TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 37. THE VERDICT

Art. 37.01. VERDICT. A "verdict" is a written declaration by a jury of its decision of the issue submitted to it in the case.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 37.02. VERDICT BY NINE JURORS. In misdemeanor cases in the district court, where one or more jurors have been discharged from serving after the cause has been submitted to them, if all the alternate jurors selected under Article 33.011 of this code have either been seated or discharged, and there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but in such case, the verdict must be signed by each juror rendering it.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.
Amended by Acts 1983, 68th Leg., p. 4594, ch. 775, Sec. 4, eff. Aug. 29, 1983.

Art. 37.03. IN COUNTY COURT. In the county court the verdict must be concurred in by each juror.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 37.04. WHEN JURY HAS AGREED. When the jury agrees upon a verdict, it shall be brought into court by the proper officer; and if it states that it has agreed, the verdict shall be read aloud by the judge, the foreman, or the clerk. If in proper form and no juror dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1981, 67th Leg., p. 171, ch. 78, Sec. 1, eff. April 30, 1981.

Art. 37.05. POLLING THE JURY. (a) The State and the defendant each have the right to have the jury polled, which is done by calling separately the name or identification number of each juror and asking the juror if the verdict is the juror's. If all

jurors, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but if any juror answers in the negative, the jury shall retire again to consider its verdict.

(b) For the purposes of polling the jury in Subsection (a), the judge may assign each juror an identification number to use in place of the juror's name.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 287 (S.B. 46), Sec. 1, eff. September 1, 2017.

Art. 37.06. PRESENCE OF DEFENDANT. In felony cases the defendant must be present when the verdict is read unless his absence is wilful or voluntary. A verdict in a misdemeanor case may be received and read in the absence of the defendant.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 37.07. VERDICT MUST BE GENERAL; SEPARATE HEARING ON PROPER PUNISHMENT.

Sec. 1. (a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.

(b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

(c) If the charging instrument contains more than one count or if two or more offenses are consolidated for trial pursuant to Chapter 3 of the Penal Code, the jury shall be instructed to return a finding of guilty or not guilty in a separate verdict as to each count and offense submitted to them.

Sec. 2. (a) In all criminal cases, other than misdemeanor cases of which the justice court or municipal court has jurisdiction, which are tried before a jury on a plea of not guilty, the judge shall, before argument begins, first submit to the jury the issue of guilt or innocence of the defendant of the offense or

offenses charged, without authorizing the jury to pass upon the punishment to be imposed. If the jury fails to agree on the issue of guilt or innocence, the judge shall declare a mistrial and discharge the jury, and jeopardy does not attach in the case.

(b) Except as provided by Article 37.071 or 37.072, if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend community supervision and the defendant filed his sworn motion for community supervision before the trial began, and (2) in other cases where the defendant so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment shall be assessed by the same jury, except as provided in Section 3(c) of this article and in Article 44.29. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

(c) Punishment shall be assessed on each count on which a finding of guilty has been returned.

Sec. 3. Evidence of prior criminal record in all criminal cases after a finding of guilty.

(a)(1) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under Chapter 17 as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Evidence, and subject to Subsection (h), evidence may be

offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail.

(2) Notwithstanding Subdivision (1), evidence may not be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(3) Regardless of the plea and whether the punishment is assessed by the judge or the jury, during the punishment phase of the trial of an offense under Section 35A.02, Penal Code, subject to the applicable rules of evidence, the state and the defendant may offer evidence not offered during the guilt or innocence phase of the trial concerning the total pecuniary loss to the affected health care program caused by the defendant's conduct or, if applicable, the scheme or continuing course of conduct of which the defendant's conduct is part. Evidence may be offered in summary form concerning the total pecuniary loss to the affected health care program. Testimony regarding the total pecuniary loss to the affected health care program is subject to cross-examination. Evidence offered under this subdivision may be considered by the judge or jury in ordering or recommending the amount of any restitution to be made to the affected health care program or the appropriate punishment for the defendant.

(b) After the introduction of such evidence has been concluded, and if the jury has the responsibility of assessing the punishment, the court shall give such additional written instructions as may be necessary and the order of procedure and the rules governing the conduct of the trial shall be the same as are applicable on the issue of guilt or innocence.

(c) If the jury finds the defendant guilty and the matter of punishment is referred to the jury, the verdict shall not be complete until a jury verdict has been rendered on both the guilt or innocence of the defendant and the amount of punishment. In the event the jury shall fail to agree on the issue of punishment, a mistrial shall be declared only in the punishment phase of the

trial, the jury shall be discharged, and no jeopardy shall attach. The court shall impanel another jury as soon as practicable to determine the issue of punishment.

(d) When the judge assesses the punishment, the judge may order a presentence report as contemplated in Subchapter F, Chapter 42A, and after considering the report, and after the hearing of the evidence hereinabove provided for, the judge shall forthwith announce the judge's decision in open court as to the punishment to be assessed.

(e) Nothing herein contained shall be construed as affecting the admissibility of extraneous offenses on the question of guilt or innocence.

(f) In cases in which the matter of punishment is referred to a jury, either party may offer into evidence the availability of community corrections facilities serving the jurisdiction in which the offense was committed.

(g) On timely request of the defendant, notice of intent to introduce evidence under this article shall be given in the same manner required by Rule 404(b), Texas Rules of Evidence. If the attorney representing the state intends to introduce an extraneous crime or bad act that has not resulted in a final conviction in a court of record or a probated or suspended sentence, notice of that intent is reasonable only if the notice includes the date on which and the county in which the alleged crime or bad act occurred and the name of the alleged victim of the crime or bad act. The requirement under this subsection that the attorney representing the state give notice applies only if the defendant makes a timely request to the attorney representing the state for the notice.

(h) Regardless of whether the punishment will be assessed by the judge or the jury, neither the state nor the defendant may offer before sentencing evidence that the defendant plans to undergo an orchiectomy.

(i) Evidence of an adjudication for conduct that is a violation of a penal law of the grade of misdemeanor punishable by confinement in jail is admissible only if the conduct upon which the adjudication is based occurred on or after January 1, 1996.

Sec. 4. (a) In the penalty phase of the trial of a felony

case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is an offense under Section 71.02, Penal Code, other than an offense punishable as a state jail felony under that section, an offense under Section 71.023, Penal Code, or an offense listed in Article 42A.054(a), or if the judgment contains an affirmative finding under Article 42A.054(c) or (d), unless the defendant has been convicted of an offense under Section 21.02, Penal Code, an offense under Section 22.021, Penal Code, that is punishable under Subsection (f) of that section, or a capital felony, the court shall charge the jury in writing as follows:

"The length of time for which a defendant is imprisoned may be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, the defendant will not become eligible for parole until the actual time served equals one-half of the sentence imposed or 30 years, whichever is less. If the defendant is sentenced to a term of less than four years, the defendant must serve at least two years before the defendant is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law might be applied to this defendant if sentenced to a term of imprisonment, because the application of that law will depend on decisions made by parole authorities.

"You may consider the existence of the parole law. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(b) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the first degree, if a prior conviction has been alleged for enhancement of punishment as provided by Section 12.42(b), (c)(1) or (2), or (d), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is longer than 60 years, unless the offense of which the jury has

found the defendant guilty is an offense that is punishable under Section 21.02(h), Penal Code, or is listed in Article 42A.054(a) or the judgment contains an affirmative finding under Article 42A.054(c) or (d), the court shall charge the jury in writing as follows:

"The length of time for which a defendant is imprisoned may be reduced by the award of parole.

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn early parole eligibility through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, the defendant will not become eligible for parole until the actual time served plus any good conduct time earned equals one-fourth of the sentence imposed or 15 years, whichever is less. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(c) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the second or third degree, if a prior conviction has been alleged for enhancement as provided by Section 12.42(a), Penal Code, or if the offense is a felony not designated as a capital felony or a felony

of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is 60 years or less, unless the offense of which the jury has found the defendant guilty is listed in Article 42A.054(a) or the judgment contains an affirmative finding under Article 42A.054(c) or (d), the court shall charge the jury in writing as follows:

"The length of time for which a defendant is imprisoned may be reduced by the award of parole.

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn early parole eligibility through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, the defendant will not become eligible for parole until the actual time served plus any good conduct time earned equals one-fourth of the sentence imposed. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(d) This section does not permit the introduction of evidence on the operation of parole and good conduct time laws.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1739, ch. 659, Sec. 22, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 971, ch. 399, Sec. 2(A), eff. Jan. 1, 1974; Acts 1973, 63rd Leg., p. 1126, ch. 426, art. 3, Sec. 2, eff. June 14, 1973.

Sec. 3(d) amended by Acts 1981, 67th Leg., p. 2466, ch. 639, Sec. 1, eff. Sept. 1, 1981; Sec. 2(b) amended by Acts 1985, 69th Leg., ch. 291, Sec. 1, eff. Sept. 1, 1985; Sec. 3(a) amended by Acts 1985, 69th Leg., ch. 685, Sec. 8(b), eff. Aug. 26, 1985; Sec. 4 added by Acts 1985, 69th Leg., ch. 576, Sec. 1, eff. Sept. 1, 1985; Sec. 2(b) amended by Acts 1987, 70th Leg., ch. 179, Sec. 2, eff. Aug. 31, 1987; Sec. 3(a) amended by Acts 1987, 70th Leg., ch. 385, Sec. 19, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 386, Sec. 1, eff. Sept. 1, 1987; Sec. 4 amended by Acts 1987, 70th Leg., ch. 66, Sec. 1, eff. May 6, 1987; Acts 1987, 70th Leg., ch. 1101, Sec. 15, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 103, Sec. 1; Sec. 3(a) amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.04, eff. Sept. 1, 1989; Sec. 3(f) added by Acts 1990, 71st Leg., 6th C.S., ch. 25, Sec. 30, eff. June 18, 1990; Sec. 3(a) amended by Acts 1993, 73rd Leg., ch. 900, Sec. 5.05, eff. Sept. 1, 1993; Sec. 3(d) amended by Acts 1993, 73rd Leg., ch. 900, Sec. 5.01, eff. Sept. 1, 1993; Sec. 3(g) added by Acts 1993, 73rd Leg., ch. 900, Sec. 5.06, eff. Sept. 1, 1993; Sec. 4 amended by Acts 1993, 73rd Leg., ch. 900, Sec. 5.02, eff. Sept. 1, 1993; Sec. 3(a) amended by Acts 1995, 74th Leg., ch. 262, Sec. 82, eff. Jan. 1, 1996; Sec. 3(a) amended by Acts 1997, 75th Leg., ch. 1086, Sec. 31, eff. Sept. 1, 1997; Sec. 3(h) added by Acts 1997, 75th Leg., ch. 144, Sec. 2, eff. May 20, 1997; Sec. 3(h) added by Acts 1997, 75th Leg., ch. 1086, Sec. 31, eff. Sept. 1, 1997; relettered as Sec. 3(i) by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(7), eff. Sept. 1, 1999; Sec. 3(a) amended by Acts 2001, 77th Leg., ch. 585, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 660 (H.B. 3265), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 660 (H.B. 3265), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 4.003, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.15, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1325 (S.B. 549), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.07, eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.08, eff. January 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 260 (H.B. 1279), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 381 (H.B. 2894), Sec. 2, eff. September 1, 2019.

Art. 37.071. PROCEDURE IN CAPITAL CASE

Sec. 1. (a) If a defendant is found guilty in a capital felony case in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment or to life imprisonment without parole as required by Section 12.31, Penal Code.

(b) A defendant who is found guilty of an offense under Section 19.03(a)(9), Penal Code, may not be sentenced to death, and the state may not seek the death penalty in any case based solely on an offense under that subdivision.

Sec. 2. (a)(1) If a defendant is tried for a capital offense in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(c) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court deems relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision shall not be construed to authorize the introduction of any evidence secured in violation of

the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The introduction of evidence of extraneous conduct is governed by the notice requirements of Section 3(g), Article 37.07. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (c) or (e).

(2) Notwithstanding Subdivision (1), evidence may not be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be taken.

(c) The state must prove each issue submitted under Subsection (b) of this article beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted under Subsection (b) of this Article.

(d) The court shall charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) of this article, it shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) it may not answer any issue submitted under Subsection (b) of this article "yes" unless it agrees unanimously and it may

not answer any issue "no" unless 10 or more jurors agree; and

(3) members of the jury need not agree on what particular evidence supports a negative answer to any issue submitted under Subsection (b) of this article.

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court shall:

(A) instruct the jury that if the jury answers that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from the department on parole.

(f) The court shall charge the jury that in answering the issue submitted under Subsection (e) of this article, the jury:

(1) shall answer the issue "yes" or "no";

(2) may not answer the issue "no" unless it agrees unanimously and may not answer the issue "yes" unless 10 or more jurors agree;

(3) need not agree on what particular evidence supports an affirmative finding on the issue; and

(4) shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subsection (e)(1), the court shall sentence the

defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on an issue submitted under Subsection (e)(1) or is unable to answer any issue submitted under Subsection (b) or (e), the court shall sentence the defendant to confinement in the Texas Department of Criminal Justice for life imprisonment without parole.

(h) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals.

(i) This article applies to the sentencing procedure in a capital case for an offense that is committed on or after September 1, 1991. For the purposes of this section, an offense is committed on or after September 1, 1991, if any element of that offense occurs on or after that date.

Added by Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 3, Sec. 1, eff. June 14, 1973.

Subsec. (e) amended by Acts 1981, 67th Leg., p. 2673, ch. 725, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1985, 69th Leg., ch. 44, Sec. 2, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 652, Sec. 9, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 838, Sec. 1, eff. Sept. 1, 1991; Subsec. (i) added by Acts 1993, 73rd Leg., ch. 781, Sec. 1, eff. Aug. 30, 1993; Sec. 2(e) amended by Acts 1999, 76th Leg., ch. 140, Sec. 1, eff. Sept. 1, 1999; Sec. 2(a) amended by Acts 2001, 77th Leg., ch. 585, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 399 (S.B. 1507), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 7, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 9, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.015, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.016,

eff. September 1, 2009.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 2, Sec. 2, eff. July 22, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1214 (S.B. 719), Sec. 3, eff. September 1, 2019.

Art. 37.0711. PROCEDURE IN CAPITAL CASE FOR OFFENSE COMMITTED BEFORE SEPTEMBER 1, 1991

Sec. 1. This article applies to the sentencing procedure in a capital case for an offense that is committed before September 1, 1991, whether the sentencing procedure is part of the original trial of the offense, an award of a new trial for both the guilt or innocence stage and the punishment stage of the trial, or an award of a new trial only for the punishment stage of the trial. For the purposes of this section, an offense is committed before September 1, 1991, if every element of the offense occurs before that date.

Sec. 2. If a defendant is found guilty in a case in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment.

Sec. 3. (a) (1) If a defendant is tried for a capital offense in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(c) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence. This subdivision shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of this state. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

(2) Notwithstanding Subdivision (1), evidence may not be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(b) On conclusion of the presentation of the evidence, the court shall submit the following three issues to the jury:

(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result;

(2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

(3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased.

(c) The state must prove each issue submitted under Subsection (b) of this section beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue submitted.

(d) The court shall charge the jury that:

(1) it may not answer any issue submitted under Subsection (b) of this section "yes" unless it agrees unanimously; and

(2) it may not answer any issue submitted under Subsection (b) of this section "no" unless 10 or more jurors agree.

(e) The court shall instruct the jury that if the jury returns an affirmative finding on each issue submitted under Subsection (b) of this section, it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed.

(f) The court shall charge the jury that, in answering the issue submitted under Subsection (e) of this section, the jury:

(1) shall answer the issue "yes" or "no";

(2) may not answer the issue "no" unless it agrees unanimously and may not answer the issue "yes" unless 10 or more jurors agree; and

(3) shall consider mitigating evidence that a juror might

regard as reducing the defendant's moral blameworthiness.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on the issue submitted under Subsection (e), the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on the issue submitted under Subsection (e) or is unable to answer any issue submitted under Subsection (b) or (e), the court shall sentence the defendant to confinement in the Texas Department of Criminal Justice for life.

(h) If a defendant is convicted of an offense under Section 19.03(a)(7), Penal Code, the court shall submit the issues under Subsections (b) and (e) of this section only with regard to the conduct of the defendant in murdering the deceased individual first named in the indictment.

(i) The court, the attorney for the state, or the attorney for the defendant may not inform a juror or prospective juror of the effect of failure of the jury to agree on an issue submitted under this article.

(j) The Court of Criminal Appeals shall automatically review a judgment of conviction and sentence of death not later than the 60th day after the date of certification by the sentencing court of the entire record, unless the Court of Criminal Appeals extends the time for an additional period not to exceed 30 days for good cause shown. Automatic review under this subsection has priority over all other cases before the Court of Criminal Appeals, and the court shall hear automatic reviews under rules adopted by the court for that purpose.

Added by Acts 1993, 73rd Leg., ch. 781, Sec. 2, eff. Aug. 30, 1993. Sec. 3(h) amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.22, eff. Sept. 1, 1995; Sec. 3(a) amended by Acts 2001, 77th Leg., ch. 585, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.017, eff. September 1, 2009.

Art. 37.072. PROCEDURE IN REPEAT SEX OFFENDER CAPITAL CASE

PROCEDURE IN REPEAT SEX OFFENDER CAPITAL CASE

Sec. 1. If a defendant is found guilty in a capital felony case punishable under Section 12.42(c)(3), Penal Code, in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment without parole.

Sec. 2. (a) (1) If a defendant is tried for an offense punishable under Section 12.42(c)(3), Penal Code, in which the state seeks the death penalty, on a finding that the defendant is guilty of a capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death or life imprisonment without parole. The proceeding shall be conducted in the trial court and, except as provided by Article 44.29(d) of this code, before the trial jury as soon as practicable. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court considers relevant to sentence, including evidence of the defendant's background or character or the circumstances of the offense that mitigates against the imposition of the death penalty. This subdivision may not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death. The introduction of evidence of extraneous conduct is governed by the notice requirements of Section 3(g), Article 37.07. The court, the attorney representing the state, the defendant, or the defendant's counsel may not inform a juror or a prospective juror of the effect of a failure of a jury to agree on issues submitted under Subsection (b) or (e).

(2) Notwithstanding Subdivision (1), evidence may not be offered by the state to establish that the race or ethnicity of the defendant makes it likely that the defendant will engage in future criminal conduct.

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a

continuing threat to society; and

(2) in cases in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually engaged in the conduct prohibited by Section 22.021, Penal Code, or did not actually engage in the conduct prohibited by Section 22.021, Penal Code, but intended that the offense be committed against the victim or another intended victim.

(c) The state must prove beyond a reasonable doubt each issue submitted under Subsection (b) of this section, and the jury shall return a special verdict of "yes" or "no" on each issue submitted under Subsection (b) of this section.

(d) The court shall charge the jury that:

(1) in deliberating on the issues submitted under Subsection (b) of this section, it shall consider all evidence admitted at the guilt or innocence stage and the punishment stage, including evidence of the defendant's background or character or the circumstances of the offense that militates for or mitigates against the imposition of the death penalty;

(2) it may not answer any issue submitted under Subsection (b) of this section "yes" unless it agrees unanimously and it may not answer any issue "no" unless 10 or more jurors agree; and

(3) members of the jury need not agree on what particular evidence supports a negative answer to any issue submitted under Subsection (b) of this section.

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed.

(2) The court shall:

(A) instruct the jury that if the jury answers

that a circumstance or circumstances warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed, the court will sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole; and

(B) charge the jury that a defendant sentenced to confinement for life without parole under this article is ineligible for release from the department on parole.

(f) The court shall charge the jury that in answering the issue submitted under Subsection (e) of this section, the jury:

(1) shall answer the issue "yes" or "no";

(2) may not answer the issue "no" unless it agrees unanimously and may not answer the issue "yes" unless 10 or more jurors agree;

(3) need not agree on what particular evidence supports an affirmative finding on the issue; and

(4) shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness.

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subsection (e)(1), the court shall sentence the defendant to death. If the jury returns a negative finding on any issue submitted under Subsection (b) or an affirmative finding on an issue submitted under Subsection (e)(1) or is unable to answer any issue submitted under Subsection (b) or (e), the court shall sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

(h) The judgment of conviction and sentence of death shall be subject to automatic review by the Court of Criminal Appeals.
Added by Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.04, eff. September 1, 2007.

Art. 37.073. REPAYMENT OF REWARDS; FINES. (a) After a defendant has been convicted of a felony offense, the judge may order a defendant to pay a fine repaying all or part of a reward paid by a crime stoppers organization.

(b) In determining whether the defendant must repay the reward or part of the reward, the court shall consider:

(1) the ability of the defendant to make the payment and the financial hardship on the defendant to make the required payment; and

(2) the importance of the information to the prosecution of the defendant as provided by the arresting officer or the attorney for the state with due regard for the confidentiality of the crime stoppers organization records.

(c) In this article, "crime stoppers organization" means a crime stoppers organization, as defined by Subdivision (2), Section 414.001, Government Code, that is approved by the Texas Crime Stoppers Council to receive payments of rewards under this article and Article 42.152.

Added by Acts 1989, 71st Leg., ch. 611, Sec. 1, eff. Sept. 1, 1989. Renumbered from art. 37.072 by Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(5), eff. Aug. 26, 1991. Amended by Acts 1997, 75th Leg., ch. 700, Sec. 10, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 168 (H.B. 590), Sec. 4, eff. May 27, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.08, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.09, eff. January 1, 2020.

Art. 37.08. CONVICTION OF LESSER INCLUDED OFFENSE. In a prosecution for an offense with lesser included offenses, the jury may find the defendant not guilty of the greater offense, but guilty of any lesser included offense.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 972, ch. 399, Sec. 2(A), eff. Jan. 1, 1974.

Art. 37.09. LESSER INCLUDED OFFENSE. An offense is a lesser included offense if:

(1) it is established by proof of the same or less than all the facts required to establish the commission of the offense

charged;

(2) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest suffices to establish its commission;

(3) it differs from the offense charged only in the respect that a less culpable mental state suffices to establish its commission; or

(4) it consists of an attempt to commit the offense charged or an otherwise included offense.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 972, ch. 399, Sec. 2(A), eff. Jan. 1, 1974.

Art. 37.10. INFORMAL VERDICT. (a) If the verdict of the jury is informal, its attention shall be called to it, and with its consent the verdict may, under the direction of the court, be reduced to the proper form. If the jury refuses to have the verdict altered, it shall again retire to its room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and in that case, the judgment shall be rendered accordingly, discharging the defendant.

(b) If the jury assesses punishment in a case and in the verdict assesses both punishment that is authorized by law for the offense and punishment that is not authorized by law for the offense, the court shall reform the verdict to show the punishment authorized by law and to omit the punishment not authorized by law. If the trial court is required to reform a verdict under this subsection and fails to do so, the appellate court shall reform the verdict as provided by this subsection.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1985, 69th Leg., ch. 442, Sec. 1, eff. June 11, 1985.

Art. 37.11. DEFENDANTS TRIED JOINTLY. Where several defendants are tried together, the jury may convict each defendant it finds guilty and acquit others. If it agrees to a verdict as to one or more, it may find a verdict in accordance with such agreement, and if it cannot agree as to others, a mistrial may be

entered as to them.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 37.12. JUDGMENT ON VERDICT. On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted, the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the court; but in no event shall the judgment be deferred for a longer period of time than six months. On expiration of the time fixed by the order of the court, the court or judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 43 of this Code. Provided further, that the court or judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his personal bond, or may require him to enter into bail bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day, set in the order and discharges the judgment in the manner provided by Chapter 43 of this Code; and for the enforcement of any judgment entered, all writs, processes and remedies of this Code are made applicable so far as necessary to carry out the provisions of this Article.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 37.13. IF JURY BELIEVES ACCUSED INSANE. When a jury has been impaneled to assess the punishment upon a plea of guilty, it shall say in its verdict what the punishment is which it assesses; but if it is of the opinion that a person pleading guilty is insane, it shall so report to the court, and an issue as to that fact shall be tried before another jury; and if, upon such trial, it be found that the defendant is insane, such proceedings shall be had as

directed in cases where a defendant becomes insane after conviction.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 37.14. ACQUITTAL OF HIGHER OFFENSE AS JEOPARDY. If a defendant, prosecuted for an offense which includes within it lesser offenses, be convicted of an offense lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offense; but he may, upon a second trial, be convicted of the same offense of which he was before convicted, or any other inferior thereto.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.