

## **BILL ANALYSIS**

H.B. 1736  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In the American justice system, criminal punishments are generally calibrated by considering factors such as the severity of the offender's conduct, the harm it caused, and the offender's culpable mental state. Yet state law also allows courts to convict individuals of an offense that was committed by someone else, which is also known as the "conspirator-party rule" or the "law of parties." The law provides that in a conspiracy to commit a felony in which another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed if the offense was in furtherance of the unlawful purpose and should have been anticipated as a result of carrying out the conspiracy, regardless of whether the offender was, in fact, aware of the possibility. H.B. 1736 seeks to address this issue with respect to capital murder by setting out a two-step approach relating to the criminal liability and sentencing of conspirators in a capital murder case under the law of parties by first requiring that a conspirator meet certain conditions in order to be convicted of capital murder. Secondly, in order to impose a death sentence, the jury must find that the conspirator actually caused the death of the victim or did not actually cause the death but intended to kill the victim or another.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 1736 amends the Penal Code to establish that a conspirator is guilty under the law of parties of capital murder committed by a coconspirator in the attempt to carry out a conspiracy to commit another felony, though having no intent to commit the capital murder, only under the following conditions:

- the conspirator is a major participant in the conspiracy;
- in attempting to carry out the conspiracy, the conspirator acts with reckless indifference to human life; and
- the capital murder was committed in furtherance of the unlawful purpose of the conspiracy.

The bill establishes the actions that render the conspirator a major participant and the conditions under which the conspirator acts with reckless indifference to human life.

H.B. 1736 amends the Code of Criminal Procedure to remove as an issue to be considered by a jury in deliberating on the imposition of the death penalty in a capital case for a defendant who is found guilty under the law of parties the issue of whether the defendant anticipated that a human life would be taken. Accordingly, a finding of such anticipation may no longer be made by a jury imposing the death penalty for a defendant found guilty under the law of parties as an alternative to the requisite finding that the defendant actually caused the death of the deceased or intended to kill the deceased or another.

H.B. 1736 amends the Government Code to require the Board of Pardons and Paroles, not later than January 1, 2024, to review the criminal conviction of each inmate who is serving a death sentence after having been found guilty under the law of parties regarding the commission of a felony other than the attempted felony in order to identify appropriate inmates to recommend to the governor for the purposes of granting clemency. This requirement expires September 1, 2024.

H.B. 1736 applies only to the prosecution of an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

**EFFECTIVE DATE**

September 1, 2023.