SB182

SUGR877-1

By Senators Hatcher, Coleman-Madison, Stewart, Beasley, Smitherman

RFD: Judiciary

First Read: 29-Feb-24

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.

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§13A-5-46

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

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

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

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

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

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

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

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

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

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

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

"§13A-5-47

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

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

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

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

§13A-5-46.1

A defendant sentenced prior to June 1, 2024, shall be resentenced pursuant to Section 13A-5-46, in effect on June 1, 2024, by the sentencing judge or, if the sentencing judge is no longer in office, by any circuit judge appointed by the presiding judge.

§13A-5-47.2

A defendant sentenced prior to June 1, 2024, shall be resentenced pursuant to Section 13A-5-47, in effect on June 1, 2024, by the sentencing judge or, if the sentencing judge is no longer in office, by any circuit judge appointed by the presiding judge.

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

Section 4. This act shall become effective June 1, 2024.