

By: J. Johnson of Harris

H.B. No. 838

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 by adding Subsection (c) to read as follows:

(c) 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 innocence stage permitted the jury to find the defendant guilty as a party under Sections 7.01 and 7.02, Penal Code, whether the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another or anticipated that a human life would be~~

1 ~~taken~~].

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

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

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

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

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

20 (g) If the jury returns an affirmative finding on the [~~each~~]
21 issue submitted under Subsection (b) and a negative finding on the
22 [~~an~~] issue submitted under Subsection (e)(1), the court shall
23 sentence the defendant to death. If the jury returns a negative
24 finding on the [~~any~~] issue submitted under Subsection (b) or an
25 affirmative finding on the [~~an~~] issue submitted under Subsection
26 (e)(1) or is unable to answer an [~~any~~] issue submitted under
27 Subsection (b) or (e), the court shall sentence the defendant to

1 confinement in the Texas Department of Criminal Justice for life
2 imprisonment without parole.

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

5 (1) The court shall instruct the jury that if the jury
6 returns an affirmative finding to the ~~[each]~~ issue submitted under
7 Subsection (b), it shall determine whether ~~[answer the following~~
8 ~~issue:~~

9 ~~[Whether]~~, taking into consideration all of the evidence,
10 including the circumstances of the offense, the defendant's
11 character and background, and the personal moral culpability of the
12 defendant, there is a sufficient mitigating circumstance or
13 circumstances to warrant that a sentence of life imprisonment
14 without parole rather than a death sentence be imposed.

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

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

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

24 SECTION 5. The change in law made by this Act applies to a
25 criminal proceeding that commences on or after the effective date
26 of this Act. A criminal proceeding that commences before the
27 effective date of this Act is governed by the law in effect on the

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1 date the proceeding commenced, and the former law is continued in
2 effect for that purpose.

3 SECTION 6. This Act takes effect September 1, 2021.