

By: Leach

H.B. No. 1736

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the extent of a defendant's criminal responsibility for  
3 the conduct of a coconspirator in a capital murder case and the  
4 review of certain convictions by the Board of Pardons and Paroles.

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

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

8 (b) On conclusion of the presentation of the evidence, the  
9 court shall submit the following issues to the jury:

10 (1) whether there is a probability that the defendant  
11 would commit criminal acts of violence that would constitute a  
12 continuing threat to society; and

13 (2) in cases in which the jury charge at the guilt or  
14 innocence stage permitted the jury to find the defendant guilty as a  
15 party under Sections 7.01 and 7.02, Penal Code, whether the  
16 defendant actually caused the death of the deceased or did not  
17 actually cause the death of the deceased but intended to kill the  
18 deceased or another [~~or anticipated that a human life would be~~  
19 ~~taken~~].

20 SECTION 2. Section 7.02(b), Penal Code, is amended to read  
21 as follows:

22 (b) If, in the attempt to carry out a conspiracy to commit  
23 one felony, another felony is committed by one of the conspirators,  
24 all conspirators are guilty of the felony actually committed,

1 though having no intent to commit it, provided that [~~if~~] the offense  
2 was committed in furtherance of the unlawful purpose and was one  
3 that should have been anticipated as a result of the carrying out of  
4 the conspiracy. This subsection does not apply to the prosecution  
5 of the offense of capital murder.

6 SECTION 3. Subchapter A, Chapter 7, Penal Code, is amended  
7 by adding Section 7.021 to read as follows:

8 Sec. 7.021. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER  
9 CONSPIRATOR IN CAPITAL MURDER CASES. (a) If, in the attempt to  
10 carry out a conspiracy to commit one felony, a capital murder is  
11 committed by one of the conspirators, a conspirator is guilty of the  
12 capital murder, though having no intent to commit it, provided  
13 that:

14 (1) the conspirator is a major participant in the  
15 conspiracy;

16 (2) in attempting to carry out the conspiracy, the  
17 conspirator acts with reckless indifference to human life; and

18 (3) the capital murder was committed in furtherance of  
19 the unlawful purpose of the conspiracy.

20 (b) For purposes of Subsection (a):

21 (1) a conspirator is a major participant if the  
22 conspirator plans, organizes, directs, or otherwise substantially  
23 participates in the specific conduct that results in the death of a  
24 victim; and

25 (2) a conspirator acts with reckless indifference to  
26 human life if the conspirator is aware of but consciously  
27 disregards a substantial and unjustifiable risk that another

1 conspirator intends to commit an act that is clearly dangerous to  
2 human life.

3 SECTION 4. Subchapter B, Chapter 508, Government Code, is  
4 amended by adding Section 508.0501 to read as follows:

5 Sec. 508.0501. REQUIRED REVIEW OF CERTAIN CONVICTIONS. (a)  
6 Not later than January 1, 2024, the board shall review the criminal  
7 conviction of each inmate who is serving a sentence of death after  
8 having been found guilty only as a party under Section 7.02(b),  
9 Penal Code, to identify appropriate inmates to recommend to the  
10 governor for purposes of granting clemency.

11 (b) This section expires September 1, 2024.

12 SECTION 5. The change in law made by this Act applies only  
13 to the prosecution of an offense committed on or after the effective  
14 date of this Act. The prosecution of an offense committed before the  
15 effective date of this Act is governed by the law in effect on the  
16 date the offense was committed, and the former law is continued in  
17 effect for that purpose. For purposes of this section, an offense  
18 was committed before the effective date of this Act if any element  
19 of the offense occurred before that date.

20 SECTION 6. This Act takes effect September 1, 2023.