10 penalty, and arrive at the juror's own conclusion regarding the  
11 answer to the issue;

12 (3) the jury may not answer the issue "no" unless each  
13 juror individually reaches an answer of "no" [~~it agrees unanimously~~  
14 ~~and may not answer the issue "yes" unless 10 or more jurors agree~~];

15 (4) members of the jury [~~(3)~~] need not agree on what  
16 particular evidence supports an affirmative finding on the issue;  
17 and

18 (5) the jury [~~(4)~~] shall consider mitigating evidence  
19 to be evidence that a juror might regard as reducing the defendant's  
20 moral blameworthiness.

21 SECTION 4. The change in law made by this Act applies only  
22 to a criminal proceeding that commences on or after the effective  
23 date of this Act. A criminal proceeding that commenced before the  
24 effective date of this Act is governed by the law in effect on the  
25 date the proceeding commenced, and the former law is continued in  
26 effect for that purpose.

27 SECTION 5. This Act takes effect September 1, 2017.