

## **BILL ANALYSIS**

Senate Research Center

H.B. 2267  
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Criminal Justice  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law allows accomplices to capital murder to receive the death penalty. Under the Texas law of parties, if a person conspires to commit a serious crime, and in the process of committing that crime commits another crime that should have been anticipated, all the parties can be found guilty of the crime committed, even though they did not intend to commit the crime.

The recent cases of Kenneth Foster and Jeffery Wood have called attention to Section 7.02(b), Penal Code (relating to the Texas law of parties). The Foster case received particular attention partly because it resulted in a rare gubernatorial commutation of the death sentence. Foster was sentenced to death for his role in the 1996 capital murder of Michael LaHood, Jr. Foster was driving three friends around San Antonio, Texas, as they committed robberies. One passenger, Mauricio Brown, shot and killed LaHood during what was described as a botched robbery. Foster was tried jointly with Brown, the triggerman, and found guilty of capital murder under the law of parties, with both Foster and Brown receiving death sentences. Brown was executed in 2006, and the two others involved in the crime received life sentences. Just prior to Foster's execution, Governor Rick Perry commuted his sentence from death to life in prison.

Jeffery Wood was convicted for his role in a 1996 robbery-murder. During the planned robbery, Wood was in a truck outside a convenience store in which David Reneau murdered store employee Kriss Keeran. Wood and Reneau were both convicted, and Reneau was executed in 2002. Wood's execution for his role as an accomplice to capital murder was put on hold in August 2008, just before his scheduled execution, when a federal judge issued a stay.

Current law also allows an individual who is charged with a crime involving multiple participants to be joined in the same indictment and ultimately tried in a single trial in which the jury has the responsibility to return a verdict for all defendants. The law provides for severance in cases involving multiple defendants, permitting a defendant in a joint trial to petition the judge to have his or her case severed from that of one or more co-defendants and tried separately, but it is at the judge's discretion to grant severance; the judge is required to do so only if the motion is timely and sufficient evidence exists to show that a joint trial would be prejudicial to any defendant.

In practice, the decision to prosecute multiple defendants in a joint trial often rests with the prosecutor, leaving the defense counsel with the task of proving prejudice if one or more defendants wish to have a particular case severed or tried separately. Courts have found that consolidated proceedings play a vital role in the administration of justice, while defendants often view a joint trial as a source of substantial prejudice in their cases. Recently, there has been particular concern that under Texas law, capital murder defendants may receive the death penalty regardless of who personally committed the murder.

H.B. 2267 mandates separate trials in capital cases and eliminates the death penalty as a punishment option for a person found guilty in a capital felony case under the law of parties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Requires that this Act be known as the Kenneth Foster, Jr., Act.

SECTION 2. Amends Article 36.09, Code of Criminal Procedure, as follows:

Art. 36.09. SEVERANCE ON SEPARATE INDICTMENTS. (a) Creates this subsection from existing text. Makes no changes to this subsection.

(b) Prohibits the court, notwithstanding Subsection (a), from joining two or more defendants in the same criminal trial if any defendant to be tried is indicted or complained against for a capital felony, and requires the court to order a severance as to any two or more defendants who are jointly indicted or complained against for a capital felony.

SECTION 3. Amends Section 1, Article 37.071, Code of Criminal Procedure, as follows:

Sec. 1. (a) Creates this subsection from existing text. Makes no changes to this subsection.

(b) Prohibits a defendant who is found guilty in a capital felony case only as a party under Section 7.02(b) (relating to criminal responsibility for conduct of another), Penal Code, from being sentenced to death, and the state from seeking the death penalty in any case in which the defendant's liability is based solely on that section.

SECTION 4. Amends Section 2, Article 37.0711, Code of Criminal Procedure, as follows:

Sec. 2. (a) Creates this subsection from existing text. Makes no changes to this subsection.

(b) Prohibits a defendant who is found guilty in a capital felony case only as a party under Section 7.02(b), Penal Code, from being sentenced to death, and the state from seeking the death penalty in any case in which the defendant's liability is based solely on that section.

SECTION 5. Makes application of Article 36.09, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 6. Makes application of Section 1, Article 37.071, and Section 2, Article 37.0711, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2009.