

1 SB247  
2 78554-1  
3 By Senator Sanders  
4 RFD: Judiciary  
5 First Read: 22-MAR-11

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, in a capital case, the  
9 jury may recommend to the court the sentence of a  
10 person convicted of a capital offense, but the  
11 court is not required to accept the jury's  
12 recommendation.

13 This bill would prohibit a court from  
14 overriding a verdict by a jury in a capital case.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 To amend Sections 13A-5-45, 13A-5-46, and 13A-5-47,  
21 Code of Alabama 1975, relating to capital cases and to the  
22 determination of the sentence by courts; to prohibit a court  
23 from overriding a jury verdict.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

27 "§13A-5-45.

1           "(a) Upon conviction of a defendant for a capital  
2 offense, the trial court shall conduct a separate sentence  
3 hearing to determine whether the defendant shall be sentenced  
4 to life imprisonment without parole or to death. The sentence  
5 hearing shall be conducted as soon as practicable after the  
6 defendant is convicted. Provided, however, if the sentence  
7 hearing is to be conducted before the trial judge without a  
8 jury or before the trial judge and a jury other than the trial  
9 jury, as provided elsewhere in this article, the trial court  
10 with the consent of both parties may delay the sentence  
11 hearing until it has received the pre-sentence investigation  
12 report specified in Section 13A-5-47(b). Otherwise, the  
13 sentence hearing shall not be delayed pending receipt of the  
14 pre-sentence investigation report.

15           "(b) The state and the defendant shall be allowed to  
16 make opening statements and closing arguments at the sentence  
17 hearing. The order of those statements and arguments and the  
18 order of presentation of the evidence shall be the same as at  
19 trial.

20           "(c) At the sentence hearing evidence may be  
21 presented as to any matter that the court deems relevant to  
22 sentence and shall include any matters relating to the  
23 aggravating and mitigating circumstances referred to in  
24 Sections 13A-5-49, 13A-5-51 and 13A-5-52. Evidence presented  
25 at the trial of the case may be considered insofar as it is  
26 relevant to the aggravating and mitigating circumstances  
27 without the necessity of re-introducing that evidence at the

1 sentence hearing, unless the sentence hearing is conducted  
2 before ~~a jury other than the one before which the defendant~~  
3 ~~was tried~~ a trial judge other than the one before whom the  
4 defendant was tried or a jury other than the trial jury before  
5 which the defendant was tried.

6 "(d) Any evidence which has probative value and is  
7 relevant to sentence shall be received at the sentence hearing  
8 regardless of its admissibility under the exclusionary rules  
9 of evidence, provided that the defendant is accorded a fair  
10 opportunity to rebut any hearsay statements. This subsection  
11 shall not be construed to authorize the introduction of any  
12 evidence secured in violation of the Constitution of the  
13 United States or the State of Alabama.

14 "(e) At the sentence hearing the state shall have  
15 the burden of proving beyond a reasonable doubt the existence  
16 of any aggravating circumstances. Provided, however, any  
17 aggravating circumstance which the verdict convicting the  
18 defendant establishes was proven beyond a reasonable doubt at  
19 trial shall be considered as proven beyond a reasonable doubt  
20 for purposes of the sentence hearing.

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

24 "(g) The defendant shall be allowed to offer any  
25 mitigating circumstance defined in Sections 13A-5-51 and  
26 13A-5-52. When the factual existence of an offered mitigating  
27 circumstance is in dispute, the defendant shall have the

1 burden of interjecting the issue, but once it is interjected  
2 the state shall have the burden of disproving the factual  
3 existence of that circumstance by a preponderance of the  
4 evidence.

5 "§13A-5-46.

6 "(a) Unless both parties with the consent of the  
7 court waive the right to have the sentence hearing conducted  
8 before a jury as provided in Section 13A-5-44(c), it shall be  
9 conducted before a jury which shall return ~~an advisory~~ a  
10 verdict as provided by subsection (e) of this section. If both  
11 parties with the consent of the court waive the right to have  
12 the hearing conducted before a jury, the trial judge shall  
13 proceed to determine sentence without ~~an advisory~~ a verdict  
14 from a jury. Otherwise, the hearing shall be conducted before  
15 a jury as provided in the remaining subsections of this  
16 section.

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

26 "(c) The separation of the jury during the pendency  
27 of the sentence hearing, and if the sentence hearing is before

1 the same jury which convicted the defendant, the separation of  
2 the jury during the time between the guilty verdict and the  
3 beginning of the sentence hearing, shall be governed by the  
4 law and court rules applicable to the separation of the jury  
5 during the trial of a capital case.

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

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

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

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

24 "(3) If the jury determines that one or more  
25 aggravating circumstances as defined in Section 13A-5-49 exist  
26 and that they outweigh the mitigating circumstances, if any,

1 it shall return ~~an advisory verdict recommending to the trial~~  
2 ~~court that the penalty be~~ a verdict of death.

3 "(f) The decision of the jury to return ~~an advisory~~  
4 a verdict recommending a sentence of life imprisonment without  
5 parole must be based on a vote of a majority of the jurors.  
6 The decision of the jury to recommend a sentence of death must  
7 be based on a vote of at least 10 jurors. The verdict of the  
8 jury must be in writing and must specify the vote.

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

23 "§13A-5-47.

24 "(a) After the sentence hearing has been conducted,  
25 and after the jury has returned ~~an advisory a~~ a verdict, or  
26 after such a verdict has been waived as provided in Section  
27 13A-5-46(a) or Section 13A-5-46(g), the trial court shall

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

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

19 ~~"(c) (b) Before~~ Where the sentencing jury is waived  
20 pursuant to Section 13A-5-44 and before imposing sentence the  
21 trial court shall permit the parties to present arguments  
22 concerning the existence of aggravating and mitigating  
23 circumstances and the proper sentence to be imposed in the  
24 case. The order of the arguments shall be the same as at the  
25 trial of a case. The trial court, based upon evidence  
26 presented at trial and the evidence presented during the  
27 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~~  
26 ~~recommendation of the jury contained in its advisory verdict,~~  
27 ~~unless such a verdict has been waived pursuant to Section~~

1 ~~13A-5-46(a) or 13A-5-46(g). While the jury's recommendation~~  
2 ~~concerning sentence shall be given consideration, it is not~~  
3 ~~binding upon the court."~~

4           Section 2. This act shall become effective  
5 immediately following its passage and approval by the  
6 Governor, or its otherwise becoming law.