



Ensure Texas Jurors Make Informed Decisions in Death Penalty Sentencing

Jurors perform a vital function within the Texas criminal justice system. They provide a link between courtrooms and their local communities, ensure that punishments comport with contemporary values,¹ protect citizens against over-zealous prosecution,² and sacrifice a substantial portion of their time and attention in executing these responsibilities. In cases where capital punishment is sought, they assume the awesome responsibility of determining whether an individual lives or dies,³ and carry the heavy burden of their decision in the trial's aftermath.

Yet, Texas' jury instructions are a confusing set of directions that leave many jurors confused about the implications of their vote and the factors to take into consideration as they determine the proper sentence.

- (1) Article 37.071 requires that judges ***explicitly mislead*** jurors about their individual capacity to impose a sentence of life without parole.

Under this statute, the jury must consider up to three “yes” or “no” special issue questions in sentencing the defendant to death or life without parole. In considering its answers to these questions, the jury is instructed that *“it may not answer any issue [in favor of death] unless it agrees unanimously and it may not answer any issue [in favor of life without parole] unless 10 or more jurors agree.”*

However, a defendant is sentenced to life without parole anytime the jury reaches fewer than 12 votes for death.

- (2) The statute prohibits informing juries of the truth.

Article 37.071, §2(a)(1) states, *“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 [this article].”*

As a result, none of the jurors are informed of what will transpire if they disagree during sentencing phase deliberations, even if they explicitly ask the court about the implications of a deadlock.

¹ *McGautha v. California*, 402 U.S. 183, 202 (1971).

² *Taylor v. Louisiana*, 419 U.S. 522 (1975).

³ *Caldwell v. Mississippi*, 472 U.S. 320 (1985).

FACTS

- Texas has a bifurcated procedure in death penalty cases, where the defendant's guilt and punishment are adjudicated separately. If a jury finds that a defendant is guilty of a capital offense and the State seeks the death penalty, the case proceeds to a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. This bill would affect only the sentencing phase of trial.
- Once all of the evidence for or against a death sentence is presented, the court submits a series of up to three questions to the jury that drive their determination of the proper sentence that ask whether (1) a defendant is a future danger to society,(2) whether the defendant, if he was guilty as a party, intended to kill the deceased or another or anticipated that a human life would be taken, and (3) whether 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. The jury is told that to reach a verdict, it must either unanimously answer the questions favoring the death penalty or it must answer the questions favoring a life sentence with a 10 to 2 verdict.
- Under this bill, the jury would continue to be told that the questions favoring the death penalty must be answered unanimously to constitute a verdict.
- This bill would only change the portion of the instructions that tell the jury that a verdict favoring a life sentence requires a 10 to 2 vote. That instruction would be eliminated.
- The elimination of the language referring to a 10 to 2 verdict would lead to truth in sentencing in that the jury would understand that the only possible way to that a defendant may be sentenced to death is with unanimous answers on the special issues that lead to a death sentence.
- This bill will also allow judges, defense attorneys and even prosecutors to inform jurors of the implications of their vote.