

SUBJECT: Life in prison for capital felony by those 17 years old at time of offense

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody,  
Schaefer, Toth

0 nays

SENATE VOTE: On final passage, March 27 — 30-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion, HB 901)*

For — Justin Wood, Harris County District Attorney's Office; Tuck  
Mclain, *(Registered, but did not testify: Brian Eppes, Tarrant County  
District Attorney's Office)*

Against — *(Registered, but did not testify: Lauren Rose, Texans Care For  
Children)*

On — *(Registered, but did not testify: Shannon Edmonds, Texas District  
and County Attorneys Association)*

BACKGROUND: Under Family Code, sec. 54.02, juvenile courts may transfer certain  
juveniles to adult court for prosecution. In the case of capital murder, this  
applies to juveniles who are 14, 15, and 16 years old. Those who are 17  
years old are considered adults and tried in the adult system.

Those 14, 15, and 16 years old who have their cases transferred to adult  
court can receive only a sentence of life in prison, which carries with it the  
possibility of parole. They must serve 40 calendar years in prison, without  
consideration of good conduct time, before being eligible to be considered  
for parole.

Those 17 years old and older fall under the punishments available for all  
other capital murders: death or life without parole. However, the U.S.  
Supreme Court has held that the Eighth and Fourteenth amendments to the  
U.S. Constitution forbid the death penalty for offenders who were younger  
than 18 years old when their crimes were committed and that the Eighth

Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders.

**DIGEST:** SB 187 would require sentences of life in prison for all those convicted of a capital felony who were younger than 18 years old when the crime was committed.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. It would apply to cases pending, on appeal, or begun on or after the bill's effective date.

**SUPPORTERS SAY:** SB 187 would bring Texas into compliance with a U.S. Supreme Court ruling that forbids mandatory life without parole for capital murder offenders who are younger than 18.

Under Texas statutes, 17-year-olds convicted of capital murder fall under the adult criminal justice system, which makes them eligible either for the death penalty or life without parole. However, the death penalty was eliminated as an option when the U.S. Supreme Court ruled in 2005 in *Roper v. Simmons* that the Eighth and Fourteenth amendments forbid the imposition of the death penalty for offenders who were younger than 18 years old when their crimes were committed. This left life without parole as the only punishment option for 17-year-olds who commit capital murder in Texas.

In 2012, the U.S. Supreme Court made another decision affecting the Texas sentencing structure under which life without parole is the only option for 17-year-olds. The court ruled in *Miller v. Alabama* that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders. The U.S. Supreme Court defines juveniles as younger than 18 years old, which means that the 17-year-olds in Texas are included in that prohibition.

This has resulted in there being no punishment available for 17-year-olds convicted of capital murder. Cases have been put on hold, and courts are waiting for legislative direction. In some cases, prosecutors are charging these juveniles with lesser offenses, such as murder or aggravated robbery. This sets up an inequitable situation in which these 17-year-old offenders would become eligible for parole much sooner than younger teens convicted of capital murder who must serve 40 years before being eligible

for parole.

SB 187 would address this situation by instituting a sentence of life in prison for these 17-year-olds. This would be the same sentence available for defendants ranging from 14 to 16 years of age who had their cases transferred to adult courts. The bill would meet the requirements of the U.S. Supreme Court rulings and allow these cases in Texas to move forward. Adult defendants, including those at least 18 years old, could continue to be sentenced to death or life without parole upon conviction of capital murder.

SB 187 should not be used to institute a unique punishment scheme only for 17-year-olds convicted of capital murder, nor should it be used to revise the entire punishment structure for 14, 15, and 16 year olds who commit capital murder and are punished in the adult system. This narrowly drawn bill would be designed only to address the gap in Texas law resulting from the Supreme Court decision. It would meet the court's prohibition on mandatory life without parole by working within the current sentencing structure to implement a life sentence for those who were 17 years old and committed capital murder offender.

**OPPONENTS  
SAY:**

The state should not respond to the 2012 U.S. Supreme Court decision by instituting a mandatory life sentence for 17-year-olds convicted of capital murder. Replacing one mandatory sentence with another mandatory sentence would not meet requirements for individualized sentencing. Instead, the state should develop individualized sentencing for all those younger than 18 who commit capital murder. This would allow courts to take into account the unique characteristics of a young offender and to institute more judicial discretion in sentencing all those convicted of capital murder who are younger than 18 years old.