

1 HB32  
2 180359-2  
3 By Representative England  
4 RFD: Judiciary  
5 First Read: 07-FEB-17  
6 PFD: 12/15/2016

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8 SYNOPSIS: Under existing law, in a capital case, the  
9 jury may recommend to the court the sentence of a  
10 person convicted of a capital offense, but the  
11 court is not required to accept the jury's  
12 recommendation. Also under existing law, the  
13 decision of a jury to recommend a sentence of death  
14 is required to be based on a vote of at least 10  
15 jurors.

16 The bill would require a verdict of death to  
17 be based on a unanimous vote of the jury and would  
18 prohibit a court from overriding a verdict by a  
19 jury in a capital case.

20  
21 A BILL  
22 TO BE ENTITLED  
23 AN ACT

24  
25 To amend Sections 13A-5-45, 13A-5-46, and 13A-5-47,  
26 Code of Alabama 1975, relating to capital cases and to the  
27 determination of the sentence by courts; to require a verdict

1 of death to be based on a unanimous vote of the jury; and to  
2 prohibit a court from overriding a jury verdict.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 13A-5-45, 13A-5-46, 13A-5-47,  
5 Code of Alabama 1975, are amended to read as follows:

6 "§13A-5-45.

7 "(a) Upon conviction of a defendant for a capital  
8 offense, the trial court shall conduct a separate sentence  
9 hearing to determine whether the defendant shall be sentenced  
10 to life imprisonment without parole or to death. The sentence  
11 hearing shall be conducted as soon as practicable after the  
12 defendant is convicted. Provided, however, if the sentence  
13 hearing is to be conducted before the trial judge without a  
14 jury or before the trial judge and a jury other than the trial  
15 jury, as provided elsewhere in this article, the trial court  
16 with the consent of both parties may delay the sentence  
17 hearing until it has received the pre-sentence investigation  
18 report specified in Section 13A-5-47(b). Otherwise, the  
19 sentence hearing shall not be delayed pending receipt of the  
20 pre-sentence investigation report.

21 "(b) The state and the defendant shall be allowed to  
22 make opening statements and closing arguments at the sentence  
23 hearing. The order of those statements and arguments and the  
24 order of presentation of the evidence shall be the same as at  
25 trial.

26 "(c) At the sentence hearing evidence may be  
27 presented as to any matter that the court deems relevant to

1 sentence and shall include any matters relating to the  
2 aggravating and mitigating circumstances referred to in  
3 Sections 13A-5-49, 13A-5-51, and 13A-5-52. Evidence presented  
4 at the trial of the case may be considered insofar as it is  
5 relevant to the aggravating and mitigating circumstances  
6 without the necessity of re-introducing that evidence at the  
7 sentence hearing, unless the sentence hearing is conducted  
8 before ~~a jury other than the one before which the defendant~~  
9 ~~was tried~~ a trial judge other than the one before whom the  
10 defendant was tried or a jury other than the trial jury before  
11 which the defendant was tried.

12 "(d) Any evidence which has probative value and is  
13 relevant to sentence shall be received at the sentence hearing  
14 regardless of its admissibility under the exclusionary rules  
15 of evidence, provided that the defendant is accorded a fair  
16 opportunity to rebut any hearsay statements. This subsection  
17 shall not be construed to authorize the introduction of any  
18 evidence secured in violation of the Constitution of the  
19 United States or the State of Alabama.

20 "(e) At the sentence hearing the state shall have  
21 the burden of proving beyond a reasonable doubt the existence  
22 of any aggravating circumstances. Provided, however, any  
23 aggravating circumstance which the verdict convicting the  
24 defendant establishes was proven beyond a reasonable doubt at  
25 trial shall be considered as proven beyond a reasonable doubt  
26 for purposes of the sentence hearing.

1           "(f) Unless at least one aggravating circumstance as  
2 defined in Section 13A-5-49 exists, the sentence shall be life  
3 imprisonment without parole.

4           "(g) The defendant shall be allowed to offer any  
5 mitigating circumstance defined in Sections 13A-5-51 and  
6 13A-5-52. When the factual existence of an offered mitigating  
7 circumstance is in dispute, the defendant shall have the  
8 burden of interjecting the issue, but once it is interjected  
9 the state shall have the burden of disproving the factual  
10 existence of that circumstance by a preponderance of the  
11 evidence.

12           "§13A-5-46.

13           "(a) Unless both parties with the consent of the  
14 court waive the right to have the sentence hearing conducted  
15 before a jury as provided in Section 13A-5-44(c), it shall be  
16 conducted before a jury which shall return ~~an advisory~~ a  
17 verdict as provided by subsection (e) of this section. If both  
18 parties with the consent of the court waive the right to have  
19 the hearing conducted before a jury, the trial judge shall  
20 proceed to determine sentence without ~~an advisory~~ a verdict  
21 from a jury. Otherwise, the hearing shall be conducted before  
22 a jury as provided in the remaining subsections of this  
23 section.

24           "(b) If the defendant was tried and convicted by a  
25 jury, the sentence hearing shall be conducted before that same  
26 jury unless it is impossible or impracticable to do so. If it  
27 is impossible or impracticable for the trial jury to sit at

1 the sentence hearing, or if the case on appeal is remanded for  
2 a new sentence hearing before a jury, a new jury shall be  
3 impanelled to sit at the sentence hearing. The selection of  
4 that jury shall be according to the laws and rules governing  
5 the selection of a jury for the trial of a capital case.

6 "(c) The separation of the jury during the pendency  
7 of the sentence hearing, and if the sentence hearing is before  
8 the same jury which convicted the defendant, the separation of  
9 the jury during the time between the guilty verdict and the  
10 beginning of the sentence hearing, shall be governed by the  
11 law and court rules applicable to the separation of the jury  
12 during the trial of a capital case.

13 "(d) After hearing the evidence and the arguments of  
14 both parties at the sentence hearing, the jury shall be  
15 instructed on its function and on the relevant law by the  
16 trial judge. The jury shall then retire to deliberate  
17 concerning the ~~advisory~~ verdict it is to return.

18 "(e) After deliberation, the jury shall return ~~an~~  
19 ~~advisory~~ a verdict as follows:

20 "(1) If the jury determines that no aggravating  
21 circumstances as defined in Section 13A-5-49 exist, it shall  
22 return ~~an advisory verdict recommending to the trial court~~  
23 ~~that the penalty be~~ a verdict of life imprisonment without  
24 parole;

25 "(2) If the jury determines that one or more  
26 aggravating circumstances as defined in Section 13A-5-49 exist  
27 but do not outweigh the mitigating circumstances, it shall

1 return ~~an advisory verdict recommending to the trial court~~  
2 ~~that the penalty be~~ a verdict of life imprisonment without  
3 parole;

4 "(3) If the jury determines that one or more  
5 aggravating circumstances as defined in Section 13A-5-49 exist  
6 and that they outweigh the mitigating circumstances, if any,  
7 it shall return ~~an advisory verdict recommending to the trial~~  
8 ~~court that the penalty be~~ a verdict of death.

9 "(f) The decision of the jury to return ~~an advisory~~  
10 a verdict recommending a sentence of life imprisonment without  
11 parole must be based on a vote of a majority of the jurors.  
12 The decision of the jury to recommend a sentence of death must  
13 be based on a unanimous vote of ~~at least 10~~ the jurors. The  
14 verdict of the jury must be in writing and must specify the  
15 vote.

16 "(g) If the jury is unable to reach ~~an advisory a~~  
17 verdict recommending a sentence, or for other manifest  
18 necessity, the trial court may declare a mistrial of the  
19 sentence hearing. Such a mistrial shall not affect the  
20 conviction. After such a mistrial or mistrials another  
21 sentence hearing shall be conducted before another jury,  
22 selected according to the laws and rules governing the  
23 selection of a jury for the trial of a capital case. Provided,  
24 however, that, subject to the provisions of Section  
25 13A-5-44(c), after one or more mistrials both parties with the  
26 consent of the court may waive the right to have ~~an advisory a~~  
27 verdict from a jury, in which event the issue of sentence

1 shall be submitted to the trial court without a recommendation  
2 from a jury.

3 "§13A-5-47.

4 "(a) After the sentence hearing has been conducted,  
5 and after the jury has returned ~~an advisory~~ a verdict, or  
6 after such a verdict has been waived as provided in Section  
7 13A-5-46(a) or Section 13A-5-46(g), the trial court shall  
8 ~~proceed to determine the~~ impose sentence. Where the jury has  
9 returned a verdict of death, the court shall sentence the  
10 defendant to death. Where a sentence of death is not returned  
11 by the jury, the court shall sentence the defendant to life  
12 imprisonment without parole. This code section shall not  
13 affect a trial court's power to sentence in accordance with a  
14 guilty plea.

15 "~~(b) Before making the sentence determination, the~~  
16 ~~trial court shall order and receive a written pre-sentence~~  
17 ~~investigation report. The report shall contain the information~~  
18 ~~prescribed by law or court rule for felony cases generally and~~  
19 ~~any additional information specified by the trial court. No~~  
20 ~~part of the report shall be kept confidential, and the parties~~  
21 ~~shall have the right to respond to it and to present evidence~~  
22 ~~to the court about any part of the report which is the subject~~  
23 ~~of factual dispute. The report and any evidence submitted in~~  
24 ~~connection with it shall be made part of the record in the~~  
25 ~~case.~~

26 "~~(c) Before~~ (b) Where the sentencing jury is waived  
27 pursuant to Section 13A-5-44 and before imposing sentence the



1 trial court shall permit the parties to present arguments  
2 concerning the existence of aggravating and mitigating  
3 circumstances and the proper sentence to be imposed in the  
4 case. The order of the arguments shall be the same as at the  
5 trial of a case. The trial court, based upon evidence  
6 presented at trial and the evidence presented during the  
7 sentence hearing and any evidence submitted in connection with  
8 it, shall enter specific written findings concerning the  
9 existence or nonexistence of each aggravating circumstance  
10 enumerated in Section 13A-5-49, each mitigating circumstance  
11 enumerated in Section 13A-5-51, and any additional mitigating  
12 circumstances offered pursuant to Section 13A-5-52. The trial  
13 court shall also enter written findings of facts summarizing  
14 the crime and the defendant's participation in it. In deciding  
15 upon the sentence, the trial court shall determine whether the  
16 aggravating circumstances it finds to exist outweigh the  
17 mitigating circumstances it finds to exist.

18 ~~"(d) Based upon the evidence presented at trial, the~~  
19 ~~evidence presented during the sentence hearing, and the~~  
20 ~~pre-sentence investigation report and any evidence submitted~~  
21 ~~in connection with it, the trial court shall enter specific~~  
22 ~~written findings concerning the existence or nonexistence of~~  
23 ~~each aggravating circumstance enumerated in Section 13A-5-49,~~  
24 ~~each mitigating circumstance enumerated in Section 13A-5-51,~~  
25 ~~and any additional mitigating circumstances offered pursuant~~  
26 ~~to Section 13A-5-52. The trial court shall also enter written~~

1 ~~findings of facts summarizing the crime and the defendant's~~  
2 ~~participation in it.~~

3 ~~"(e) In deciding upon the sentence, the trial court~~  
4 ~~shall determine whether the aggravating circumstances it finds~~  
5 ~~to exist outweigh the mitigating circumstances it finds to~~  
6 ~~exist, and in doing so the trial court shall consider the~~  
7 ~~recommendation of the jury contained in its advisory verdict,~~  
8 ~~unless such a verdict has been waived pursuant to Section~~  
9 ~~13A-5-46(a) or 13A-5-46(g). While the jury's recommendation~~  
10 ~~concerning sentence shall be given consideration, it is not~~  
11 ~~binding upon the court."~~

12 Section 2. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.