

By: Canales

H.B. No. 316

A BILL TO BE ENTITLED

AN ACT

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

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

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

Sec. 1. (a) If a defendant is found guilty in a capital felony case in which the state does not seek the death penalty, the judge shall sentence the defendant to life imprisonment or to life imprisonment without parole as required by Section 12.31, Penal Code.

(b) A defendant who is found guilty in a capital felony case only as a party under Section 7.02, Penal Code, may not be sentenced to death, and the state may not seek the death penalty in any case in which the defendant's liability is based solely on that section.

SECTION 2. Sections 2(b), (c), (d), and (g), Article 37.071, Code of Criminal Procedure, are amended to read as follows:

(b) On conclusion of the presentation of the evidence, the court shall instruct [~~submit the following issues to~~] the jury to determine [+

[~~(1)~~] whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society[, and

[~~(2) in cases in which the jury charge at the guilt or~~

1 ~~innocence stage permitted the jury to find the defendant guilty as a~~
2 ~~party under Sections 7.01 and 7.02, Penal Code, whether the~~
3 ~~defendant actually caused the death of the deceased or did not~~
4 ~~actually cause the death of the deceased but intended to kill the~~
5 ~~deceased or another or anticipated that a human life would be~~
6 ~~taken].~~

7 (c) The state must prove the ~~[each]~~ issue submitted under
8 Subsection (b) ~~[of this article]~~ beyond a reasonable doubt, and the
9 jury shall return a special verdict of "yes" or "no" on that ~~[each]~~
10 issue ~~[submitted under Subsection (b) of this Article]~~.

11 (d) The court shall charge the jury that:

12 (1) in deliberating on the issue ~~[issues]~~ submitted
13 under Subsection (b) ~~[of this article]~~, it shall consider all
14 evidence admitted at the guilt or innocence stage and the
15 punishment stage, including evidence of the defendant's background
16 or character or the circumstances of the offense that militates for
17 or mitigates against the imposition of the death penalty;

18 (2) it may not answer the ~~[any]~~ issue submitted under
19 Subsection (b) ~~[of this article]~~ "yes" unless it agrees unanimously
20 and it may not answer the ~~[any]~~ issue "no" unless 10 or more jurors
21 agree; and

22 (3) members of the jury need not agree on what
23 particular evidence supports a negative answer to the ~~[any]~~ issue
24 submitted under Subsection (b) ~~[of this article]~~.

25 (g) If the jury returns an affirmative finding on the ~~[each]~~
26 issue submitted under Subsection (b) and a negative finding on the
27 ~~[an]~~ issue submitted under Subsection (e)(1), the court shall

1 sentence the defendant to death. If the jury returns a negative
2 finding on the [~~any~~] issue submitted under Subsection (b) or an
3 affirmative finding on the [~~an~~] issue submitted under Subsection
4 (e)(1) or is unable to answer an [~~any~~] issue submitted under
5 Subsection (b) or (e), the court shall sentence the defendant to
6 confinement in the Texas Department of Criminal Justice for life
7 imprisonment without parole.

8 SECTION 3. Section 2(e)(1), Article 37.071, Code of
9 Criminal Procedure, is amended to read as follows:

10 (e)(1) The court shall instruct the jury that if the jury
11 returns an affirmative finding to the [~~each~~] issue submitted under
12 Subsection (b), it shall determine whether [~~answer the following~~
13 ~~issue:~~

14 [~~whether~~], taking into consideration all of the evidence,
15 including the circumstances of the offense, the defendant's
16 character and background, and the personal moral culpability of the
17 defendant, there is a sufficient mitigating circumstance or
18 circumstances to warrant that a sentence of life imprisonment
19 without parole rather than a death sentence be imposed.

20 SECTION 4. Section 2, Article 37.0711, Code of Criminal
21 Procedure, is amended to read as follows:

22 Sec. 2. (a) If a defendant is found guilty in a case in
23 which the state does not seek the death penalty, the judge shall
24 sentence the defendant to life imprisonment.

25 (b) A defendant who is found guilty in a capital felony case
26 only as a party under Section 7.02, Penal Code, may not be sentenced
27 to death, and the state may not seek the death penalty in any case in

1 which the defendant's liability is based solely on that section.

2 SECTION 5. The change in law made by this Act applies to a
3 criminal proceeding that commences on or after the effective date
4 of this Act. A criminal proceeding that commences before the
5 effective date of this Act is governed by the law in effect when the
6 proceeding commenced, and the former law is continued in effect for
7 that purpose.

8 SECTION 6. This Act takes effect September 1, 2017.