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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
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The Committee on Criminal Justice (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete lines 131 - 182

and insert:

reasonable doubt, the existence of at least two aggravating factors set forth in subsection (7).

(b) The jury must return findings identifying each aggravating factor found to exist. A finding that two aggravating factors exists must be unanimous. If the jury:

1. Does not unanimously find at least two aggravating



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11 factors, the defendant is ineligible for a sentence of death.
12 2. Unanimously finds at least two aggravating factors, the
13 defendant is eligible for a sentence of death and the jury must
14 make a recommendation to the court as to whether the defendant
15 must be sentenced to life imprisonment without the possibility
16 of parole or to death. The recommendation must be based on a
17 weighing of all of the following:
18 a. Whether sufficient aggravating factors exist.
19 b. Whether aggravating factors exist which outweigh the
20 mitigating circumstances found to exist.
21 c. Based on the considerations in sub-subparagraphs a. and
22 b., whether the defendant should be sentenced to life
23 imprisonment without the possibility of parole or to death.
24 (c) If at least eight jurors determine that the defendant
25 should be sentenced to death, the jury's recommendation to the
26 court must be a sentence of death. If fewer than eight jurors
27 determine that the defendant should be sentenced to death, the
28 jury's recommendation to the court must be a sentence of life
29 imprisonment without the possibility of parole.
30 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—
31 (a) If the jury has recommended a sentence of:
32 1. Life imprisonment without the possibility of parole, the
33 court must impose the recommended sentence of life imprisonment
34 without the possibility of parole.
35 2. Death, the court, after considering each aggravating
36 factor found by the jury and all mitigating circumstances, may
37 impose a sentence of life imprisonment without the possibility
38 of parole or a sentence of death. The court may consider only an
39 aggravating factor that was unanimously found to exist by the



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40 jury. The court may impose a sentence of death only if the jury
41 unanimously finds at least two aggravating factors beyond a
42 reasonable doubt.

43 (b) If the defendant waives his or her right to a
44 sentencing proceeding by a jury, the court, after considering
45 all aggravating factors and mitigating circumstances, may impose
46 a sentence of life imprisonment without the possibility of
47 parole or a sentence of death. The court may impose a sentence
48 of death only if the court finds that at least two aggravating
49 factors have been proven to exist beyond a reasonable doubt.

50 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
51 IMPRISONMENT OR DEATH.- In each case in which the court imposes
52 a sentence of life imprisonment without the possibility of
53 parole or death, the court must, considering the records of the
54 trial and the sentencing proceedings, enter a written order
55 addressing the aggravating factors set forth in subsection (7)
56 found to exist, the mitigating circumstances in subsection (8)
57 reasonably established by the evidence, whether there are
58 sufficient aggravating factors to warrant the death penalty, and
59 whether the aggravating factors outweigh the mitigating
60 circumstances reasonably established by the evidence. The court
61 must include in its written order the reasons for not accepting
62 the jury's recommended sentence, if applicable. If the

63
64 ===== T I T L E A M E N D M E N T =====

65 And the title is amended as follows:

66 Delete lines 27 - 33

67 and insert:

68 the court to impose the jury's recommended sentence if



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69 the recommendation is for a sentence of life
70 imprisonment without the possibility of parole; giving
71 the court discretion to impose a sentence of life
72 imprisonment without the possibility of parole or a
73 sentence of death if the recommended sentence is for
74 death; requiring unanimity on at least two aggravating
75 factors beyond a reasonable doubt for a court to
76 impose a sentence of death; requiring a court to enter
77 a written order