

Juries don't need more power, judges say

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They have the power to decide guilt or innocence and life or death. Now jurors could have much more say in the length of prison sentences.

A governor's task force is considering a move that would give juries the power to decide whether there were aggravating factors that would allow the judge in a criminal case to tack on extra time to a sentence.

Judges in Davidson County and across Tennessee have serious concerns about the idea, which is being discussed in the wake of a recent U.S. Supreme Court decision.

A survey found that 84% of the state's judges who hold criminal trials are opposed to the idea, Davidson County Criminal Court Judge Steve Dozier told the task force Friday.

Dozier, at the meeting in Legislative Plaza, said the plan would not be fair to jurors, who would have to spend more time on jury duty. He also said that victims might have to testify more than they do now, and the procedure would back up the courts and be costly to taxpayers.

One member of the task force agreed that the system would be costly and slow down the courts.

"Judge Dozier's observation is absolutely correct," said Nashville attorney David Raybin. "But that is a function of what the Supreme Court said we had to do. Nobody likes it. I don't like it. That is a consequence of the Supreme Court ruling."

The plan would involve shifting Tennessee's criminal courts to a "bifurcated" jury system — one where juries would deliberate in two phases during their service.

Tennessee now employs bifurcated juries in cases where the defendant faces either execution or life without parole. Jurors in such cases decide the guilt or innocence of the accused in one phase, then report their verdict publicly. The verdict is followed by a hearing, after which the jury deliberates a second time on the appropriate sentence.

If the proposed plan goes into effect, a bifurcated jury process would be extended to all felony crimes in Tennessee — though jurors would not actually decide the accused's fate except in cases involving life or death sentences.

Jurors would spend one phase deliberating on the defendant's guilt and another after the trial, deciding whether there were "aggravating" circumstances surrounding the crime. If the jury finds aggravating factors, the judge could then enhance, or elongate, the sentence.

An aggravating factor could be found in the case of the rape of an elderly woman, where the victim is considered especially vulnerable due to her age or mental or physical health problems. Another aggravating factor could be whether the defendant was the ringleader of a group engaged in criminal activity, or if the victim suffered serious bodily harm.

Under the plan, judges would still impose the sentences — and they wouldn't be required to enhance the punishment even if the jurors found aggravating factors. However, judges could not use aggravating factors to extend the sentence without the jury deciding, beyond a reasonable doubt, that those circumstances exist. The plan would also allow judges to find "mitigating" factors — such as, if the person played only a minor role in the commission of the crime — and reduce a sentence without the jury's approval.

The idea is designed to get Tennessee in compliance with a recent U.S. Supreme Court decision, *Blakely vs. Washington*, that has cast doubt on thousands of criminal cases across the nation, including in Tennessee.

In *Blakely*, the court found that any facts used to increase a defendant's sentence, other than prior convictions, must be decided by a jury and not by a judge.

Before the *Blakely* decision, a judge had the ability to bump up a sentence if he or she found certain aggravating factors surrounding the crime.

Dozier, Davidson County Criminal Court Judge Cheryl Blackburn and Shelby County Criminal Court Judge Jim Beasley all voiced concerns to the task force. The judges think a bifurcated jury system isn't the only way to get in compliance with *Blakely*.