

By: Dutton

H.B. No. 354

A BILL TO BE ENTITLED

AN ACT

relating to abolishing the death penalty.

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 committed the offense when younger than 18 years of age; or

(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 the state does not seek the death penalty~~], prospective jurors shall be informed [~~that the state is not seeking the death penalty and~~] that:

(1) a sentence of life imprisonment is mandatory on

1 conviction of the capital felony, if the individual committed the
2 offense when younger than 18 years of age; or

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

6 SECTION 2. Articles 1.13(a) and (b), Code of Criminal
7 Procedure, are amended to read as follows:

8 (a) Subject to Subsection (b), the ~~[The]~~ defendant in a
9 criminal prosecution for any offense is entitled ~~[other than a~~
10 ~~capital felony case in which the state notifies the court and the~~
11 ~~defendant that it will seek the death penalty shall have the right]~~,
12 upon entering a plea, to waive the right of trial by jury,
13 conditioned, however, that, except as provided by Article 27.19,
14 the waiver must be made in person by the defendant in writing in
15 open court with the consent and approval of the court, and the
16 attorney representing the state. The consent and approval by the
17 court shall be entered of record on the minutes of the court, and
18 the consent and approval of the attorney representing the state
19 shall be in writing, signed by that attorney, and filed in the
20 papers of the cause before the defendant enters the defendant's
21 plea.

22 (b) In a capital felony case ~~[in which the attorney~~
23 ~~representing the State notifies the court and the defendant that it~~
24 ~~will not seek the death penalty]~~, the defendant may waive the right
25 to trial by jury but only if the attorney representing the state
26 ~~[State]~~, in writing and in open court, consents to the waiver.

27 SECTION 3. Articles 26.04(b) and (g), Code of Criminal

1 Procedure, are amended to read as follows:

2 (b) Procedures adopted under Subsection (a) shall:

3 (1) authorize only the judges of the county courts,
4 statutory county courts, and district courts trying criminal cases
5 in the county, or the judges' designee, to appoint counsel for
6 indigent defendants in the county;

7 (2) apply to each appointment of counsel made by a
8 judge or the judges' designee in the county;

9 (3) ensure that each indigent defendant in the county
10 who is charged with a misdemeanor punishable by confinement or with
11 a felony and who appears in court without counsel has an opportunity
12 to confer with appointed counsel before the commencement of
13 judicial proceedings;

14 (4) ~~[require appointments for defendants in capital~~
15 ~~cases in which the death penalty is sought to comply with any~~
16 ~~applicable requirements under Articles 11.071 and 26.052,~~

17 ~~[(5)]~~ ensure that each attorney appointed from a public
18 appointment list to represent an indigent defendant perform the
19 attorney's duty owed to the defendant in accordance with the
20 adopted procedures, the requirements of this code, and applicable
21 rules of ethics; and

22 (5) ~~[(6)]~~ ensure that appointments are allocated
23 among qualified attorneys in a manner that is fair, neutral, and
24 nondiscriminatory.

25 (g) A countywide alternative program for appointing counsel
26 for indigent defendants in criminal cases is established by a
27 formal action in which two-thirds of the judges of the courts

1 designated under this subsection vote to establish the alternative
2 program. An alternative program for appointing counsel in
3 misdemeanor and felony cases may be established in the manner
4 provided by this subsection by the judges of the county courts,
5 statutory county courts, and district courts trying criminal cases
6 in the county. An alternative program for appointing counsel in
7 misdemeanor cases may be established in the manner provided by this
8 subsection by the judges of the county courts and statutory county
9 courts trying criminal cases in the county. An alternative program
10 for appointing counsel in felony cases may be established in the
11 manner provided by this subsection by the judges of the district
12 courts trying criminal cases in the county. In a county in which an
13 alternative program is established:

14 (1) the alternative program may:

15 (A) use a single method for appointing counsel or
16 a combination of methods; and

17 (B) use a multicounty appointment list using a
18 system of rotation; and

19 (2) the procedures adopted under Subsection (a) must
20 ensure that:

21 (A) attorneys appointed using the alternative
22 program to represent defendants in misdemeanor cases punishable by
23 confinement:

24 (i) meet specified objective
25 qualifications for that representation, which may be graduated
26 according to the degree of seriousness of the offense and whether
27 representation will be provided in trial court proceedings,

1 appellate proceedings, or both; and

2 (ii) are approved by a majority of the
3 judges of the county courts and statutory county courts trying
4 misdemeanor cases in the county;

5 (B) attorneys appointed using the alternative
6 program to represent defendants in felony cases:

7 (i) meet specified objective
8 qualifications for that representation, which may be graduated
9 according to the degree of seriousness of the offense and whether
10 representation will be provided in trial court proceedings,
11 appellate proceedings, or both; and

12 (ii) are approved by a majority of the
13 judges of the district courts trying felony cases in the county; and

14 (C) ~~[appointments for defendants in capital~~
15 ~~cases in which the death penalty is sought comply with the~~
16 ~~requirements of Article 26.052; and~~

17 ~~[(D)]~~ appointments are reasonably and impartially
18 allocated among qualified attorneys.

19 SECTION 4. Article 34.01, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 34.01. SPECIAL VENIRE. A "special venire" is a writ
22 issued in a capital case by order of the district court, commanding
23 the sheriff to summon either verbally or by mail such a number of
24 persons, not less than 50, as the court may order, to appear before
25 the court on a day named in the writ from whom the jury for the trial
26 of such case is to be selected. Where as many as one hundred jurors
27 have been summoned in such county for regular service for the week

1 in which such capital case is set for trial, the judge of the court
2 having jurisdiction of a capital case in which a motion for a
3 special venire has been made, shall grant or refuse such motion for
4 a special venire, and upon such refusal require the case to be tried
5 by regular jurors summoned for service in such county for the week
6 in which such capital case is set for trial and such additional
7 talesmen as may be summoned by the sheriff upon order of the court
8 as provided in Article 34.02 of this code [~~Code, but the clerk of~~
9 ~~such court shall furnish the defendant or his counsel a list of the~~
10 ~~persons summoned as provided in Article 34.04~~].

11 SECTION 5. Article 35.15(b), Code of Criminal Procedure, is
12 amended to read as follows:

13 (b) In [~~non-capital~~] felony cases [~~and in capital cases in~~
14 ~~which the State does not seek the death penalty~~], the State and
15 defendant shall each be entitled to ten peremptory challenges. If
16 two or more defendants are tried together each defendant shall be
17 entitled to six peremptory challenges and the State to six for each
18 defendant.

19 SECTION 6. Article 35.16(b), Code of Criminal Procedure, is
20 amended to read as follows:

21 (b) A challenge for cause may be made by the state [~~State~~]
22 for any of the following reasons:

23 1. That the juror has conscientious scruples in regard
24 to the imposition [~~infliction~~] of a sentence of imprisonment for
25 life without parole [~~the punishment of death for crime,~~] in a
26 capital case[~~, where the State is seeking the death penalty~~];

27 2. That the juror [~~he~~] is related within the third

1 degree of consanguinity or affinity, as determined under Chapter
2 573, Government Code, to the defendant; and

3 3. That the juror [~~he~~] has a bias or prejudice against
4 any phase of the law upon which the state [~~State~~] is entitled to
5 rely for conviction or punishment.

6 SECTION 7. Article 35.17, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 35.17. VOIR DIRE EXAMINATION

9 [1]. When the court in its discretion so directs, [~~except as~~
10 ~~provided in Section 2,~~] the state and defendant shall conduct the
11 voir dire examination of prospective jurors in the presence of the
12 entire panel.

13 [~~2. In a capital felony case in which the State seeks the~~
14 ~~death penalty, the court shall propound to the entire panel of~~
15 ~~prospective jurors questions concerning the principles, as~~
16 ~~applicable to the case on trial, of reasonable doubt, burden of~~
17 ~~proof, return of indictment by grand jury, presumption of~~
18 ~~innocence, and opinion. Then, on demand of the State or defendant,~~
19 ~~either is entitled to examine each juror on voir dire individually~~
20 ~~and apart from the entire panel, and may further question the juror~~
21 ~~on the principles propounded by the court.]~~

22 SECTION 8. Article 35.25, Code of Criminal Procedure, is
23 amended to read as follows:

24 Art. 35.25. MAKING PEREMPTORY CHALLENGE. The [~~In~~
25 ~~non-capital cases and in capital cases in which the State's~~
26 ~~attorney has announced that he will not qualify the jury for, or~~
27 ~~seek the death penalty, the]~~ party desiring to challenge any juror

1 peremptorily shall strike the name of such juror from the list
2 furnished the party [~~him~~] by the clerk.

3 SECTION 9. Article 35.26, Code of Criminal Procedure, is
4 amended to read as follows:

5 Art. 35.26. LISTS RETURNED TO CLERK. [~~(a)~~] When the parties
6 have made or declined to make their peremptory challenges, they
7 shall deliver their lists to the clerk. The [~~Except as provided in~~
8 ~~Subsection (b) of this section, the~~] clerk shall, if the case be in
9 the district court, call off the first twelve names on the lists
10 that have not been stricken. If the case be in the county court, the
11 clerk [~~he~~] shall call off the first six names on the lists that have
12 not been stricken. Those whose names are called shall be the jury.

13 [~~(b) In a capital case in which the state seeks the death~~
14 ~~penalty, the court may direct that two alternate jurors be selected~~
15 ~~and that the first fourteen names not stricken be called off by the~~
16 ~~clerk. The last two names to be called are the alternate jurors.]~~

17 SECTION 10. Article 36.29(a), Code of Criminal Procedure,
18 is amended to read as follows:

19 (a) Not less than twelve jurors can render and return a
20 verdict in a felony case. It must be concurred in by each juror and
21 signed by the foreman. After [~~Except as provided in Subsection (b),~~
22 ~~however, after~~] the trial of any felony case begins and a juror dies
23 or, as determined by the judge, becomes disabled from sitting at any
24 time before the charge of the court is read to the jury, the
25 remainder of the jury shall have the power to render the verdict;
26 but when the verdict shall be rendered by less than the whole
27 number, it shall be signed by every member of the jury concurring in

1 it.

2 SECTION 11. Section 2(b), Article 37.07, Code of Criminal
3 Procedure, is amended to read as follows:

4 (b) If [~~Except as provided by Article 37.071 or 37.072, if~~]
5 a finding of guilty is returned, it shall then be the responsibility
6 of the judge to assess the punishment applicable to the offense;
7 provided, however, that (1) in any criminal action where the jury
8 may recommend community supervision and the defendant filed his
9 sworn motion for community supervision before the trial began, and
10 (2) in other cases where the defendant so elects in writing before
11 the commencement of the voir dire examination of the jury panel, the
12 punishment shall be assessed by the same jury, except as provided in
13 Section 3(c) of this article and in Article 44.29. If a finding of
14 guilty is returned, the defendant may, with the consent of the
15 attorney for the state, change his election of one who assesses the
16 punishment.

17 SECTION 12. Section 1, Article 42.01, Code of Criminal
18 Procedure, is amended to read as follows:

19 Sec. 1. A judgment is the written declaration of the court
20 signed by the trial judge and entered of record showing the
21 conviction or acquittal of the defendant. The sentence served shall
22 be based on the information contained in the judgment. The judgment
23 shall reflect:

- 24 1. The title and number of the case;
- 25 2. That the case was called and the parties appeared,
26 naming the attorney for the state, the defendant, and the attorney
27 for the defendant, or, where a defendant is not represented by

1 counsel, that the defendant knowingly, intelligently, and
2 voluntarily waived the right to representation by counsel;

3 3. The plea or pleas of the defendant to the offense
4 charged;

5 4. Whether the case was tried before a jury or a jury
6 was waived;

7 5. The submission of the evidence, if any;

8 6. In cases tried before a jury that the jury was
9 charged by the court;

10 7. The verdict or verdicts of the jury or the finding
11 or findings of the court;

12 8. In the event of a conviction that the defendant is
13 adjudged guilty of the offense as found by the verdict of the jury
14 or the finding of the court, and that the defendant be punished in
15 accordance with the jury's verdict or the court's finding as to the
16 proper punishment;

17 9. In the event of conviction where [~~death or~~] any
18 punishment is assessed that the defendant be sentenced to [~~death,~~
19 a term of confinement or community supervision, or to pay a fine, as
20 the case may be;

21 10. In the event of conviction where the imposition of
22 sentence is suspended and the defendant is placed on community
23 supervision, setting forth the punishment assessed, the length of
24 community supervision, and the conditions of community
25 supervision;

26 11. In the event of acquittal that the defendant be
27 discharged;

1 12. The county and court in which the case was tried
2 and, if there was a change of venue in the case, the name of the
3 county in which the prosecution was originated;

4 13. The offense or offenses for which the defendant
5 was convicted;

6 14. The date of the offense or offenses and degree of
7 offense for which the defendant was convicted;

8 15. The term of sentence;

9 16. The date judgment is entered;

10 17. The date sentence is imposed;

11 18. The date sentence is to commence and any credit for
12 time served;

13 19. The terms of any order entered pursuant to Article
14 [42.08](#) that the defendant's sentence is to run cumulatively or
15 concurrently with another sentence or sentences;

16 20. The terms of any plea bargain;

17 21. Affirmative findings entered pursuant to Article
18 [42A.054](#)(c) or (d);

19 22. The terms of any fee payment ordered under Article
20 [42.151](#);

21 23. The defendant's thumbprint taken in accordance
22 with Article [38.33](#);

23 24. In the event that the judge orders the defendant to
24 repay a reward or part of a reward under Articles [37.073](#) and [42.152](#),
25 a statement of the amount of the payment or payments required to be
26 made;

27 25. In the event that the court orders restitution to

1 be paid to the victim, a statement of the amount of restitution
2 ordered and:

3 (A) the name and address of a person or agency
4 that will accept and forward restitution payments to the victim; or

5 (B) if the court specifically elects to have
6 payments made directly to the crime victim, the name and permanent
7 address of the victim at the time of judgment;

8 26. In the event that a presentence investigation is
9 required by Subchapter F, Chapter 42A, a statement that the
10 presentence investigation was done according to the applicable
11 provision;

12 27. In the event of conviction of an offense for which
13 registration as a sex offender is required under Chapter 62, a
14 statement that the registration requirement of that chapter applies
15 to the defendant and a statement of the age of the victim of the
16 offense;

17 28. The defendant's state identification number
18 required by Article 66.152(a)(2), if that number has been assigned
19 at the time of the judgment; and

20 29. The incident number required by Article
21 66.152(a)(4), if that number has been assigned at the time of the
22 judgment.

23 SECTION 13. Section 557.012(b), Government Code, is amended
24 to read as follows:

25 (b) An offense under this section is punishable by[+
26 [~~1~~] death, or
27 [~~2~~] confinement in the Texas Department of Criminal

1 Justice for:

2 (1) [~~(A)~~] life; or

3 (2) [~~(B)~~] a term of not less than two years.

4 SECTION 14. The following provisions of the Code of
5 Criminal Procedure are repealed:

6 (1) Article 34.04;

7 (2) Articles 35.13 and 35.15(a);

8 (3) Article 36.29(b);

9 (4) Articles 37.071, 37.0711, and 37.072;

10 (5) Articles 38.43(i), (j), (k), (l), and (m);

11 (6) Article 42.04; and

12 (7) Article 46.05.

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

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

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

20 SECTION 16. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2021.