

1 SB16  
2 178947-2  
3 By Senator Brewbaker  
4 RFD: Judiciary  
5 First Read: 07-FEB-17  
6 PFD: 12/19/2016

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 13A-5-45, 13A-5-46, and 13A-5-47,  
12 Code of Alabama 1975, relating to capital cases and to the  
13 determination of the sentence by courts; to prohibit a court  
14 from overriding a jury verdict.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 13A-5-45, 13A-5-46, 13A-5-47,  
17 Code of Alabama 1975, are amended to read as follows:

18 "§13A-5-45.

19 "(a) Upon conviction of a defendant for a capital  
20 offense, the trial court shall conduct a separate sentence  
21 hearing to determine whether the defendant shall be sentenced  
22 to life imprisonment without parole or to death. The sentence  
23 hearing shall be conducted as soon as practicable after the  
24 defendant is convicted. Provided, however, if the sentence  
25 hearing is to be conducted before the trial judge without a  
26 jury or before the trial judge and a jury other than the trial  
27 jury, as provided elsewhere in this article, the trial court

1 with the consent of both parties may delay the sentence  
2 hearing until it has received the pre-sentence investigation  
3 report specified in Section 13A-5-47(b). Otherwise, the  
4 sentence hearing shall not be delayed pending receipt of the  
5 pre-sentence investigation report.

6 "(b) The state and the defendant shall be allowed to  
7 make opening statements and closing arguments at the sentence  
8 hearing. The order of those statements and arguments and the  
9 order of presentation of the evidence shall be the same as at  
10 trial.

11 "(c) At the sentence hearing evidence may be  
12 presented as to any matter that the court deems relevant to  
13 sentence and shall include any matters relating to the  
14 aggravating and mitigating circumstances referred to in  
15 Sections 13A-5-49, 13A-5-51, and 13A-5-52. Evidence presented  
16 at the trial of the case may be considered insofar as it is  
17 relevant to the aggravating and mitigating circumstances  
18 without the necessity of re-introducing that evidence at the  
19 sentence hearing, unless the sentence hearing is conducted  
20 before a jury other than the one before which the defendant  
21 was tried a trial judge other than the one before whom the  
22 defendant was tried or a jury other than the trial jury before  
23 which the defendant was tried.

24 "(d) Any evidence which has probative value and is  
25 relevant to sentence shall be received at the sentence hearing  
26 regardless of its admissibility under the exclusionary rules  
27 of evidence, provided that the defendant is accorded a fair

1 opportunity to rebut any hearsay statements. This subsection  
2 shall not be construed to authorize the introduction of any  
3 evidence secured in violation of the Constitution of the  
4 United States or the State of Alabama.

5 "(e) At the sentence hearing the state shall have  
6 the burden of proving beyond a reasonable doubt the existence  
7 of any aggravating circumstances. Provided, however, any  
8 aggravating circumstance which the verdict convicting the  
9 defendant establishes was proven beyond a reasonable doubt at  
10 trial shall be considered as proven beyond a reasonable doubt  
11 for purposes of the sentence hearing.

12 "(f) Unless at least one aggravating circumstance as  
13 defined in Section 13A-5-49 exists, the sentence shall be life  
14 imprisonment without parole.

15 "(g) The defendant shall be allowed to offer any  
16 mitigating circumstance defined in Sections 13A-5-51 and  
17 13A-5-52. When the factual existence of an offered mitigating  
18 circumstance is in dispute, the defendant shall have the  
19 burden of interjecting the issue, but once it is interjected  
20 the state shall have the burden of disproving the factual  
21 existence of that circumstance by a preponderance of the  
22 evidence.

23 "§13A-5-46.

24 "(a) Unless both parties with the consent of the  
25 court waive the right to have the sentence hearing conducted  
26 before a jury as provided in Section 13A-5-44(c), it shall be  
27 conducted before a jury which shall return ~~an advisory a~~

1 verdict as provided by subsection (e) of this section. If both  
2 parties with the consent of the court waive the right to have  
3 the hearing conducted before a jury, the trial judge shall  
4 proceed to determine sentence without ~~an advisory~~ a verdict  
5 from a jury. Otherwise, the hearing shall be conducted before  
6 a jury as provided in the remaining subsections of this  
7 section.

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

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

24 "(d) After hearing the evidence and the arguments of  
25 both parties at the sentence hearing, the jury shall be  
26 instructed on its function and on the relevant law by the

1 trial judge. The jury shall then retire to deliberate  
2 concerning the ~~advisory~~ verdict it is to return.

3 "(e) After deliberation, the jury shall return ~~an~~  
4 ~~advisory~~ a verdict as follows:

5 "(1) If the jury determines that no aggravating  
6 circumstances as defined in Section 13A-5-49 exist, it shall  
7 return ~~an advisory verdict recommending to the trial court~~  
8 ~~that the penalty be~~ a verdict of life imprisonment without  
9 parole;

10 "(2) If the jury determines that one or more  
11 aggravating circumstances as defined in Section 13A-5-49 exist  
12 but do not outweigh the mitigating circumstances, it shall  
13 return ~~an advisory verdict recommending to the trial court~~  
14 ~~that the penalty be~~ a verdict of life imprisonment without  
15 parole;

16 "(3) If the jury determines that one or more  
17 aggravating circumstances as defined in Section 13A-5-49 exist  
18 and that they outweigh the mitigating circumstances, if any,  
19 it shall return ~~an advisory verdict recommending to the trial~~  
20 ~~court that the penalty be~~ a verdict of death.

21 "(f) The decision of the jury to return ~~an advisory~~  
22 a verdict recommending a sentence of life imprisonment without  
23 parole must be based on a vote of a majority of the jurors.  
24 The decision of the jury to recommend a sentence of death must  
25 be based on a vote of at least 10 jurors. The verdict of the  
26 jury must be in writing and must specify the vote.

1           "(g) If the jury is unable to reach ~~an advisory a~~  
2 verdict recommending a sentence, or for other manifest  
3 necessity, the trial court may declare a mistrial of the  
4 sentence hearing. Such a mistrial shall not affect the  
5 conviction. After such a mistrial or mistrials another  
6 sentence hearing shall be conducted before another jury,  
7 selected according to the laws and rules governing the  
8 selection of a jury for the trial of a capital case. Provided,  
9 however, that, subject to the provisions of Section  
10 13A-5-44(c), after one or more mistrials both parties with the  
11 consent of the court may waive the right to have ~~an advisory a~~  
12 verdict from a jury, in which event the issue of sentence  
13 shall be submitted to the trial court without a recommendation  
14 from a jury.

15           "§13A-5-47.

16           "(a) After the sentence hearing has been conducted,  
17 and after the jury has returned ~~an advisory a~~ verdict, or  
18 after such a verdict has been waived as provided in Section  
19 13A-5-46(a) or Section 13A-5-46(g), the trial court shall  
20 proceed to determine the impose sentence. Where the jury has  
21 returned a verdict of death, the court shall sentence the  
22 defendant to death. Where a sentence of death is not returned  
23 by the jury, the court shall sentence the defendant to life  
24 imprisonment without parole. This code section shall not  
25 affect a trial court's power to sentence in accordance with a  
26 guilty plea.

1           ~~"(b) Before making the sentence determination, the~~  
2 ~~trial court shall order and receive a written pre-sentence~~  
3 ~~investigation report. The report shall contain the information~~  
4 ~~prescribed by law or court rule for felony cases generally and~~  
5 ~~any additional information specified by the trial court. No~~  
6 ~~part of the report shall be kept confidential, and the parties~~  
7 ~~shall have the right to respond to it and to present evidence~~  
8 ~~to the court about any part of the report which is the subject~~  
9 ~~of factual dispute. The report and any evidence submitted in~~  
10 ~~connection with it shall be made part of the record in the~~  
11 ~~case.~~

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



1 upon the sentence, the trial court shall determine whether the  
2 aggravating circumstances it finds to exist outweigh the  
3 mitigating circumstances it finds to exist.

4 ~~"(d) Based upon the evidence presented at trial, the~~  
5 ~~evidence presented during the sentence hearing, and the~~  
6 ~~pre-sentence investigation report and any evidence submitted~~  
7 ~~in connection with it, the trial court shall enter specific~~  
8 ~~written findings concerning the existence or nonexistence of~~  
9 ~~each aggravating circumstance enumerated in Section 13A-5-49,~~  
10 ~~each mitigating circumstance enumerated in Section 13A-5-51,~~  
11 ~~and any additional mitigating circumstances offered pursuant~~  
12 ~~to Section 13A-5-52. The trial court shall also enter written~~  
13 ~~findings of facts summarizing the crime and the defendant's~~  
14 ~~participation in it.~~

15 ~~"(e) In deciding upon the sentence, the trial court~~  
16 ~~shall determine whether the aggravating circumstances it finds~~  
17 ~~to exist outweigh the mitigating circumstances it finds to~~  
18 ~~exist, and in doing so the trial court shall consider the~~  
19 ~~recommendation of the jury contained in its advisory verdict,~~  
20 ~~unless such a verdict has been waived pursuant to Section~~  
21 ~~13A-5-46(a) or 13A-5-46(g). While the jury's recommendation~~  
22 ~~concerning sentence shall be given consideration, it is not~~  
23 ~~binding upon the court."~~

24 Section 2. This act shall apply to any defendant who  
25 is charged with capital murder after the effective date of  
26 this act and shall not apply retroactively to any defendant

1       who has previously been convicted of capital murder and  
2       sentenced to death prior to the effective date of this act.

3               Section 3. This act shall become effective  
4       immediately following its passage and approval by the  
5       Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Judiciary..... 07-FEB-17

Read for the second time and placed on the calen-  
dar..... 09-FEB-17

Read for the third time and passed as amended .... 23-FEB-17

Yeas 30  
Nays 1

Patrick Harris  
Secretary