

By: Dutton

H.B. No. 852

A BILL TO BE ENTITLED

AN ACT

relating to abolishing the death penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.31, Penal Code, is amended to read as follows:

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony ~~[in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty]~~ shall be punished by imprisonment in the Texas Department of Criminal Justice for:

(1) life, if the individual's case was transferred to the court under Section 54.02, Family Code; or

(2) life without parole.

(b) In a capital felony trial ~~[in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty]~~, prospective jurors shall be informed ~~[that the state is not seeking the death penalty and]~~ that:

(1) a sentence of life imprisonment is mandatory on conviction of the capital felony, if the case was transferred to the

1 court under Section 54.02, Family Code; or

2 (2) a sentence of life imprisonment without parole is  
3 mandatory on conviction of the capital felony.

4 SECTION 2. Article 1.13(a), Code of Criminal Procedure, is  
5 amended to read as follows:

6 (a) The defendant in a criminal prosecution for any offense  
7 [~~other than a capital felony case in which the State notifies the~~  
8 ~~court and the defendant that it will seek the death penalty~~] shall  
9 have the right, upon entering a plea, to waive the right of trial by  
10 jury, conditioned, however, that such waiver must be made in person  
11 by the defendant in writing in open court with the consent and  
12 approval of the court, and the attorney representing the State. The  
13 consent and approval by the court shall be entered of record on the  
14 minutes of the court, and the consent and approval of the attorney  
15 representing the State shall be in writing, signed by him, and filed  
16 in the papers of the cause before the defendant enters his plea.

17 SECTION 3. Article 4.03, Code of Criminal Procedure, is  
18 amended to read as follows:

19 Art. 4.03. COURTS OF APPEALS. The Courts of Appeals shall  
20 have appellate jurisdiction coextensive with the limits of their  
21 respective districts in all criminal cases [~~except those in which~~  
22 ~~the death penalty has been assessed~~]. This article may [~~Article~~  
23 ~~shall~~] not be so construed as to embrace any case which has been  
24 appealed from any inferior court to the county court, the county  
25 criminal court, or county court at law, in which the fine imposed by  
26 the county court, the county criminal court or county court at law  
27 does not exceed one hundred dollars, unless the sole issue is the

1 constitutionality of the statute or ordinance on which the  
2 conviction is based.

3 SECTION 4. Section 2, Article 4.04, Code of Criminal  
4 Procedure, is amended to read as follows:

5 Sec. 2. The Court of Criminal Appeals shall have, and is  
6 hereby given, final appellate and review jurisdiction in criminal  
7 cases coextensive with the limits of the state, and its  
8 determinations shall be final. [~~The appeal of all cases in which  
9 the death penalty has been assessed shall be to the Court of  
10 Criminal Appeals.~~] In addition, the Court of Criminal Appeals may,  
11 on its own motion, with or without a petition for such discretionary  
12 review being filed by one of the parties, review any decision of a  
13 court of appeals in a criminal case. Discretionary review by the  
14 Court of Criminal Appeals is not a matter of right, but of sound  
15 judicial discretion.

16 SECTION 5. The heading to Article 11.07, Code of Criminal  
17 Procedure, is amended to read as follows:

18 Art. 11.07. PROCEDURE AFTER CONVICTION [~~WITHOUT DEATH  
19 PENALTY~~].

20 SECTION 6. Section 2, Article 11.07, Code of Criminal  
21 Procedure, is amended to read as follows:

22 Sec. 2. After indictment found in any felony case [~~other  
23 than a case in which the death penalty is imposed,~~] and before  
24 conviction, the writ must be made returnable in the county where the  
25 offense has been committed.

26 SECTION 7. Section 3(b), Article 11.07, Code of Criminal  
27 Procedure, is amended to read as follows:

1           (b) An application for writ of habeas corpus filed after  
2 final conviction in a felony case[~~, other than a case in which the~~  
3 ~~death penalty is imposed,~~] must be filed with the clerk of the court  
4 in which the conviction being challenged was obtained, and the  
5 clerk shall assign the application to that court. When the  
6 application is received by that court, a writ of habeas corpus,  
7 returnable to the Court of Criminal Appeals, shall issue by  
8 operation of law. The clerk of that court shall make appropriate  
9 notation thereof, assign to the case a file number (ancillary to  
10 that of the conviction being challenged), and forward a copy of the  
11 application by certified mail, return receipt requested, or by  
12 personal service to the attorney representing the state in that  
13 court, who shall answer the application not later than the 15th day  
14 after the date the copy of the application is received. Matters  
15 alleged in the application not admitted by the state are deemed  
16 denied.

17           SECTION 8. Articles 26.04(b) and (g), Code of Criminal  
18 Procedure, are amended to read as follows:

- 19           (b) Procedures adopted under Subsection (a) shall:
- 20                 (1) authorize only the judges of the county courts,  
21 statutory county courts, and district courts trying criminal cases  
22 in the county, or the judges' designee, to appoint counsel for  
23 indigent defendants in the county;
- 24                 (2) apply to each appointment of counsel made by a  
25 judge or the judges' designee in the county;
- 26                 (3) ensure that each indigent defendant in the county  
27 who is charged with a misdemeanor punishable by confinement or with

1 a felony and who appears in court without counsel has an opportunity  
2 to confer with appointed counsel before the commencement of  
3 judicial proceedings;

4 (4) [~~require appointments for defendants in capital~~  
5 ~~cases in which the death penalty is sought to comply with any~~  
6 ~~applicable requirements under Articles 11.071 and 26.052;~~

7 [~~(5)~~] ensure that each attorney appointed from a  
8 public appointment list to represent an indigent defendant perform  
9 the attorney's duty owed to the defendant in accordance with the  
10 adopted procedures, the requirements of this code, and applicable  
11 rules of ethics; and

12 (5) [~~(6)~~] ensure that appointments are allocated  
13 among qualified attorneys in a manner that is fair, neutral, and  
14 nondiscriminatory.

15 (g) A countywide alternative program for appointing counsel  
16 for indigent defendants in criminal cases is established by a  
17 formal action in which two-thirds of the judges of the courts  
18 designated under this subsection vote to establish the alternative  
19 program. An alternative program for appointing counsel in  
20 misdemeanor and felony cases may be established in the manner  
21 provided by this subsection by the judges of the county courts,  
22 statutory county courts, and district courts trying criminal cases  
23 in the county. An alternative program for appointing counsel in  
24 misdemeanor cases may be established in the manner provided by this  
25 subsection by the judges of the county courts and statutory county  
26 courts trying criminal cases in the county. An alternative program  
27 for appointing counsel in felony cases may be established in the

1 manner provided by this subsection by the judges of the district  
2 courts trying criminal cases in the county. In a county in which an  
3 alternative program is established:

4 (1) the alternative program may:

5 (A) use a single method for appointing counsel or  
6 a combination of methods; and

7 (B) use a multicounty appointment list using a  
8 system of rotation; and

9 (2) the procedures adopted under Subsection (a) must  
10 ensure that:

11 (A) attorneys appointed using the alternative  
12 program to represent defendants in misdemeanor cases punishable by  
13 confinement:

14 (i) meet specified objective  
15 qualifications, which may be graduated according to the degree of  
16 seriousness of the offense, for providing representation in  
17 misdemeanor cases punishable by confinement; and

18 (ii) are approved by a majority of the  
19 judges of the county courts and statutory county courts trying  
20 misdemeanor cases in the county;

21 (B) attorneys appointed using the alternative  
22 program to represent defendants in felony cases:

23 (i) meet specified objective  
24 qualifications, which may be graduated according to the degree of  
25 seriousness of the offense, for providing representation in felony  
26 cases; and

27 (ii) are approved by a majority of the

1 judges of the district courts trying felony cases in the county; and

2 (C) [~~appointments for defendants in capital~~  
3 ~~cases in which the death penalty is sought comply with the~~  
4 ~~requirements of Article 26.052; and~~

5 [~~(D)~~] appointments are reasonably and  
6 impartially allocated among qualified attorneys.

7 SECTION 9. Article 26.05(d), Code of Criminal Procedure, is  
8 amended to read as follows:

9 (d) A counsel in a criminal [~~noncapital~~] case, other than an  
10 attorney with a public defender, appointed to represent a defendant  
11 under this code shall be reimbursed for reasonable and necessary  
12 expenses, including expenses for investigation and for mental  
13 health and other experts. Expenses incurred with prior court  
14 approval shall be reimbursed in the [~~same~~] manner provided for  
15 [~~capital cases~~] by Articles 26.052(f) and (g), and expenses  
16 incurred without prior court approval shall be reimbursed in the  
17 manner provided for [~~capital cases~~] by Article 26.052(h).

18 SECTION 10. The heading to Article 26.052, Code of Criminal  
19 Procedure, is amended to read as follows:

20 Art. 26.052. [~~APPOINTMENT OF COUNSEL IN DEATH PENALTY~~  
21 ~~CASE,~~] REIMBURSEMENT OF [~~INVESTIGATIVE~~] EXPENSES INCURRED BY  
22 APPOINTED COUNSEL.

23 SECTION 11. Section 3, Article 31.08, Code of Criminal  
24 Procedure, is amended to read as follows:

25 Sec. 3. An [~~Except for the review of a death sentence under~~  
26 ~~Section 2(h), Article 37.071, or under Section 2(h), Article~~  
27 ~~37.072, an]~~ appeal taken in a cause returned to the original county

1 under this article must be docketed in the appellate district in  
2 which the county of original venue is located.

3 SECTION 12. Article 35.15(b), Code of Criminal Procedure,  
4 is amended to read as follows:

5 (b) In [~~non-capital~~] felony cases [~~and in capital cases in~~  
6 ~~which the State does not seek the death penalty~~], the State and  
7 defendant shall each be entitled to ten peremptory challenges. If  
8 two or more defendants are tried together each defendant shall be  
9 entitled to six peremptory challenges and the State to six for each  
10 defendant.

11 SECTION 13. Article 35.16(b), Code of Criminal Procedure,  
12 is amended to read as follows:

13 (b) A challenge for cause may be made by the State for any of  
14 the following reasons:

15 1. That the juror has conscientious scruples in regard  
16 to the imposition [~~infliction~~] of a sentence of imprisonment for  
17 life without parole [~~the punishment of death for crime,~~] in a  
18 capital case[, ~~where the State is seeking the death penalty~~];

19 2. That he is related within the third degree of  
20 consanguinity or affinity, as determined under Chapter 573,  
21 Government Code, to the defendant; and

22 3. That he has a bias or prejudice against any phase of  
23 the law upon which the State is entitled to rely for conviction or  
24 punishment.

25 SECTION 14. Article 35.17, Code of Criminal Procedure, is  
26 amended to read as follows:

27 Art. 35.17. VOIR DIRE EXAMINATION. [~~1.~~] When the court in



1 its discretion so directs, [~~except as provided in Section 2,~~] the  
2 state and defendant shall conduct the voir dire examination of  
3 prospective jurors in the presence of the entire panel.

4 [~~2. In a capital felony case in which the State seeks the  
5 death penalty, the court shall propound to the entire panel of  
6 prospective jurors questions concerning the principles, as  
7 applicable to the case on trial, of reasonable doubt, burden of  
8 proof, return of indictment by grand jury, presumption of  
9 innocence, and opinion. Then, on demand of the State or defendant,  
10 either is entitled to examine each juror on voir dire individually  
11 and apart from the entire panel, and may further question the juror  
12 on the principles propounded by the court.~~]

13 SECTION 15. Article 35.25, Code of Criminal Procedure, is  
14 amended to read as follows:

15 Art. 35.25. MAKING PEREMPTORY CHALLENGE. The [~~In~~  
16 ~~non-capital cases and in capital cases in which the State's~~  
17 ~~attorney has announced that he will not qualify the jury for, or~~  
18 ~~seek the death penalty, the]~~ party desiring to challenge any juror  
19 peremptorily shall strike the name of such juror from the list  
20 furnished him by the clerk.

21 SECTION 16. Article 35.26, Code of Criminal Procedure, is  
22 amended to read as follows:

23 Art. 35.26. LISTS RETURNED TO CLERK. [~~(a)~~] When the parties  
24 have made or declined to make their peremptory challenges, they  
25 shall deliver their lists to the clerk. The [~~Except as provided in~~  
26 ~~Subsection (b) of this section, the]~~ clerk shall, if the case be in  
27 the district court, call off the first twelve names on the lists

1 that have not been stricken. If the case be in the county court, he  
2 shall call off the first six names on the lists that have not been  
3 stricken. Those whose names are called shall be the jury.

4 ~~[(b) In a capital case in which the state seeks the death~~  
5 ~~penalty, the court may direct that two alternate jurors be selected~~  
6 ~~and that the first fourteen names not stricken be called off by the~~  
7 ~~clerk. The last two names to be called are the alternate jurors.]~~

8 SECTION 17. Section 2(b), Article 37.07, Code of Criminal  
9 Procedure, is amended to read as follows:

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

23 SECTION 18. Section 1, Article 42.01, Code of Criminal  
24 Procedure, is amended to read as follows:

25 Sec. 1. A judgment is the written declaration of the court  
26 signed by the trial judge and entered of record showing the  
27 conviction or acquittal of the defendant. The sentence served

1 shall be based on the information contained in the judgment. The  
2 judgment shall reflect:

3 1. The title and number of the case;

4 2. That the case was called and the parties appeared,  
5 naming the attorney for the state, the defendant, and the attorney  
6 for the defendant, or, where a defendant is not represented by  
7 counsel, that the defendant knowingly, intelligently, and  
8 voluntarily waived the right to representation by counsel;

9 3. The plea or pleas of the defendant to the offense  
10 charged;

11 4. Whether the case was tried before a jury or a jury  
12 was waived;

13 5. The submission of the evidence, if any;

14 6. In cases tried before a jury that the jury was  
15 charged by the court;

16 7. The verdict or verdicts of the jury or the finding  
17 or findings of the court;

18 8. In the event of a conviction that the defendant is  
19 adjudged guilty of the offense as found by the verdict of the jury  
20 or the finding of the court, and that the defendant be punished in  
21 accordance with the jury's verdict or the court's finding as to the  
22 proper punishment;

23 9. In the event of conviction where [~~death or~~] any  
24 punishment is assessed that the defendant be sentenced to [~~death,~~]  
25 a term of confinement or community supervision, or to pay a fine, as  
26 the case may be;

27 10. In the event of conviction where the imposition of

1 sentence is suspended and the defendant is placed on community  
2 supervision, setting forth the punishment assessed, the length of  
3 community supervision, and the conditions of community  
4 supervision;

5 11. In the event of acquittal that the defendant be  
6 discharged;

7 12. The county and court in which the case was tried  
8 and, if there was a change of venue in the case, the name of the  
9 county in which the prosecution was originated;

10 13. The offense or offenses for which the defendant  
11 was convicted;

12 14. The date of the offense or offenses and degree of  
13 offense for which the defendant was convicted;

14 15. The term of sentence;

15 16. The date judgment is entered;

16 17. The date sentence is imposed;

17 18. The date sentence is to commence and any credit for  
18 time served;

19 19. The terms of any order entered pursuant to Article  
20 42.08 of this code that the defendant's sentence is to run  
21 cumulatively or concurrently with another sentence or sentences;

22 20. The terms of any plea bargain;

23 21. Affirmative findings entered pursuant to  
24 Subdivision (2) of Subsection (a) of Section 3g of Article 42.12 of  
25 this code;

26 22. The terms of any fee payment ordered under Article  
27 42.151 of this code;

1           23. The defendant's thumbprint taken in accordance  
2 with Article 38.33 of this code;

3           24. In the event that the judge orders the defendant to  
4 repay a reward or part of a reward under Articles 37.073 and 42.152  
5 of this code, a statement of the amount of the payment or payments  
6 required to be made;

7           25. In the event that the court orders restitution to  
8 be paid to the victim, a statement of the amount of restitution  
9 ordered and:

10           (A) the name and address of a person or agency  
11 that will accept and forward restitution payments to the victim; or

12           (B) if the court specifically elects to have  
13 payments made directly to the crime victim, the name and permanent  
14 address of the victim at the time of judgment;

15           26. In the event that a presentence investigation is  
16 required by Section 9(a), (b), (h), or (i), Article 42.12 of this  
17 code, a statement that the presentence investigation was done  
18 according to the applicable provision;

19           27. In the event of conviction of an offense for which  
20 registration as a sex offender is required under Chapter 62, a  
21 statement that the registration requirement of that chapter applies  
22 to the defendant and a statement of the age of the victim of the  
23 offense;

24           28. The defendant's state identification number  
25 required by Article [~~Section~~] 60.052(a)(2), if that number has been  
26 assigned at the time of the judgment; and

27           29. The incident number required by Article [~~Section~~]

1 60.052(a)(4), if that number has been assigned at the time of the  
2 judgment.

3 SECTION 19. Sections 1 and 3, Article 42.09, Code of  
4 Criminal Procedure, are amended to read as follows:

5 Sec. 1. Except as provided in Sections 2 and 3, a defendant  
6 shall be delivered to a jail or to the Texas Department of Criminal  
7 Justice when his sentence is pronounced [~~or his sentence to death~~  
8 ~~is announced,~~] by the court. The defendant's sentence begins to  
9 run on the day it is pronounced, but with all credits, if any,  
10 allowed by Article 42.03.

11 Sec. 3. If a defendant is convicted of a felony and  
12 sentenced to [~~death,~~] life [~~,~~] or a term of more than ten years in  
13 the Texas Department of Criminal Justice and he gives notice of  
14 appeal, he shall be transferred to the department on a commitment  
15 pending a mandate from the court of appeals or the Court of Criminal  
16 Appeals.

17 SECTION 20. Article 64.05, Code of Criminal Procedure, is  
18 amended to read as follows:

19 Art. 64.05. APPEALS. An appeal under this chapter is to a  
20 court of appeals in the same manner as an appeal of any other  
21 criminal matter [~~except that if the convicted person was convicted~~  
22 ~~in a capital case and was sentenced to death, the appeal is a direct~~  
23 ~~appeal to the court of criminal appeals]~~.

24 SECTION 21. The following provisions of the Code of  
25 Criminal Procedure are repealed:

26 (1) Article 1.13(b);

27 (2) Article 11.071;

1           (3) Articles 26.052(a) through (e) and (i) through  
2 (m);

3           (4) Articles 34.04, 35.13, 35.15(a), 36.29(b),  
4 37.071, and 37.072;

5           (5) Article 42.04;

6           (6) Articles 43.14 through 43.25; and

7           (7) Articles 44.251 and 44.29(c).

8           SECTION 22. The change in law made by this Act applies only  
9 to the punishment for an offense under Section 19.03, Penal Code, if  
10 the indictment in the case is filed on or after the effective date  
11 of this Act. If the indictment in the case is filed before the  
12 effective date of this Act, the punishment in the case is governed  
13 by the law in effect when the offense was committed, and the former  
14 law is continued in effect for that purpose.

15           SECTION 23. This Act takes effect September 1, 2011.