

By: Burnam

H.B. No. 3617

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) life, if the 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. If the individual committed the offense when younger than 18 years of age, the individual shall be punished for a first-degree felony.

(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~~] a sentence for a
4 first-degree felony is mandatory on conviction of the capital
5 felony, if the individual committed the offense when younger than
6 18 years of age [~~case was transferred to the court under Section~~
7 ~~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 1, Article 37.071, Code of Criminal
12 Procedure, is amended to read as follows:

13 Sec. 1. (a) If a defendant is found guilty in a capital
14 felony case in which the state does not seek the death penalty, the
15 judge shall sentence the defendant to life imprisonment without
16 parole if the individual committed the offense when 18 years of age
17 or older.

18 (b) If a defendant is found guilty in a capital felony case
19 in which the individual committed the offense when younger than 18
20 years of age, the judge or jury shall sentence the defendant for a
21 First Degree Felony.

22 (c) In determining a sentence under this subsection the
23 sentencing court shall consider the mitigating factors which
24 contributed to the commission of the offense. If the sentence is
25 being determined by a jury, the court shall instruct the jury to
26 consider mitigating factors consistent with this subsection. The
27 defendant or the defendant's counsel may submit mitigating factors

1 to the court including but not limited to the following information
2 about the defendant:

3 (1) age at the time of the offense;

4 (2) developmental stage at the time of the offense;

5 (3) family and community environment;

6 (4) ability to appreciate the risks and consequences
7 of the conduct;

8 (5) intellectual capacity;

9 (6) the outcomes of a comprehensive mental health
10 evaluation conducted by an adolescent mental health professional
11 licensed in the state of Texas at the defendant's request as
12 described in subsection (d);

13 (7) peer or familial pressure;

14 (8) level of participation in the offense;

15 (9) ability to participate meaningfully in his or her
16 defense;

17 (10) capacity for rehabilitation;

18 (11) school records and special education
19 evaluations;

20 (12) trauma history;

21 (13) faith and community involvement;

22 (14) involvement in the child welfare system; and

23 (15) any other mitigating factor or circumstance.

24 (d) Comprehensive mental health evaluation. The sentencing
25 Court shall consider the outcomes of a comprehensive mental health
26 evaluation which shall be conducted by an adolescent mental health
27 professional licensed in the state of Texas at the defendant's

1 request following conviction. The comprehensive mental health
2 evaluation must include the following:

3 (1) family interviews;

4 (2) family history;

5 (3) prenatal history;

6 (4) developmental history;

7 (5) medical history;

8 (6) history of treatment for substance use;

9 (7) social history; and

10 (8) a psychological evaluation.

11 (e) The defendant or the defendant's counsel may also submit
12 to the court for its consideration as a mitigating factor research
13 about adolescent brain development and its impact on adolescent
14 behavior and capacity for rehabilitation.

15 SECTION 3. The change in law made by this Act:

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

20 (2) applies retroactively to resentencing of
21 defendants who were under the age of eighteen at the commission of
22 the crime and are currently serving life without the possibility of
23 parole sentences.

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2013.