

CHAPTER 781

H.B. No. 798

AN ACT

relating to sentencing procedures in capital felony cases for offenses committed before September 1, 1991, and to the reformation of a sentence or an award of a new trial in a capital felony case.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Article 37.071, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i) This article applies to the sentencing procedure in a capital case for an offense that is committed on or after September 1, 1991. For the purposes of this section, an offense is committed on or after September 1, 1991, if any element of that offense occurs on or after that date.

SECTION 2. Chapter 37, Code of Criminal Procedure, is amended by adding Article 37.0711 to read as follows:

Art. 37.0711. PROCEDURE IN CAPITAL CASE FOR OFFENSE COMMITTED BEFORE SEPTEMBER 1, 1991

Sec. 1. This article applies to the sentencing procedure in a capital case for an offense that is committed before September 1, 1991, whether the sentencing procedure is part of the original trial of the offense, an award of a new trial for both the guilt or innocence stage and the punishment stage of the trial, or an award of a new trial only for the punishment stage of the trial. For the purposes of this section, an offense is committed before September 1, 1991, if every element of the offense occurs before that date.

Sec. 2. If a defendant is found guilty in a case in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment.

Sec. 3. (a) 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. 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 as to any matter that the court deems relevant to sentence. This subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of this state. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

(b) On conclusion of the presentation of the evidence, the court shall submit the following three issues to the jury:

(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result;

(2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased.

(c) The state must prove each issue submitted under Subsection (b) of this section beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted.

(d) The court shall charge the jury that:

(1) it may not answer any issue submitted under Subsection (b) of this section "yes" unless it agrees unanimously; and

(2) it may not answer any issue submitted under Subsection (b) of this section "no" unless 10 or more jurors agree.

(e) The court shall instruct the jury that if the jury returns an affirmative finding on each issue submitted under Subsection (b) of this section, 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, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed.

(f) The court shall charge the jury that, in answering the issue submitted under Subsection (e) of this section, the jury:

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

(2) may not answer the issue "no" unless it agrees unanimously and may not answer the issue "yes" unless 10 or more jurors agree; and

(3) shall consider mitigating evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) of this section and a negative finding on the issue submitted under Subsection (e) of this section, the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) of this section or an affirmative finding on the issue submitted under Subsection (e) of this section or is unable to answer any issue submitted under Subsection (b) or (e) of this section, the court shall sentence the defendant to confinement in the institutional division of the Texas Department of Criminal Justice for life.

(h) If a defendant is convicted of an offense under Section 19.03(a)(6), Penal Code, the court shall submit the issues under Subsections (b) and (e) of this section only with regard to the conduct of the defendant in murdering the deceased individual first named in the indictment.

(i) The court, the attorney for the state, or the attorney for the defendant may not inform a juror or prospective juror of the effect of failure of the jury to agree on an issue submitted under this article.

(j) The Court of Criminal Appeals shall automatically review a judgment of conviction and sentence of death not later than the 60th day after the date of certification by the sentencing court of the entire record, unless the Court of Criminal Appeals extends the time for an additional period not to exceed 30 days for good cause shown. Automatic review under this subsection has priority over all other cases before the Court of Criminal Appeals, and the court shall hear automatic reviews under rules adopted by the court for that purpose.

SECTION 3. Article 44.251(a), Code of Criminal Procedure, is amended to read as follows:

(a) The court of criminal appeals shall reform a sentence of death to a sentence of confinement in the institutional division of the Texas Department of Criminal Justice for life if the court finds that there is insufficient evidence to support an affirmative answer to an issue submitted to the jury under Section 2(b), Article 37.071, or Section 3(b), Article 37.0711, [(b)] of this code or a negative answer to an issue submitted to a jury under Section 2(e), Article 37.071, or Section 3(e), Article 37.0711, [(e)] of this code.

SECTION 4. Article 44.29(c), Code of Criminal Procedure, is amended to read as follows:

(c) If any court sets aside or invalidates the sentence of a defendant convicted of an offense under Section 19.03, Penal Code, and sentenced to death on the basis of any error affecting punishment only, the court shall not set the conviction aside but rather shall commence a new punishment hearing under Article 37.071 or Article 37.0711 of this code, *as appropriate*, as if a finding of guilt had been returned. The court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is to be empaneled by the court in other trials before the court for offenses under Section 19.03, Penal Code. *At the new punishment hearing, the court shall permit both the state and the defendant to introduce evidence as permitted by Article 37.071 or Article 37.0711 of this code.*

SECTION 5. Notwithstanding Section 5, Chapter 838, Acts of the 72nd Legislature, Regular Session, 1991, the changes in law made by Section 2 of Chapter 838 to Subsections (b) and (c) of Article 44.29, Code of Criminal Procedure, and by Section 3 of Chapter 838 to Article 44.251, Code of Criminal Procedure, apply to an offense whether the offense is committed before, on, or after September 1, 1991.

SECTION 6. The change in law made by this Act applies to an offense whether committed before, on, or after the effective date of this Act.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 8, 1993, by a non-record vote; passed by the Senate on May 30, 1993: Yeas 31, Nays 0.

Approved June 17, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.