

By: Canales

H.B. No. 10

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) for life, if the individual committed the offense when younger than 17 years of age [~~individual's case was transferred to the court under Section 54.02, Family Code~~];

(2) for life or for life without parole, if the individual committed the offense when 17 years of age; or

(3) for [~~(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

1 the state does not seek the death penalty, prospective jurors shall
2 be informed that the state is not seeking the death penalty and
3 that:

4 (1) a sentence of life imprisonment is mandatory on
5 conviction of the capital felony, if the individual committed the
6 offense when younger than 17 years of age [~~case was transferred to~~
7 ~~the court under Section 54.02, Family Code~~];

8 (2) a sentence of either life imprisonment or life
9 imprisonment without parole is mandatory on conviction of the
10 capital felony, if the individual committed the offense when 17
11 years of age; or

12 (3) [~~(2)~~] a sentence of life imprisonment without
13 parole is mandatory on conviction of the capital felony, if the
14 individual committed the offense when 18 years of age or older.

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

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

22 (b) The judge shall impose a sentence of imprisonment in the
23 Texas Department of Criminal Justice for life without parole with
24 respect to a defendant who was 18 years of age or older at the time
25 the capital felony was committed.

26 (c) The judge shall impose a sentence of imprisonment in the
27 Texas Department of Criminal Justice for life with respect to a

1 defendant who was younger than 17 years of age at the time the
2 capital felony was committed.

3 (d)(1) The judge or jury shall impose a sentence of
4 imprisonment in the Texas Department of Criminal Justice for life
5 or for life without parole with respect to a defendant who was 17
6 years of age at the time the capital felony was committed.
7 Notwithstanding the exception language provided by Section 2(b),
8 Article 37.07, the determination of who will assess punishment
9 under this subsection is governed by Section 2(b), Article 37.07.

10 (2) Evidence may be offered by the state and the
11 defendant as to any matter the court considers relevant to the
12 sentence, as governed by Section 3, Article 37.07, including
13 evidence of the defendant's background or character and evidence of
14 the circumstances of the offense. In determining the appropriate
15 sentence, the judge or jury shall consider any relevant mitigating
16 factor or circumstance, including any factor or circumstance that
17 may have contributed to the commission of the offense and any other
18 factor or circumstance described by this subdivision. The
19 defendant or the defendant's counsel may submit mitigating factors
20 or circumstances to the court, including any of the following
21 information about the defendant:

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

23 (B) developmental stage at the time of the
24 offense;

25 (C) family and community environment;

26 (D) ability to appreciate the risks and
27 consequences of the conduct;

- 1 (E) intellectual capacity;
 - 2 (F) the outcomes of the comprehensive mental
 - 3 health evaluation described by Subdivision (3);
 - 4 (G) peer or familial pressure;
 - 5 (H) level of participation in the offense;
 - 6 (I) ability to participate meaningfully in the
 - 7 defense of the case;
 - 8 (J) capacity for rehabilitation;
 - 9 (K) school records and special education
 - 10 evaluations;
 - 11 (L) trauma history;
 - 12 (M) faith and community involvement;
 - 13 (N) involvement in the child welfare system; and
 - 14 (O) any other mitigating factor or circumstance.
- 15 (3) At the defendant's request following the
- 16 adjudication of guilt, a mental health professional licensed in
- 17 this state and specializing in adolescent mental health issues
- 18 shall conduct a comprehensive mental health evaluation. The court
- 19 shall consider the outcomes of the evaluation in determining the
- 20 appropriate sentence under this subsection. The comprehensive
- 21 mental health evaluation must include:
- 22 (A) family interviews;
 - 23 (B) family history;
 - 24 (C) prenatal history;
 - 25 (D) developmental history;
 - 26 (E) medical history;
 - 27 (F) history of treatment for substance use;

1 (G) social history; and

2 (H) a psychological evaluation.

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

7 (5) If the punishment is to be assessed by the jury
8 rather than the judge, the judge shall charge the jury in writing as
9 follows:

10 "Under the law applicable in this case, a defendant
11 sentenced to imprisonment for life without parole is ineligible for
12 release on parole from the Texas Department of Criminal Justice.

13 "It is possible that any other sentence of imprisonment
14 for life might be reduced by the award of parole. However, the
15 defendant will not become eligible for parole until the actual time
16 served equals 30 years, without consideration of good conduct time,
17 and the eligibility for parole does not guarantee that parole will
18 be granted.

19 "It cannot accurately be predicted how the parole law
20 might be applied to this defendant if the defendant is sentenced to
21 life imprisonment, because the application of this law will depend
22 on decisions made by prison and parole authorities.

23 "You may consider the existence of the parole law.
24 However, you are not to consider the manner in which the parole law
25 may be applied to this particular defendant."

26 (6) Subdivision (5) does not permit the introduction
27 of evidence on the operation of parole laws.

1 SECTION 3. Section 508.145(b), Government Code, is amended
2 to read as follows:

3 (b) An inmate serving a life sentence under Section
4 12.31(a)(1) or (2), Penal Code, for a capital felony is not eligible
5 for release on parole until the actual calendar time the inmate has
6 served, without consideration of good conduct time, equals 30 [~~40~~]
7 calendar years.

8 SECTION 4. The change in law made by this Act:

9 (1) applies to a criminal action pending, on appeal,
10 or commenced on or after the effective date of this Act, regardless
11 of whether the criminal action is based on an offense committed
12 before, on, or after that date; and

13 (2) does not affect a final conviction that exists on
14 the effective date of this Act.

15 SECTION 5. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect on the 91st day after the last day of the
20 legislative session.