

## BILL ANALYSIS

Senate Research Center  
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S.B. 1507  
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Criminal Justice  
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As Filed

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The current statutory provisions relating to jury verdicts regarding special issues are inconsistent with current constitutional law. The current constitutional law requires special issues (such as future danger or participation in a crime) to be proven beyond a reasonable doubt. See, e.g., *Willingham v. State*, 897 S.W.2d 351, 355-356 (Tex. Crim. App. 1991) ("In determining whether evidence is sufficient to support a jury's answer to this special issue presented in the punishment phase of a capital murder trial, the Court views the evidence in the light most favorable to the verdict to determine whether a rational trier of fact could have found the elements of [the special issues] beyond a reasonable doubt.")(various citations).

Specifically the State must prove a probability of future dangerousness beyond a reasonable doubt. The word "society" in the question of whether the defendant would be a future danger to society means both the free world and prison society. See, e.g., *Mathis v. State*, 67 S.W.3d 918, 922 (Tex. Crim. App. 2002) ("We have consistently defined 'society' as encompassing both the prison population and the free population.").

The current constitutional law is that "major participation in the felony committed, combined with reckless indifference to human life" is required before a person who neither took life, attempted to take life, nor intended to take life, may be subject to the death penalty. *Tison v. Arizona*, 481 U.S. 137, 145 (1987).

Under the present scheme, a life sentence results when 10 jurors answer the special issue negatively.

As proposed, S.B. 1507 reflects the current state of the law in the capital sentencing provisions. This bill clarifies to jurors that they must decide whether they believe, beyond a reasonable doubt, that the defendant will be a future danger, rather than decide beyond a reasonable doubt whether they believe that a probability exists that the defendant will be a future danger. The bill specifies that the jury must decide whether the defendant will be a continuing threat to members of the public or to persons who are imprisoned or work in correctional facilities. S.B. 1507 requires jurors to determine whether a defendant who did not actually cause the death of the victim was a major participant in the underlying felony and displayed a reckless indifference to human life. This bill also eliminates the 10-2 voting provision (an oddity in the law), and provides that answering a special issue in the negative is required if one or more jurors finds that the issue has not been proven beyond a reasonable doubt.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2, Article 37.071, Code of Criminal Procedure, by amending Subsections (b), (d), and (f), and adding Subsection (j), as follows:

(b)(1) Requires the court to submit to the jury, on conclusion of the presentation of evidence, whether the state has proven beyond a reasonable doubt that the defendant will, rather than there is a probability that the defendant would, commit criminal acts of violence that would constitute a continuing threat to members of the general public or to

persons who are imprisoned in correctional facilities and persons who work in those facilities, rather than constitute a continuing threat to society.

(2) Requires the court to submit to the jury, in certain cases involving criminal responsibility for the conduct of another, whether the defendant, who did not actually kill the deceased, in addition to intending to kill the deceased or another or anticipating that a human life would be taken, was a major participant in the underlying felony and displayed a reckless indifference to human life. Makes nonsubstantive changes.

(d) Requires the court to charge the jury that the jury must answer any issue submitted under Subsection (b) of this article (whether the defendant poses a continuing threat to others or whether the defendant performed certain actions related to the killing of a person) "no" if one or more jurors finds that the issue has not been proven beyond a reasonable doubt, rather than may not answer any issue "no" unless 10 or more jurors agree.

(f) Requires the court to charge the jury that in answering the issue submitted under Subsection (e) of this article (whether a sentence of life imprisonment rather than death should be imposed) that the jury must answer "yes" if one or more jurors finds that a circumstance or circumstances warrant that a sentence of life imprisonment rather than a death sentence be imposed, rather than that the jury may not answer the issue "yes" unless 10 or more jurors agree.

(j) Requires the jury to inform the trial court of any failure to agree unanimously regarding an issue submitted under this article.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.