SUBJECT: Life in prison, with possible parole, for a capital felony by a 17-year-old

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Carter, Leach, Moody, Schaefer

1 nay — Canales

3 absent — Burnam, Hughes, Toth

WITNESSES: For — Shannon Edmonds, Texas District and County Attorneys Association; Tuck McLain, Grimes County District Attorney; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Bob Odom, representing Bell County District Attorney Henry Garza)

Against — Rebecca Bernhardt, Texas Defenders Service; David Gonzalez, Texas Criminal Defense Lawyers Association; Lauren Rose, Texans Care for Children; Winston Cochran; (*Registered, but did not testify:* Mercadi Crawford, Texas Criminal Justice Coalition; Natalie Kato, Human Rights Watch; DeAndrea Petty, Texas Appleseed; Devon Howard; Lindsay Ochoa; Elizabeth Riebschlaeger)

BACKGROUND: Capital murder is defined by Penal Code, sec. 19.03 as murder in a specific situation or of a specific type of person. The section lists nine types of capital murder.

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.

Under Penal Code, sec. 12.31(a)(1), those 14, 15, and 16 years old who have their cases transferred to adult court can receive for capital murder only a sentence of life in prison, which carries with it the possibility of parole. Under Government Code, sec. 508.145(b), 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 they committed their crimes and that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders.

DIGEST:

HB 4 would impose a sentence of life in prison, with the possibility of parole, for a person convicted of a capital felony committed when the person was 17 years old.

The 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 on the 91st day after the last day of the second called session (October 29, 2013, if both houses adjourn sine die on July 30). It would apply to cases pending, on appeal, or begun on or after the bill's effective date, regardless of whether the offense was committed before, on, or after that date. It would not affect final convictions existing on the bill's effective date.

SUPPORTERS SAY:

HB 4 would bring Texas into compliance with a recent U.S. Supreme Court ruling that forbids a mandatory life-without-parole sentence for capital murder offenders younger than 18. It would remedy a situation created by the ruling in which Texas has no available punishment for a person convicted of committing capital murder at age 17.

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 for a sentence of life without parole. However, the death penalty was eliminated as an option in 2005 when the U.S. Supreme Court ruled in *Roper v. Simmons* that the Eighth and Fourteenth amendments to the U.S. Constitution 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 convicted of capital murder in Texas.

In 2012, the Supreme Court issued another decision affecting the Texas sentencing structure when the court ruled in *Miller v. Alabama* that the Eighth Amendment forbids a sentencing scheme that mandates life without parole for juvenile homicide offenders. The U.S. Supreme Court defines a juvenile as a person younger than 18 years old, which means that

17-year-olds in Texas are included in that prohibition. The decision resulted in no punishment being available for 17-year-olds convicted in Texas of capital murder.

Since the *Miller* decision, dozens of cases involving 17-year-olds charged with capital murder have been placed on hold, which has left courts awaiting legislative direction, the accused awaiting trial, and victims awaiting justice. In the meantime, capital murder prosecutions have proceeded for adults and for 14-, 15-, and 16-year-olds certified to stand trial as adults, while trials for 17-year-olds charged with capital murder have been stymied.

In other cases of capital murder with a 17-year-old defendant, prosecutors have tried the crimes as lesser offenses, such as murder or aggravated robbery, which can carry punishments ranging from five to 99 years to life in prison. This can result in inadequate punishment for someone who committed the horrible crime of capital murder. It also is unfair, given that these offenses are serious enough to warrant the death penalty if committed by someone at least 18 years old and a life sentence if committed by a youth tried as an adult. In addition, if convicted of a lesser offense, a 17-year-old would become eligible for parole much sooner than a younger teen convicted as an adult of capital murder, who must serve 40 years before becoming eligible for parole.

The bill would address this situation by instituting a sentence of life in prison for 17-year-olds convicted of capital murder, making this punishment consistent with the penalty for younger teens tried as adults for this crime. Enacting a punishment consistent with current law, rather than developing a unique sentence for 17-year-olds, would be the fairest and most logical course of action and would avoid drawing an unfair distinction in punishment for one narrow group of offenders. It also would help minimize confusion when implementing the law and dealing with court challenges to the changes.

HB 4 would meet the requirements of the U.S. Supreme Court ruling in *Miller*, which was narrowly drawn and said that a person younger than 18 years old who is convicted of capital murder cannot be given a mandatory sentence of life without parole. The decision does not restrict a state from applying another mandatory punishment and does not require the use of a specific sentencing process with the type of punishment that would be imposed by HB 4.

HB 4 also would be in line with the court's discussion by allowing 17-year-old offenders the same meaningful opportunity for release currently given to younger teen offenders through parole eligibility after serving 40 years in prison. For many years Texas courts have been successfully issuing life sentences requiring 40 years before parole eligibility to younger teens who stand trial as adults, and extending this sentence to those who were 17 at the time of a capital murder would withstand legal challenges.

The bill would respect Texas' current sentencing laws and its tradition of punishing capital murder with the most severe sentence available, instead of within a punishment range. This is appropriate given the nature of capital murder, which involves murder enhanced by another factor, such as the murder of a peace officer or multiple victims. All capital murders are serious enough to warrant a mandatory life sentence. Allowing for a lesser punishment than life in prison by instituting a range of possible prison terms with parole eligibility sooner than the 40 years could result in a capital murder being punished more leniently than other crimes.

By imposing a life sentence, rather than a choice of life or life-without-parole, the bill would impose the lower end of the acceptable punishment range so there would be no need for courts to have another proceeding to hear additional, mitigating information.

HB 4 would not change the current ability of courts to decide guilt or innocence and to make distinctions among defendants with different levels of involvement in a crime. Judges and juries that decided a defendant was not guilty of capital murder could convict the defendant of a lesser, but included, charge. For example, a defendant tried for capital murder that involved aggravated robbery could be convicted of the aggravated robbery instead of the capital felony.

The state would retain the ability to appropriately punish rare cases in which 17-year-olds committed multiple or mass killings. In those cases, separate trials could be held for individual victims and sentences served consecutively so that an offender could effectively receive life without parole.

Instituting a new punishment scheme for juveniles or a unique punishment for 17-year-olds who commit capital murder would be outside the scope of

the governor's call for this special session, which is narrowly tailored to legislation relating to establishing a mandatory sentence of life with parole for a capital felony committed by a 17-year-old offender. If the Legislature wishes to address the bigger picture of the punishment of youths convicted of capital murder, it would be best to thoroughly study these issues during the interim and debate them in the future.

OPPONENTS SAY:

The state should not respond to the *Miller* decision by instituting a mandatory life sentence for 17-year-olds convicted of capital murder. Replacing one mandatory sentence with another mandatory sentence that is the maximum allowed for these offenders would not address the need for individualized sentencing discussed in the *Miller* decision and would extend a flawed sentencing scheme used for younger offenders. The underlying message of *Miller* is that the state should not continue to mandatorily impose the harshest sentence available on a set of juvenile homicide offenders.

Instead, the state should institute a punishment scheme that uses individualized sentencing for those who are 17 years old and convicted of capital murder, as well as for 14-, 15-, and 16-year-olds tried as adults for capital murder. This would allow for the recognition by juries and judges of the unique characteristics of young offenders, such as maturity level, sense of responsibility, vulnerability to influence and pressure, and the possibility for rehabilitation. While all capital murders are heinous crimes that deserve serious punishment, individualized punishments should be considered because all cases and offenders may not be equal.

Under this type of sentencing structure, the Legislature could establish the appropriate sentencing range for youths convicted of capital murder, and judges and juries could assess penalties within the range so that cases were handled appropriately and justice served. For example, sentences could range from a minimum punishment up to 99 years in prison, life in prison, or life without parole, and sentences could require that a minimum number of years be served before obtaining parole eligibility. Judges and juries could hear the facts of a case and consider mitigating factors, and the most horrific cases could receive the stiffest penalties, such as life without parole, while other offenders could be punished in a manner commensurate with the nature of their crimes.

HB 4 would not meet the need to institute a punishment system that allowed for mitigating information, such as maturity level, about a person

who committed capital murder when 17 years old to be heard by a court and placed in the record where it could be considered at a later parole hearing. Under current law this type of information can come to light when a 14-, 15-, or 16-year-old is certified to stand trial as an adult, but there would be no opportunity under HB 4 for the court to consider or the record to reflect particular circumstances or characteristics in a case involving an accused 17-year-old while witnesses were available and memories fresh.

HB 4 and the current Texas sentencing structure also are out of step with the *Miller* decision because a life sentence could effectively function as life without parole. Under a life sentence, parole is considered only after 40 years in prison and given the low life expectancy rate for prisoners, even for someone convicted as a teenager, a life sentence could equal life without parole and deny the inmate a meaningful opportunity for release. Parole eligibility does not mean a person will be released on parole, and because the likelihood of a capital murderer receiving parole is low, HB 4 could be considered the equivalent of life without parole. A minimum term, such as 25 to 30 years, before parole eligibility could be instituted would provide an appropriately harsh punishment while meeting the requirements of *Miller*.

OTHER OPPONENTS SAY:

The state should not abandon the punishment of life without parole for 17-year-olds convicted of capital murder. A sentencing structure allowing life without parole, as well as life in prison, would both recognize that these are heinous crimes — some of which merit life without parole — and meet constitutional requirements that life without parole not be imposed mandatorily.

NOTES:

During the 83rd Legislature's regular session, the Senate approved an identical bill, SB 187 by Huffman. It was placed on the May 21 General State Calendar but never considered.

During the 83rd Legislature's first called session, the Senate approved an identical bill, SB 23 by Huffman. The House amended the bill on second reading to impose a punishment of either life in prison with the possibility of parole or life without parole for those convicted of capital murder committed when they were 17 years old. SB 23 died in the Senate.