

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

1 SB16

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4 ENROLLED, An Act,

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 "§13A-5-45.

13 "(a) Upon conviction of a defendant for a capital
14 offense, the trial court shall conduct a separate sentence
15 hearing to determine whether the defendant shall be sentenced
16 to life imprisonment without parole or to death. The sentence
17 hearing shall be conducted as soon as practicable after the
18 defendant is convicted. Provided, however, if the sentence
19 hearing is to be conducted before the trial judge without a
20 jury or before the trial judge and a jury other than the trial
21 jury, as provided elsewhere in this article, the trial court
22 with the consent of both parties may delay the sentence
23 hearing until it has received the pre-sentence investigation
24 report specified in Section 13A-5-47(b). Otherwise, the

1 sentence hearing shall not be delayed pending receipt of the
2 pre-sentence investigation report.

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

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

21 "(d) Any evidence which has probative value and is
22 relevant to sentence shall be received at the sentence hearing
23 regardless of its admissibility under the exclusionary rules
24 of evidence, provided that the defendant is accorded a fair
25 opportunity to rebut any hearsay statements. This subsection

1 shall not be construed to authorize the introduction of any
2 evidence secured in violation of the Constitution of the
3 United States or the State of Alabama.

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

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

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

22 "§13A-5-46.

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

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

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

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

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

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

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

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

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

24 "(f) The decision of the jury to return ~~an advisory~~
25 a verdict recommending a sentence of life imprisonment without

1 parole must be based on a vote of a majority of the jurors.
2 The decision of the jury to recommend a sentence of death must
3 be based on a vote of at least 10 jurors. The verdict of the
4 jury must be in writing and must specify the vote.

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

19 "§13A-5-47.

20 "(a) After the sentence hearing has been conducted,
21 and after the jury has returned ~~an advisory a~~ verdict, or
22 after such a verdict has been waived as provided in Section
23 13A-5-46(a) or Section 13A-5-46(g), the trial court shall
24 ~~proceed to determine the~~ impose sentence. Where the jury has
25 returned a verdict of death, the court shall sentence the

1 defendant to death. Where a sentence of death is not returned
2 by the jury, the court shall sentence the defendant to life
3 imprisonment without parole. This code section shall not
4 affect a trial court's power to sentence in accordance with a
5 guilty plea.

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

17 ~~"(c) Before~~ (b) Where the sentencing jury is waived
18 pursuant to Section 13A-5-44 and before imposing sentence the
19 trial court shall permit the parties to present arguments
20 concerning the existence of aggravating and mitigating
21 circumstances and the proper sentence to be imposed in the
22 case. The order of the arguments shall be the same as at the
23 trial of a case. The trial court, based upon evidence
24 presented at trial and the evidence presented during the
25 sentence hearing and any evidence submitted in connection with

1 it, shall enter specific written findings concerning the
2 existence or nonexistence of each aggravating circumstance
3 enumerated in Section 13A-5-49, each mitigating circumstance
4 enumerated in Section 13A-5-51, and any additional mitigating
5 circumstances offered pursuant to Section 13A-5-52. The trial
6 court shall also enter written findings of facts summarizing
7 the crime and the defendant's participation in it. In deciding
8 upon the sentence, the trial court shall determine whether the
9 aggravating circumstances it finds to exist outweigh the
10 mitigating circumstances it finds to exist.

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

22 ~~"(e) In deciding upon the sentence, the trial court~~
23 ~~shall determine whether the aggravating circumstances it finds~~
24 ~~to exist outweigh the mitigating circumstances it finds to~~
25 ~~exist, and in doing so the trial court shall consider the~~

1 ~~recommendation of the jury contained in its advisory verdict,~~
2 ~~unless such a verdict has been waived pursuant to Section~~
3 ~~13A-5-46(a) or 13A-5-46(g). While the jury's recommendation~~
4 ~~concerning sentence shall be given consideration, it is not~~
5 ~~binding upon the court."~~

6 Section 2. This act shall apply to any defendant who
7 is charged with capital murder after the effective date of
8 this act and shall not apply retroactively to any defendant
9 who has previously been convicted of capital murder and
10 sentenced to death prior to the effective date of this act.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB16

Senate 23-FEB-17

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 04-APR-17

By: Senator Brewbaker