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By:  Moody H.B. No. 3938

A BILL TO BE ENTITLED

AN ACT

relating to the consideration of the views of a close relative of a deceased victim regarding the imposition of the death penalty 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 considers [~~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 and evidence of the views of a close relative of a deceased victim, as defined by Article 56.01, regarding the imposition of the death penalty in the case. This subdivision does [~~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 37.07. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (c) or (e).

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

(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 admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty and evidence of the views of a close relative of a deceased victim, as defined by Article 56.01, regarding the imposition of the death penalty in the case;

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

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

SECTION 3.  Section 2(e)(1), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

(1)  The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, [~~and~~] the personal moral culpability of the defendant, and the views of a close relative of a deceased victim, as defined by Article 56.01, regarding the imposition of the death penalty in the case, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

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

SECTION 5.  This Act takes effect September 1, 2019.