

By: Canales

H.B. No. 252

A BILL TO BE ENTITLED

AN ACT

relating to the extent of a defendant's criminal responsibility for the conduct of a coconspirator in certain felony cases.

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

SECTION 1. Chapter 37, Code of Criminal Procedure, is amended by adding Article 37.0705 to read as follows:

Art. 37.0705. PROCEDURE AFTER GUILTY VERDICT IN CERTAIN CAPITAL CASES. (a) If a defendant is found guilty in a capital felony case in which the state seeks the death penalty and in which the jury charge at the guilt or innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, the court shall, before conducting the punishment stage, instruct the jury to determine based on the evidence admitted at the guilt or innocence stage whether the defendant is guilty of the capital felony only as a party under Section 7.02(b), Penal Code.

(b) If the jury unanimously finds the defendant guilty of the capital felony only as a party under Section 7.02(b), Penal Code, the defendant may not be sentenced to death.

SECTION 2. The heading to Article 37.071, Code of Criminal Procedure, is amended to read as follows:

Art. 37.071. PROCEDURE IN CAPITAL CASE: PUNISHMENT STAGE

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

1 Sec. 1. If a defendant is found guilty in a capital felony
2 case in which the state does not seek the death penalty or in which
3 the jury makes a finding as permitted under Article 37.0705, the
4 judge shall sentence the defendant to life imprisonment or to life
5 imprisonment without parole as required by Section 12.31, Penal
6 Code.

7 SECTION 4. Section 2(a)(1), Article 37.071, Code of
8 Criminal Procedure, is amended to read as follows:

9 (1) If a defendant is found guilty in [~~tried for~~] a
10 capital felony case [~~offense~~] in which the state seeks the death
11 penalty, other than a case in which the jury makes a [~~on a~~] finding
12 as permitted under Article 37.0705(b) [~~that the defendant is guilty~~
13 ~~of a capital offense~~], the court shall conduct a separate
14 sentencing proceeding to determine whether the defendant shall be
15 sentenced to death or life imprisonment without parole. The
16 proceeding shall be conducted in the trial court and, except as
17 provided by Article 44.29(c) [~~of this code~~], before the trial jury
18 as soon as practicable. In the proceeding, evidence may be
19 presented by the state and the defendant or the defendant's counsel
20 as to any matter that the court deems relevant to sentence,
21 including evidence of the defendant's background or character or
22 the circumstances of the offense that mitigates against the
23 imposition of the death penalty. This subdivision shall not be
24 construed to authorize the introduction of any evidence secured in
25 violation of the Constitution of the United States or of the State
26 of Texas. The state and the defendant or the defendant's counsel
27 shall be permitted to present argument for or against sentence of

1 death. The introduction of evidence of extraneous conduct is
2 governed by the notice requirements of Section 3(g), Article
3 37.07. The court, the attorney representing the state, the
4 defendant, or the defendant's counsel may not inform a juror or a
5 prospective juror of the effect of a failure of a jury to agree on
6 issues submitted under Subsection (c) or (e).

7 SECTION 5. The heading to Article 37.0711, Code of Criminal
8 Procedure, is amended to read as follows:

9 Art. 37.0711. PROCEDURE IN CAPITAL CASE FOR OFFENSE
10 COMMITTED BEFORE SEPTEMBER 1, 1991: PUNISHMENT STAGE

11 SECTION 6. Section 2, Article 37.0711, Code of Criminal
12 Procedure, is amended to read as follows:

13 Sec. 2. If a defendant is found guilty in a case in which the
14 state does not seek the death penalty or in which the jury makes a
15 finding as permitted under Article 37.0705, the judge shall
16 sentence the defendant to life imprisonment.

17 SECTION 7. Section 3(a)(1), Article 37.0711, Code of
18 Criminal Procedure, is amended to read as follows:

19 (1) If a defendant is found guilty in [~~tried for~~] a
20 capital felony case [~~offense~~] in which the state seeks the death
21 penalty, other than a case in which the jury makes a [~~on a~~] finding
22 as permitted under Article 37.0705(b) [~~that the defendant is guilty~~
23 ~~of a capital offense~~], the court shall conduct a separate
24 sentencing proceeding to determine whether the defendant shall be
25 sentenced to death or life imprisonment. The proceeding shall be
26 conducted in the trial court and, except as provided by Article
27 44.29(c) [~~of this code~~], before the trial jury as soon as

1 practicable. In the proceeding, evidence may be presented as to any
2 matter that the court deems relevant to sentence. This subdivision
3 shall not be construed to authorize the introduction of any
4 evidence secured in violation of the Constitution of the United
5 States or of this state. The state and the defendant or the
6 defendant's counsel shall be permitted to present argument for or
7 against sentence of death.

8 SECTION 8. The change in law made by this Act applies to a
9 criminal proceeding that commences on or after the effective date
10 of this Act. A criminal proceeding that commences before the
11 effective date of this Act is governed by the law in effect when the
12 proceeding commenced, and the former law is continued in effect for
13 that purpose.

14 SECTION 9. This Act takes effect December 1, 2017.