

SB216 INTRODUCED



1 SBJH77-1
2 By Senators Hatcher, Stewart, Coleman
3 RFD: Judiciary
4 First Read: 19-Apr-23
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SYNOPSIS:

Under existing law, a sentence of death in a capital murder case must be based on a vote of at least 10 jurors and a sentence of life without the possibility of parole requires a majority vote.

This bill would require a unanimous vote by the jurors to impose a sentence of death.

This bill would require a vote of the majority of jurors to impose a sentence of life without the possibility of parole.

Prior to 2017, in capital murder cases, the jury would provide an advisory verdict to the judge regarding the defendant's sentence. The jury's advisory sentence was not binding upon the court; however, the judge was required to give it consideration.

This bill would provide that a defendant shall be resentenced if a judge sentenced him or her to a sentence other than the jury's advisory sentence and if his or her death sentence was not unanimous.

This bill would repeal the existing code section relating to resentencing for certain defendants sentenced for capital murder.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.



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A BILL

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TO BE ENTITLED

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AN ACT

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35 Relating to sentencing; the amend Sections 13A-5-46 and
36 13A-5-47, Code of Alabama 1975, to require a unanimous vote of
37 a jury to impose a death sentence in a capital murder case; to
38 require a majority vote of a jury to impose a sentence of life
39 imprisonment without parole; to add Sections 13A-5-46.1 and
40 13A-5-47.2 to the Code of Alabama 1975, to provide for
41 resentencing for certain defendants sentenced for capital
42 murder; to repeal Section 13A-5-47.1, Code of Alabama 1975;
43 and to make nonsubstantive, technical revisions to update the
44 existing code language to current style.

45 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

48 "§13A-5-46

49 (a) Unless both parties, l with the consent of the court, l
50 waive the right to have the sentence hearing conducted before
51 a jury as provided in Section 13A-5-44(c), it shall be
52 conducted before a jury which shall return a verdict as
53 provided by subsection (e) ~~of this section~~. If both parties
54 with the consent of the court waive the right to have the
55 hearing conducted before a jury, the trial judge shall proceed
56 to determine sentence without a verdict from a jury.



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57 Otherwise, the hearing shall be conducted before a jury as
58 provided in ~~the remaining subsections of~~ this section.

59 (b) If the defendant was tried and convicted by a jury,
60 the sentence hearing shall be conducted before that same jury
61 unless it is impossible or impracticable to do so. If it is
62 impossible or impracticable for the trial jury to sit at the
63 sentence hearing, or if the case on appeal is remanded for a
64 new sentence hearing before a jury, a new jury shall be
65 impanelled to sit at the sentence hearing. The selection of
66 that jury shall be according to the laws and rules governing
67 the selection of a jury for the trial of a capital case.

68 (c) The separation of the jury during the pendency of
69 the sentence hearing, and if the sentence hearing is before
70 the same jury ~~which~~ that convicted the defendant, the
71 separation of the jury during the time between the guilty
72 verdict and the beginning of the sentence hearing, shall be
73 governed by the law and court rules applicable to the
74 separation of the jury during the trial of a capital case.

75 (d) After hearing the evidence and the arguments of
76 both parties at the sentence hearing, the jury shall be
77 instructed on its function and on the relevant law by the
78 trial judge. The jury shall then retire to deliberate
79 concerning the verdict it is to return.

80 (e) After deliberation, the jury shall return a verdict
81 as follows:

82 (1) If the jury determines that no aggravating
83 circumstances as defined in Section 13A-5-49 exist, it shall
84 return a verdict of life imprisonment without parole~~.~~.



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85 (2) If the jury determines that one or more aggravating
86 circumstances as defined in Section 13A-5-49 exist but do not
87 outweigh the mitigating circumstances, it shall return a
88 verdict of life imprisonment without parole~~+~~.

89 (3) If the jury determines that one or more aggravating
90 circumstances as defined in Section 13A-5-49 exist and that
91 they outweigh the mitigating circumstances, if any, it shall
92 return a verdict of death.

93 (f) The decision of the jury to return a verdict
94 ~~recommending a sentence~~ of life imprisonment without parole
95 ~~must~~ shall be based on a vote of a majority of the jurors. The
96 decision of the jury to ~~recommend a sentence of~~ return a
97 verdict of death ~~must~~ shall be based on a unanimous vote of ~~at~~
98 ~~least 10~~ the jurors. The verdict of the jury ~~must~~ shall be in
99 writing and ~~must~~ shall specify the vote.

100 (g) If the jury is unable to reach a verdict
101 recommending a sentence, or for other manifest necessity, the
102 trial court may declare a mistrial of the sentence hearing.
103 ~~Such a~~ The mistrial shall not affect the conviction. After ~~such~~
104 a mistrial or mistrials another sentence hearing shall be
105 conducted before another jury, selected according to the laws
106 and rules governing the selection of a jury for the trial of a
107 capital case. ~~Provided, however, that, subject~~ Subject to ~~the~~
108 ~~provisions of~~ Section 13A-5-44(c), after one or more mistrials
109 both parties, with the consent of the court, may waive the
110 right to have a verdict from a jury, in which event the ~~issue~~
111 ~~of sentence shall be submitted to the~~ trial court shall impose
112 a sentence without a ~~recommendation~~ verdict from a jury."



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113 "§13A-5-47

114 (a) After the sentence hearing has been conducted, and
115 after the jury has returned a verdict, or after ~~such~~ a verdict
116 has been waived as provided in Section 13A-5-46(a) or Section
117 13A-5-46(g), the trial court shall impose sentence. Where the
118 jury has returned a verdict of death, the court shall sentence
119 the defendant to death. Where ~~a sentence of death is not~~
120 ~~returned by~~ the jury has returned a verdict of life
121 imprisonment without parole, the court shall sentence the
122 defendant to life imprisonment without parole. This code
123 section shall not affect a trial court's power to sentence in
124 accordance with a guilty plea.

125 (b) Where the sentencing jury is waived pursuant to
126 Section 13A-5-44 and before imposing sentence the trial court
127 shall permit the parties to present arguments concerning the
128 existence of aggravating and mitigating circumstances and the
129 proper sentence to be imposed in the case. The order of the
130 arguments shall be the same as at the trial of a case. The
131 trial court, based upon evidence presented at trial and the
132 evidence presented during the sentence hearing and any
133 evidence submitted in connection with it, shall enter specific
134 written findings concerning the existence or nonexistence of
135 each aggravating circumstance enumerated in Section 13A-5-49,
136 each mitigating circumstance enumerated in Section 13A-5-51,
137 and any additional mitigating circumstances offered pursuant
138 to Section 13A-5-52. The trial court shall also enter written
139 findings of facts summarizing the crime and the defendant's
140 participation in it. In deciding upon the sentence, the trial



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141 court shall determine whether the aggravating circumstances it
142 finds to exist outweigh the mitigating circumstances it finds
143 to exist."

144 Section 2. Sections 13A-5-46.1 and 13A-5-47.2 are added
145 to the Code of Alabama 1975, to read as follows:

146 §13A-5-46.1

147 A defendant sentenced prior to the effective date of
148 this act shall be resentenced pursuant to Section 13A-5-46, in
149 effect on the effective date of this act, by the sentencing
150 judge or, if the sentencing judge is no longer in office, by
151 any circuit judge appointed by the presiding judge.

152 §13A-5-47.2

153 A defendant sentenced prior to the effective date of
154 this act shall be resentenced pursuant to Section 13A-5-47, in
155 effect on the effective date of this act, by the sentencing
156 judge or, if the sentencing judge is no longer in office, by
157 any circuit judge appointed by the presiding judge.

158 Section 3. Section 13A-5-47.1, Code of Alabama 1975,
159 relating to the application of sentencing of certain
160 defendants convicted of capital murder, is repealed.

161 Section 4. This act shall become effective immediately
162 following its passage and approval by the Governor, or its
163 otherwise becoming law.