

HB14 INTRODUCED



1 MS2FWW-1
2 By Representative England
3 RFD: Judiciary
4 First Read: 07-Mar-23
5 PFD: 08-Feb-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.

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

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 may 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.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a



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29 local governmental entity without enactment by a 2/3
30 vote unless: it comes within one of a number of
31 specified exceptions; it is approved by the affected
32 entity; or the Legislature appropriates funds, or
33 provides a local source of revenue, to the entity for
34 the purpose.

35 The purpose or effect of this bill would be to
36 require a new or increased expenditure of local funds
37 within the meaning of the amendment. However, the bill
38 does not require approval of a local governmental
39 entity or enactment by a 2/3 vote to become effective
40 because it comes within one of the specified exceptions
41 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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48 Relating to sentencing; to amend Section 13A-5-46, Code
49 of Alabama 1975, to require a unanimous vote of a jury to
50 impose a death sentence in a capital murder case; to add
51 Section 13A-5-46.1 to the Code of Alabama 1975, to provide for
52 resentencing for certain defendants sentenced for capital
53 murder; to repeal Section 13A-5-47.4, Code of Alabama 1975; to
54 make nonsubstantive, technical revisions to update the
55 existing code language to current style; and in connection
56 therewith would have as its purpose or effect the requirement



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57 of a new or increased expenditure of local funds within the
58 meaning of Section 111.05 of the Constitution of Alabama of
59 2022.

60 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

61 Section 1. Section 13A-5-46, Code of Alabama 1975, is
62 amended to read as follows:

63 "§13A-5-46

64 (a) Unless both parties, with the consent of the court,
65 waive the right to have the sentence hearing conducted before
66 a jury as provided in Section 13A-5-44(c), it shall be
67 conducted before a jury which shall return a verdict as
68 provided by subsection (e) ~~of this section~~. If both parties
69 with the consent of the court waive the right to have the
70 hearing conducted before a jury, the trial judge shall proceed
71 to determine sentence without a verdict from a jury.
72 Otherwise, the hearing shall be conducted before a jury as
73 provided in ~~the remaining subsections of~~ this section.

74 (b) If the defendant was tried and convicted by a jury,
75 the sentence hearing shall be conducted before that same jury
76 unless it is impossible or impracticable to do so. If it is
77 impossible or impracticable for the trial jury to sit at the
78 sentence hearing, or if the case on appeal is remanded for a
79 new sentence hearing before a jury, a new jury shall be
80 impanelled to sit at the sentence hearing. The selection of
81 that jury shall be according to the laws and rules governing
82 the selection of a jury for the trial of a capital case.

83 (c) The separation of the jury during the pendency of
84 the sentence hearing, and if the sentence hearing is before



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85 the same jury ~~which~~that convicted the defendant, the
86 separation of the jury during the time between the guilty
87 verdict and the beginning of the sentence hearing, shall be
88 governed by the law and court rules applicable to the
89 separation of the jury during the trial of a capital case.

90 (d) After hearing the evidence and the arguments of
91 both parties at the sentence hearing, the jury shall be
92 instructed on its function and on the relevant law by the
93 trial judge. The jury shall then retire to deliberate
94 concerning the verdict it is to return.

95 (e) After deliberation, the jury shall return a verdict
96 as follows:

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

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

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

108 ~~(f) The decision of the jury to return a verdict~~
109 ~~recommending a sentence of life imprisonment without parole~~
110 ~~must be based on a vote of a majority of the jurors. The~~
111 ~~decision of the jury to recommend a sentence~~A jury verdict of
112 ~~death must be based on a vote of at least 10 jurors~~ shall be



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113 unanimous. The verdict of the jury ~~must~~ shall be in writing
114 and ~~must~~ specify the vote.

115 (g) If the jury is unable to reach a verdict
116 recommending a sentence, or for other manifest necessity, the
117 trial court may declare a mistrial of the sentence hearing.
118 ~~Such a~~ The mistrial shall not affect the conviction. After ~~such~~
119 a mistrial or mistrials another sentence hearing shall be
120 conducted before another jury, selected according to the laws
121 and rules governing the selection of a jury for the trial of a
122 capital case. ~~Provided, however, that, subject~~ Subject to ~~the~~
123 ~~provisions of~~ Section 13A-5-44(c), after one or more mistrials
124 both parties, with the consent of the court, may waive the
125 right to have a verdict from a jury, in which event the ~~issue~~
126 ~~of sentence shall be submitted to the~~ trial court shall impose
127 a sentence without a ~~recommendation~~ verdict from a jury."

128 Section 2. Section 13A-5-46.1 is added to the Code of
129 Alabama 1975, to read as follows:

130 (a) Notwithstanding Section 13A-5-57, a defendant
131 sentenced prior to the effective date of this act shall be
132 resentenced pursuant to Section 13A-5-46, in effect on the
133 effective date of this act, upon petition to the sentencing
134 court.

135 (b) The petition shall be on a form and filed in the
136 manner prescribed by the Administrative Office of Courts.
137 Petitions shall be considered authorized motions for
138 modifications of sentence, assigned a unique identifier by the
139 Administrative Office of Courts and shall not require payment
140 of a filing fee.



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141 (c) The Administrative Office of Courts shall adopt
142 rules as are necessary to implement this section.

143 Section 3. Section 13A-5-47.1, Code of Alabama 1975,
144 relating to the application of sentencing of certain defendant
145 convicted of capital murder, is repealed.

146 Section 4. Although this bill would have as its purpose
147 or effect the requirement of a new or increased expenditure of
148 local funds, the bill is excluded from further requirements
149 and application under Section 111.05 of the Constitution of
150 Alabama of 2022, because the bill defines a new crime or
151 amends the definition of an existing crime.

152 Section 5. This act shall become effective immediately
153 following its passage and approval by the Governor, or its
154 otherwise becoming law.