

By: Dutton

H.B. No. 2511

A BILL TO BE ENTITLED

AN ACT

relating to the joint or separate prosecution of a capital felony charged against two or more defendants and the extent of a defendant's criminal responsibility for the conduct of a coconspirator in capital felony cases.

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

SECTION 1. Article 36.09, Code of Criminal Procedure, is amended to read as follows:

Art. 36.09. SEVERANCE ON SEPARATE INDICTMENTS. (a) Two or more defendants who are jointly or separately indicted or complained against for the same offense or any offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately as to one or more defendants; provided that in any event either defendant may testify for the other or on behalf of the state; and provided further, that in cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant, the court shall order a severance as to the defendant whose joint trial would prejudice the other defendant or defendants.

(b) Notwithstanding Subsection (a), the court may not join two or more defendants in the same criminal trial if any defendant to be tried is indicted or complained against for a capital felony,

1 and the court shall order a severance as to any two or more  
2 defendants who are jointly indicted or complained against for a  
3 capital felony.

4 SECTION 2. Section 1, Article 37.071, Code of Criminal  
5 Procedure, is amended to read as follows:

6 Sec. 1. (a) If a defendant is found guilty in a capital  
7 felony case in which the state does not seek the death penalty, the  
8 judge shall sentence the defendant to life imprisonment without  
9 parole.

10 (b) A defendant who is found guilty in a capital felony case  
11 only as a party under Section 7.02(b), Penal Code, may not be  
12 sentenced to death, and the state may not seek the death penalty in  
13 any case in which the defendant's liability is based solely on that  
14 section.

15 SECTION 3. Section 2, Article 37.0711, Code of Criminal  
16 Procedure, is amended to read as follows:

17 Sec. 2. (a) If a defendant is found guilty in a case in  
18 which the state does not seek the death penalty, the judge shall  
19 sentence the defendant to life imprisonment.

20 (b) A defendant who is found guilty in a capital felony case  
21 only as a party under Section 7.02(b), Penal Code, may not be  
22 sentenced to death, and the state may not seek the death penalty in  
23 any case in which the defendant's liability is based solely on that  
24 section.

25 SECTION 4. Article 36.09, Code of Criminal Procedure, as  
26 amended by this Act, applies only to a trial commenced in a criminal  
27 case on or after the effective date of this Act. A trial commenced

1 before the effective date of this Act is governed by the law in  
2 effect when the trial commenced, and the former law is continued in  
3 effect for that purpose.

4       SECTION 5. Section 1, Article 37.071, and Section 2,  
5 Article 37.0711, Code of Criminal Procedure, as amended by this  
6 Act, apply only to the sentence imposed in a criminal proceeding  
7 that commences on or after the effective date of this Act. The  
8 sentence imposed in a criminal proceeding that commenced before the  
9 effective date of this Act is governed by the law in effect when the  
10 proceeding commenced, and the former law is continued in effect for  
11 that purpose.

12       SECTION 6. This Act takes effect September 1, 2011.