

By: Rodriguez

S.B. No. 1083

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the punishment for a capital felony committed by an
3 individual younger than 18 years of age; changing parole
4 eligibility.

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

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

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

15 (1) for life or for a term of not more than 99 years or
16 less than 5 years [~~life~~], if the individual committed the offense
17 when younger than 18 years of age; or

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

20 (b) In a capital felony trial in which the state seeks the
21 death penalty, prospective jurors shall be informed that a sentence
22 of life imprisonment without parole or death is mandatory on
23 conviction of a capital felony. In a capital felony trial in which
24 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 either for life
4 or for a term of not more than 99 years or less than 5 years is
5 mandatory on conviction of a capital felony, if the individual
6 committed the offense when younger than 18 years of age; or

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

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

12 (e) For purposes of this section, a person convicted of a
13 capital felony who is punished by imprisonment for a term of not
14 more than 99 years or less than 5 years is considered to have been
15 convicted of a felony of the first degree.

16 SECTION 3. Articles 1.13(a) and (b), Code of Criminal
17 Procedure, are amended to read as follows:

18 (a) Subject to Subsection (b), the [~~The~~] defendant in a
19 criminal prosecution for any offense, other than a capital felony
20 case in which the state notifies the court and the defendant that it
21 will seek the death penalty or a capital felony case described by
22 Section 12.31(a)(2), Penal Code, shall have the right, upon
23 entering a plea, to waive the right of trial by jury, conditioned,
24 however, that, except as provided by Article 27.19, the waiver must
25 be made in person by the defendant in writing in open court with the
26 consent and approval of the court, and the attorney representing
27 the state. The consent and approval by the court shall be entered

1 of record on the minutes of the court, and the consent and approval
2 of the attorney representing the state shall be in writing, signed
3 by that attorney, and filed in the papers of the cause before the
4 defendant enters the defendant's plea.

5 (b) In a capital felony case described by Section
6 12.31(a)(1), Penal Code [~~in which the attorney representing the~~
7 ~~State notifies the court and the defendant that it will not seek the~~
8 ~~death penalty~~], the defendant may waive the right to trial by jury
9 in writing and in open court.

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

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

17 (2) The judge shall impose a sentence of imprisonment
18 in the Texas Department of Criminal Justice for life without parole
19 on a defendant who was 18 years of age or older at the time the
20 capital felony was committed.

21 (3) The judge or jury shall impose a sentence of
22 imprisonment in the Texas Department of Criminal Justice for a term
23 of life or for not more than 99 years or less than 5 years on a
24 defendant who was younger than 18 years of age at the time the
25 capital felony was committed.

26 (b) For purposes of assessing punishment under Subsection
27 (a)(3), the court shall conduct a separate sentencing proceeding in

1 the trial court and before the trial jury as soon as practicable.
2 In the proceeding, the defendant or the defendant's counsel is
3 entitled to present evidence tending to diminish defendant's
4 culpability or tending to show the defendant's capacity for
5 rehabilitation such as the following information about the
6 defendant:

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

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

9 (3) family and community environment;

10 (4) ability to appreciate the risks and consequences
11 of the conduct;

12 (5) intellectual capacity;

13 (6) the outcome of a comprehensive mental health
14 evaluation that is conducted by a disinterested expert, such as a
15 psychiatrist or psychologist, who is qualified by education and
16 clinical training in adolescent mental health issues and includes;

17 (A) family interviews;

18 (B) family history;

19 (C) prenatal history;

20 (D) developmental history;

21 (E) medical history;

22 (F) history of treatment for substance use;

23 (G) social history; and

24 (H) a psychological evaluation;

25 (7) peer or familial pressure;

26 (8) level of participation in the offense;

27 (9) inability to effectively communicate with defense

1 counsel or to participate meaningfully in the defense of the case;

2 (10) capacity for rehabilitation;

3 (11) school records and special education
4 evaluations;

5 (12) trauma history;

6 (13) faith and community involvement;

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

8 (15) any other mitigating factor or circumstance.

9 (d) This section may not be construed to authorize the
10 introduction of any evidence secured in violation of the United
11 States Constitution or the Texas Constitution. The court shall
12 permit the state and the defendant or the defendant's counsel to
13 present arguments relevant to sentencing. The introduction of
14 evidence of extraneous conduct is governed by the notice
15 requirements of Section 3(g), Article 37.07.

16 SECTION 5. Section 508.145(b), Government Code, is amended
17 to read as follows:

18 (b)(1) An inmate serving a [~~life~~] sentence of imprisonment
19 for a term of not more than 99 years or less than 5 years under
20 Section 12.31(a)(1), Penal Code, for a capital felony is not
21 eligible for release on parole until the actual calendar time the
22 inmate has served, without consideration of good conduct time,
23 equals one-half of the sentence or 25 [~~40~~] calendar years,
24 whichever is less.

25 (2) An inmate serving a sentence of imprisonment for life
26 under Section 12.31(a)(1), Penal Code, for a capital felony is not
27 eligible for release on parole until the actual calendar time the

1 inmate has served, without consideration of good conduct time,
2 equals 25 calendar years.

3 SECTION 6. (a) Except as provided by Subsection (b) of
4 this section, the change in law made by this Act applies to:

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

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

14 (b) The change in law made by this Act in adding Section
15 12.42(e), Penal Code, applies only to an offense committed on or
16 after the effective date of this Act. An offense committed before
17 the effective date of this Act is governed by the law in effect when
18 the offense was committed, and the former law is continued in effect
19 for that purpose. For purposes of this subsection, an offense was
20 committed before the effective date of this Act if any element of
21 the offense occurred before that date.

22 SECTION 7. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2015.