

By: Canales

H.B. No. 72

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for a capital felony committed by an individual younger than 18 years of age.

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) a term of not more than 99 years or less than 25 years [life], if the individual committed the offense when younger than 18 years of age [individual's case was transferred to the court under Section 54.02, Family Code]; or

(2) life without parole, if the individual committed the offense when 18 years of age or older.

(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

1 be informed that the state is not seeking the death penalty and
2 that:

3 (1) a sentence of [~~life~~] imprisonment for a term of not
4 more than 99 years or less than 25 years is mandatory on conviction
5 of the capital felony, if the individual committed the offense when
6 younger than 18 years of age [~~case was transferred to the court~~
7 ~~under Section 54.02, Family Code~~]; or

8 (2) a sentence of life imprisonment without parole is
9 mandatory on conviction of the capital felony, if the individual
10 committed the offense when 18 years of age or older.

11 SECTION 2. Section 12.42, Penal Code, is amended by adding
12 Subsection (e) to read as follows:

13 (e) For purposes of this section, a person convicted of a
14 capital felony who is punished by imprisonment for a term of not
15 more than 99 years or less than 25 years is considered to have been
16 convicted of a felony of the first degree.

17 SECTION 3. Section 1, Article 37.071, Code of Criminal
18 Procedure, is amended to read as follows:

19 Sec. 1. (a) If a defendant is found guilty in a capital
20 felony case in which the state does not seek the death penalty, the
21 [~~judge shall sentence the~~] defendant shall be sentenced to
22 imprisonment for a term of not more than 99 years or less than 25
23 years or to life imprisonment without parole as described by this
24 section and by Section 12.31, Penal Code.

25 (b) The judge shall impose a sentence of imprisonment in the
26 Texas Department of Criminal Justice for life without parole on a
27 defendant who was 18 years of age or older at the time the capital

1 felony was committed.

2 (c)(1) The judge or jury shall impose a sentence of
3 imprisonment for a term of not more than 99 years or less than 25
4 years on a defendant who was younger than 18 years of age at the time
5 the capital felony was committed.

6 (2) In determining an appropriate term of imprisonment
7 under this subsection, the court shall consider any mitigating
8 factors that may have contributed to the commission of the offense.
9 If a jury will determine the sentence, the court shall instruct the
10 jury to consider mitigating factors consistent with this
11 subdivision. The defendant or the defendant's counsel may submit
12 mitigating factors to the court, including any of the following
13 information about the defendant:

14 (A) age at the time of the offense;

15 (B) developmental stage at the time of the
16 offense;

17 (C) family and community environment;

18 (D) ability to appreciate the risks and
19 consequences of the conduct;

20 (E) intellectual capacity;

21 (F) the outcomes of a comprehensive mental health
22 evaluation described by Subdivision (3);

23 (G) peer or familial pressure;

24 (H) level of participation in the offense;

25 (I) ability to participate meaningfully in the
26 defense of the case;

27 (J) capacity for rehabilitation;

1 (K) school records and special education
2 evaluations;

3 (L) trauma history;

4 (M) faith and community involvement;

5 (N) involvement in the child welfare system; and

6 (O) any other mitigating factor or circumstance.

7 (3) At the defendant's request following the
8 adjudication of guilt, a mental health professional licensed in
9 this state and specializing in adolescent mental health issues
10 shall conduct a comprehensive mental health evaluation. The court
11 shall consider the outcomes of the evaluation in determining an
12 appropriate term of imprisonment under this subsection. The
13 comprehensive mental health evaluation must include:

14 (A) family interviews;

15 (B) family history;

16 (C) prenatal history;

17 (D) developmental history;

18 (E) medical history;

19 (F) history of treatment for substance use;

20 (G) social history; and

21 (H) a psychological evaluation.

22 (4) The defendant or the defendant's counsel may also
23 submit to the court for consideration as a mitigating factor
24 research about adolescent brain development and its impact on
25 adolescent behavior and capacity for rehabilitation.

26 SECTION 4. Section 508.145(b), Government Code, is amended
27 to read as follows:

1 (b) An inmate serving a [~~life~~] sentence for a capital felony
2 under Section 12.31(a)(1), Penal Code, for a term of not more than
3 99 years or less than 25 years [~~capital felony~~] is not eligible for
4 release on parole until the actual calendar time the inmate has
5 served, without consideration of good conduct time, equals 25 [~~40~~]
6 calendar years.

7 SECTION 5. (a) Except as provided by Subsection (b) of this
8 section, the change in law made by this Act applies to:

9 (1) a criminal action for which a final conviction
10 exists on the effective date of this Act if the defendant is serving
11 a sentence of life without parole for the offense and was younger
12 than 18 years of age at the time the offense was committed; and

13 (2) any other criminal action that is pending, on
14 appeal, or commenced on or after the effective date of this Act,
15 regardless of whether the criminal action is based on an offense
16 committed before, on, or after that date.

17 (b) The change in law made by this Act in adding Section
18 12.42(e), Penal Code, applies only to an offense committed on or
19 after the effective date of this Act. An offense committed before
20 the effective date of this Act is covered by the law in effect when
21 the offense was committed, and the former law is continued in effect
22 for that purpose. For purposes of this subsection, an offense was
23 committed before the effective date of this Act if any element of
24 the offense occurred before that date.

25 SECTION 6. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this
2 Act takes effect on the 91st day after the last day of the
3 legislative session.