

SUBJECT: Revising jury instructions in sentencing proceedings of capital cases

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Moody, Cook, Bhojani, Bowers, Darby, Harrison, Leach, C. Morales, Schatzline

0 nays

WITNESSES: For — Jennifer Allmon, Texas Catholic Conference of Bishops (*Registered, but did not testify*: Kevin Hale, Libertarian Party of Texas; Tom Glass, Lone Star Fully Informed Jury Association; John Litzler, Texas Baptists; Allen Place, Texas Criminal Defense Lawyers Association; Bee Moorhead, Texas Impact; and 6 individuals)

Against — (*Registered, but did not testify*: Elmer Beckworth)

On — Benjamin Wolff, Office of Capital and Forensic Writs (*Registered, but did not testify*: Joyce H)

BACKGROUND: Code of Criminal Procedure, art. 37.071 states that if a defendant is tried for a capital offense in which the state seeks the death penalty, the court must then conduct a separate sentencing trial to decide whether the defendant will receive the death penalty or life in prison without parole. After evidence has been presented in the sentencing trial, the court must present the following questions to the jury:

- whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and
- for cases in which the jury found the defendant guilty as a party to an offense, whether or not the defendant actually caused a death, or didn't cause a death but intended to kill or anticipated that a human life would be taken.

The court must inform the jury that it may not answer either of the two

questions "yes" unless the jury agrees unanimously and that the jury may not answer "no" unless 10 or more jurors agree.

If the jury answers "yes" to both questions, the court must ask the jury whether there are sufficient mitigating circumstances to warrant a sentence of life in prison without parole rather than the death penalty.

The court must instruct the jury that it may not answer the question regarding mitigating circumstances "no" unless the jury agrees unanimously and it may not answer "yes" unless 10 or more jurors agree.

Under sec. 2(a)(1), the court, the prosecutor, the defendant, and the defendant's counsel may not inform a juror or a prospective juror of the effect of the jury's failure to agree on the questions.

DIGEST:

CSHB 188 would require the court to inform the jury that unless a jury answered "yes" unanimously regarding questions about the continuing threat to society and the defendant's role as a party to an offense, the jury would be required to answer "no."

The bill also would require the court to inform the jury that unless a jury answered "no" unanimously to the question about mitigating circumstances, the jury would be required to answer "yes."

The bill would take effect September 1, 2023, and would apply only to criminal proceedings that began on or after that date.

**SUPPORTERS
SAY:**

CSHB 188 would help to eliminate confusion among lawyers and juries by clarifying that a jury could only convict the defendant of the death penalty if the decision was unanimous. Current jury instructions suggest that a jury decision in a capital case requires a minimum number of jurors to agree on the decision. This can lead to jurors being persuaded to change their vote or thinking that their vote will not count unless they persuaded others. This also can result in jurors answering dishonestly based on their perception of possible outcomes. CSHB 188 would help jurors make

informed decisions by making their instructions more clear.

CRITICS
SAY:

CSHB could place additional burden on the state to prove that there were no mitigating circumstances in a capital case. Additionally, the potential challenges achieving a unanimous vote could discourage jury deliberation.