

Justices clarify death penalty

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By [BILL KACZOR / Associated Press Writer](#)

The Florida Supreme Court revised standard jury instructions for death penalty cases Thursday in ways the justices hope will reduce widespread confusion among jurors disclosed by an American Bar Association survey.

An ABA team studying Florida's death penalty process three years ago found large percentages of jurors misunderstood the law and their role in deciding death cases.

About 35 percent didn't realize they could consider any evidence — not just examples cited in the instructions — that would mitigate against a death sentence. More than 36 percent wrongly believed they had to recommend death if they found a defendant's crime was "heinous, vile or depraved."

Also, 25 percent had the misconception they must recommend death if they thought a defendant would be a future danger to society. In reality, that's a factor they cannot consider.

The justices wrote in an unsigned unanimous opinion that such confusion was "a cause for concern."

The high court accepted recommendations from its steering and criminal jury instructions committees, including some also suggested by the ABA team.

One new instruction says jurors should not be influenced by racial or ethnic bias, but the justices rejected an ABA recommendation to also order that jurors report evidence of discrimination in their deliberations.

"We agree, of course, that racial discrimination has no role in the jury deliberation process, but we are hesitant to craft any special instructions in this area without first being presented with specific proposals" by the Supreme Court committees, the justices wrote.

They added they may be open to such an instruction in the future.

By a 4-3 split the justices also rejected proposals for juries to fill out two special verdict forms showing whether they found a defendant guilty of premeditated or felony murder — both punishable by death — and explaining why they recommend a death sentence.

A defendant who didn't actually kill someone can be convicted of felony murder if he or she participated in a felony that resulted in death.

The majority wrote that premeditated or felony murder forms could result in even more juror confusion. They added that judges still could have juries fill out such forms but declined to

require them.

Juries must unanimously decide guilt or innocence, but they can recommend death by a simple majority vote. Sentencing is up to judges, but they must give great weight to jury recommendations.

The majority didn't believe the high court had the authority to require explanatory forms, Justice Barbara Pariente wrote in a concurring opinion. She disagreed but also urged the Legislature to change state law to permit such forms. Justices Jorge Labarga and James Perry agreed with her.

The high court in a 2005 opinion also urged lawmakers to require unanimous jury votes for death recommendations, but the Legislature has refused to make that change. Some legal experts say federal courts may begin overturning Florida death sentences because the state lacks such a requirement.