

**SUBJECT:** Revising law of parties in capital murder cases seeking death penalty

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Collier, K. Bell, Cason, Crockett, Hinojosa, A. Johnson, Vasut  
2 nays — Cook, Murr

**WITNESSES:** For — Terri Been and Bella Sanford, Save Jeff Wood Campaign; Rachana Chhin, Texas Catholic Conference of Bishops; Allen Place, Texas Criminal Defense Lawyers Association; Becky Haigler, Texas Inmate Families Association; Amanda Marzullo; (*Registered, but did not testify:* Lauren Johnson, ACLU of Texas; Greg Glod, Americans For Prosperity; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Scott Henson, Just Liberty; Delia Perez Meyer, Secretary for Texas Moratorium Network; Maggie Luna, Statewide Leadership Council; Amanda List, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Derek Cohen, Texas Public Policy Foundation; Doug Deason; Zoe Russell)

Against — (*Registered, but did not testify:* Frederick Frazier, Dallas Police Association/FOP716 State FOP; Ray Hunt, HPOU; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Lindy Borchardt, Sharen Wilson, Tarrant County Criminal District Attorney; Jacob Putman, Smith County Criminal District Attorney's Office; John Wilkerson, Texas Municipal Police Association; Deana Johnston)

On — Benjamin Wolff, Office of Capital and Forensic Writs

**BACKGROUND:** Penal Code sec. 7.02 defines four types of actions that can result in a person being held criminally responsible for the actions of another person, often referred to as the law of parties. The actions fall into two broad areas: the liability of accomplices under sec. 7.02(a) and the liability of conspirators under sec. 7.02(b). Under the conspirator liability provisions,

if persons conspire to commit a serious crime and, in the process of committing the crime, one of them commits another crime that should have been anticipated, all parties can be guilty of the crime actually committed, even though they did not intend to commit it. Those who are charged under the law of parties are charged with the actual crime committed.

Code of Criminal Procedure art. 37.071, sec. 2 outlines sentencing procedures in capital felony cases in which the state is seeking the death penalty. After a guilty verdict, courts must conduct a separate proceeding to determine if the defendant will be sentenced to death or life in prison without parole. After evidence is presented, courts are required to ask the jury two questions, one of which applies in cases in which the charge to the jury in the guilt or innocent phase allowed the jury to find the defendant guilty under the law of parties. In such cases the court is required to ask the jury whether the defendant actually caused the death or did not actually cause the death but intended to kill the deceased or another or anticipated that a human life would be taken.

**DIGEST:**

CSHB 1340 would create new provisions governing criminal responsibility for another's conduct in capital murder cases that fall under Penal Code sec. 7.02(b), the conspirator liability statute.

Under certain circumstances, an individual conspirator would be guilty of capital murder as a party to the offense if in the attempt to carry out a conspiracy to commit one felony, a capital murder was committed by one of the other conspirators, even though there was no intent to commit it, if:

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

A conspirator would be considered a major participant if the conspirator planned, organized, directed, or otherwise substantially participated in the

specific conduct that resulted in a victim's death. A conspirator would be considered to be acting with reckless indifference to human life if the conspirator was aware of but consciously disregarded a substantial and unjustifiable risk that another conspirator intended to commit an act that was clearly dangerous to human life.

Courts would no longer be required to ask juries in the sentencing phase of capital murder cases involving the law of parties whether the defendant anticipated that a human life would be taken.

The bill would take effect September 1, 2021, and would apply to the prosecution of offenses committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1340 would address the most troubling aspect of the state's law of parties by limiting the death penalty in certain cases to ones in which an individual was a major participant and acted with reckless indifference to human life. Current law allows individuals to be found guilty of capital murder and be eligible for a death sentence if certain conditions are met and the person should have anticipated the murder.

The cases of Jeffery Wood and others have called attention to deficiencies in Texas' law of parties. The conspirator liability provisions of the law of parties have been used to obtain death sentences in this and other cases in which accomplices, such as lookouts or getaway drivers, were not directly involved in the capital murder and did not kill or intend to kill, but were convicted because they should have anticipated the murder. Such conjecture about what was on someone's mind should not be used to make someone eligible for a death sentence.

Current law violates the concept that punishment for a crime should be in proportion to a person's actions and culpability. The death penalty should be reserved for the worst of the worst, and this principle is violated by allowing a death sentence for conspirators who did not kill, were not major participants, and did not act with reckless indifference. The bill is narrowly drawn to apply only to capital murder and to eliminate only the criteria regarding whether someone "should have anticipated" that a life

would be taken. Death sentences could still be imposed for conspirators if they met both the criteria in the bill and current provisions requiring the jury to determine the defendant actually caused the death or intended to kill. Other individuals not meeting the criteria in the bill but who were found guilty of murder under the law of parties could still be held accountable and sentenced appropriately.

The bill would leave other parts of the law of parties intact and would put the Texas criminal justice system in step with court rulings by stating that an accomplice must have been a major participant in underlying conspiracy and must have acted with reckless indifference to human life. Juries would continue to play their role in deciding cases and those guilty of capital murder would continue to receive appropriate punishments.

CRITICS  
SAY:

There are situations in which a death sentence reached under the current law of parties would be justified, and changes should not be made that would reduce the ability of the criminal justice system to address these situations.

In these situations, as in any case in which the death penalty is sought, it is juries that examine the specific facts and decide if capital punishment is warranted, and CSHB 1340 would step into the province of these juries. In past cases, some juries have decided that a defendant's participation as a party warranted the death penalty.