

## **BILL ANALYSIS**

Senate Research Center  
81R628 KCR-D

S.B. 839  
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Criminal Justice  
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As Filed

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

In 2005, the 79th Legislature passed S.B. 60, which changed the sentencing options available upon a capital felony conviction. Juries could previously sentence an offender with either the death penalty or life with possibility of parole. Often, neither of these options seemed appropriate given the offender's mental culpability or the heinous nature of the crime committed. The legislature replaced life with the possibility of parole with a mandatory life without parole sentence so capital offenders would never be released from prison. This change has resulted in fewer death sentences and executions for adults in Texas since 2005.

However, because juveniles can sometimes be tried as adults based on their age and offense, they fell under the new sentencing structure. In 2004, the United States Supreme Court ruled in *Roper v. Simmons* that the death penalty could not be applied to juveniles because they are less mentally developed than adults and thus, less culpable for their actions. This meant that for capital crimes, juveniles could only be sentenced to 40 years served before parole consideration (life with possibility of parole). After 2005, the harshest sentence that could be applied to juveniles changed from 40 years served to the sentence of mandatory life without parole.

As proposed, S.B. 839 amends Section 12.31 (Capital Felony), Penal Code, to provide that an individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty is punishable by a life sentence, if the individual's case was transferred to the court under Section 54.02 (Waiver of Jurisdiction and Discretionary Transfer to Criminal Court), Family Code.

### **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. Amends Section 12.31, Penal Code, as follows:

Sec. 12.31. CAPITAL FELONY. (a) Requires an individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty to be punished by imprisonment in the Texas Department of Criminal Justice (TDCJ), rather than the institutional division, for life without parole or by death. Requires an individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty to be punished by imprisonment in TDCJ, rather than the institutional division, for life, if the individual's case was transferred to the court under Section 54.02 (Waiver of Jurisdiction and Discretionary Transfer to Criminal Court), Family Code.

(b) Requires prospective jurors, in a capital felony trial in which the state does not seek the death penalty, to be informed that the state is not seeking the death penalty and that a sentence of life imprisonment is mandatory on conviction of the capital felony, if the case was transferred to the court under Section 54.02.

SECTION 2. Amends Section 508.145, Government Code, by adding Subsection (b) and amending Subsection (d), as follows:

(b) Provides that, except as provided by Subsection (d), an inmate serving a life sentence under Section 12.31(a)(1) (relating to a life sentence, if the individual's case was transferred to the court under Section 54.02, Family Code, Penal Code, for a capital felony is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 40 calendar years.

(d) Provides that an inmate serving a life sentence under Section 12.31(a)(1), Penal Code, for a capital felony who was found guilty as a party to the offense under Section 7.01 (Parties to Offenses) or Section 7.02 (Criminal Responsibility for Conduct of Another), Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.