

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE — SECOND CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

SECOND DAY

(Thursday, July 11, 2013)

The Senate met at 9:12 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Paxton, Rodríguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Pastor Mike Mizell, Bethel Temple, Cleburne, was introduced by Senator Birdwell and offered the invocation as follows:

Heavenly Father, we first and foremost want to thank You for blessing us with another day to behold Your greatness and the splendor of Your creation. Thank You that Your steadfast love never ceases; it never comes to an end but is new every morning. As we gather today, we give thanks to the men and women who gave the ultimate sacrifice so we could be free. It is this freedom that allows us to gather today in our state's Capitol to conduct the affairs of the citizens of Texas as free people. Therefore, I request that You grant wisdom to each of our leaders here today. I ask for wisdom to govern with a righteous and just heart. As Micah wrote, He has shown you, O man, what is good; and what does the Lord require of you but to do justly, to love mercy, and to walk humbly with your God. (Micah 6:8) I lift up each of these legislators and ask that You grant to each a desire to do what is right and just, not just what is expedient. I also ask for a common unity to exist even where there is disagreement as they are here to work for the good of the people of Texas. I pray that the God of all comfort will comfort each of us, and I ask that the peace of God which transcends all understanding would guard our hearts and minds in Christ Jesus. (Philippians 4:7) Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

PHYSICIAN OF THE DAY

Senator Watson was recognized and presented Dr. Lynn Stewart of Austin as the Physician of the Day.

The Senate welcomed Dr. Stewart and thanked her for her participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

The President announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

CONCLUSION OF MORNING CALL

The President at 9:20 a.m. announced the conclusion of morning call.

SENATE JOINT RESOLUTION 1 ON SECOND READING

The President laid before the Senate **SJR 1** by Senator Nichols at this time on its second reading:

SJR 1, Proposing a constitutional amendment to provide for the transfer of certain general revenue to the economic stabilization fund, to provide for the transfer of certain general revenue to the state highway fund and the dedication of that revenue, and to authorize the payment of the principal and interest on certain highway improvement bonds from certain general revenue transferred to the state highway fund.

The resolution was read second time.

Senator Nichols offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **SJR 1** by striking SECTION 4 of the bill (senate committee report, page 2, line 62, through page 3, line 2), substituting the following appropriately numbered SECTION, and renumbering subsequent SECTIONS accordingly:

SECTION __. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 5, 2013. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment providing for the use and dedication of certain money deposited or transferred to the state highway fund to assist in the completion of transportation construction, maintenance, and rehabilitation projects other than toll roads."

The amendment to **SJR 1** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Nichols and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

SJR 1 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment.

SENATE JOINT RESOLUTION 1 ON THIRD READING

Senator Nichols moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SJR 1** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Thursday, July 11, 2013 - 1

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the house to inform the senate that the house has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 4 Guillen

Designating the week beginning September 8, 2013, as Direct Support Professionals Recognition Week in Texas.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 2 ON SECOND READING

The President laid before the Senate **SB 2** by Senator Huffman at this time on its second reading:

SB 2, Relating to the punishment for a capital felony committed by an individual younger than 18 years of age.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Rodríguez.

SENATE BILL 2 ON THIRD READING

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 2** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Rodríguez.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

REASON FOR VOTE

Senator Rodríguez submitted the following reason for vote on **SB 2**:

Although we had ample time to improve this legislation, we did not do so. I voted against S.B. 2 because I believe it is unnecessarily inflexible and takes discretion out of the hands of Texas judges and juries, who are in the best position to judge the merits of each case.

When the Senate Committee on Criminal Justice considered this legislation during the Regular Session and the First Called Special Session, I expressed serious concerns that the proposed legislation did not fully comport with the requirements of the U.S. Supreme Court's decision in *Miller v. Alabama*. I feared that the legislation, if passed, would subject the state to further litigation by continuing a policy of extreme sentences for youthful offenders. However, I initially voted for this legislation during the previous session because it closed a gap in current state law created by the Miller decision that affected 25 pending cases across the state, including one in my district. In *Miller*, the Supreme Court struck down mandatory sentences of life without the possibility of parole for homicide crimes for individuals who were under the age of 18 years at the time of the offense. The decision found mandatory life without the possibility of parole for youthful offenders to violate the 8th Amendment prohibition against cruel and unusual punishment.

S.B. 2 eliminates the sentence of life without the possibility of parole for 17-year old defendants and replaces it with a sentence of life with the possibility of parole after 40 years. During the Senate's consideration of the legislation, I expressed concerns that a minimum sentence of 40 years was in essence a life sentence. The United States Sentencing Commission defines a life sentence as 470 months (or just over 39 years), based on average life expectancy of those serving prison sentences. Hence, the practical reality is that a sentencing option of life with parole eligibility after 40 years is a life without parole sentence.

It is my belief that S.B. 2 would better comply with the requirements of *Miller* if judges and juries are allowed to impose individualized sentences that take into consideration the unique characteristics of youthful offenders, including the defendant's age, family and home environment, the circumstances of the homicide offense, including familial and peer pressure, and other factors. In addition to these mitigating factors, the Supreme Court in *Miller* indicated that a judge or a jury should also be able to weigh the greater likelihood of a young person to be rehabilitated.

However, S.B. 2 does not allow for consideration of any of these factors. As a consequence, I believe it is in contravention of the Supreme Court's opinion in Miller and will likely be held unconstitutional. Instead, in furtherance of the best policies for juveniles in the criminal justice system, the Texas Legislature should establish a meaningful sentencing range and specific guidance for individualized sentencing of youthful offenders.

RODRÍGUEZ

REMARKS ORDERED PRINTED

On motion of Senator Rodríguez and by unanimous consent, the remarks between Senators Huffman and Rodríguez regarding **SB 2** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Rodríguez: Senator Huffman, good morning.

Senator Huffman: Good morning.

Senator Rodríguez: You recall when we had the Senate committee hearing—

Senator Huffman: Yes.

Senator Rodríguez: —on this bill, that I expressed some concerns and reservations about the bill because—

Senator Huffman: Yes.

Senator Rodríguez: —I felt that it didn't fully comport with the Supreme Court decision in Miller.

Senator Huffman: Yes.

Senator Rodríguez: And you remember that, or you might recall that we discussed the possibility of studying the issue of individualized sentencing for juveniles as an interim charge. I think Senator Hinojosa was a proponent of that. Now, your bill would have addressed the gap that exists right now in the sentencing for 17-year-olds by removing life without parole for these individuals and replacing it with a life sentence with parole after a minimum of 40 years, which would have been consistent with the penalty for 14- to 16-year-olds. Isn't that right?

Senator Huffman: Yes.

Senator Rodríguez: Yeah. And is it the goal of this legislation to make Texas law conform to the constitutional requirements sent forth in Miller versus Alabama?

Senator Huffman: Yes.

Senator Rodríguez: And are you familiar with the following quote from Miller, quote, the mandatory penalty schemes at issue here, however, prevent the sentence from considering youth and from assessing whether the youth, whether the law's harshest term of imprisonment proportionately punishes a juvenile offender.

Senator Huffman: Is your question, I'm sorry, am I familiar with that line from this case? From the—

Senator Rodríguez: Yeah.

Senator Huffman: —opinion, yes.

Senator Rodríguez: Yes. So, the court is talking about needing to assess penalties on juveniles that are proportionate to not only the crime but also to other characteristics that the judge, that the court considered. It indicated that judges and juries ought to have more latitude in deciding sentences for juvenile offenders. Is that correct?

Senator Huffman: Well, it has some opinions in the case, but I think the final holding is that they just find the mandatory life without parole the harshest sentence and that was unconstitutional.

Senator Rodríguez: But there's a lot of discussion throughout the opinion about the prior decisions, the Graham decision and others, Roper, where the court has made it very clear that juvenile offenders, given their brain development, given their circumstances, are different as far as sentencing purposes than adult offenders. Isn't that correct?

Senator Huffman: That's correct, and that's why the new law will parole, give them parole eligibility rather than mandate them to a life in prison without any possibility of parole.

Senator Rodríguez: But the parole eligibility is after serving a minimum of 40 years.

Senator Huffman: Yes.

Senator Rodríguez: Is that right?

Senator Huffman: Yes, yes.

Senator Rodríguez: Does your bill include the various criteria set out in Miller relating to youth and change over time?

Senator Huffman: The bill simply puts Texas law in line with current Texas law for 14- to 16-year-olds, which gives a 17-year-old individual convicted of capital felony a possibility of parole after serving 40 years.

Senator Rodríguez: Well, Senator, you—

Senator Huffman: And that is not the harshest penalty under the law. It's not death and it's not life—

Senator Rodríguez: Yes.

Senator Huffman: —mandatory life.

Senator Rodríguez: You had a distinguished career as a jurist, as a judge in Houston. Do you think that juries and judges should be able to consider the unique characteristics of these youthful offenders, along the lines of what the court stated, including the defendant's age, family and home environment, the circumstances of the homicide offense, including familial and peer pressure and other factors?

Senator Huffman: I believe that an individual who is 17 years old who has been convicted of committing a capital crime, that it is an appropriate punishment for them to serve 40 years before they're eligible for parole. At that time, the conclusion of 40 years, then any circumstances that are relevant should be taken into consideration

including the facts of the offense, including attempts at rehabilitation, including any information that the parole board can gather to determine if it is then appropriate to parole the individual.

Senator Rodríguez: Senator Huffman, it's my understanding that other states have responded to the Miller decision by passing their legislation recently. And it's my understanding that Wyoming, for example, abolished the juvenile life without parole and replaced it with 25 years. I also hear that North Carolina did something similar. And more recently, Delaware enacted legislation that also eliminates juvenile life without parole, replacing it with 25 years to life, thus enabling those sentenced to life without parole as juveniles to have a new sentencing hearing under the new sentencing range. Why could we not consider a minimum of 25 years as some of these other states have done, versus the harsher 40 years?

Senator Huffman: In my opinion, 25 years would be too light of a sentence for an individual convicted of committing a capital felony. There's other states that have even gone higher than 40. So, we're actually somewhere in the middle, and I think it's an appropriate place to be. And, again, it, current law in Texas, even younger offenders are at 40 years, so, this simply brings the law together with what current Texas law is. And as you know, the court, the federal courts, the Supreme Court has historically deferred to the states. They set up what the constitutional boundaries are, but basically defer to the state to set up their own sentencing scheme in criminal cases, depending, of course, on constitutionality.

Senator Rodríguez: As you may recall, we had testimony at the committee hearing that the United States Sentencing Commission defines a life sentence as 470 months or just over 39 years based on average life expectancy of those serving prison sentences. You recall that? So, isn't the sentencing scheme of parole after 40 years essentially a life without parole sentence, and therefore not compliant with Miller?

Senator Huffman: I disagree with that analysis. I think if you talk to a 14-, a 16-, or a 17-year-old who's convicted, that they would much rather think that in their mid-50s that they would be eligible for parole rather than to know that they will never be eligible, that they would live their whole life in prison. I think, you know, it's realistic to assume that there will be juveniles who serve out the whole 40 years and in their mid-50s, late 50s will come before a parole board for that parole board to make an assessment of whether there is reasonable, you know, they should be paroled, and it's reasonable to do so.

Senator Rodríguez: Senator Huffman, let me tell you some other factors that trouble me about this particular sentencing, mandatory sentencing scheme that we're talking about, because according to a national survey of the characteristics of youth sentenced to life without parole from 2012, 60 percent of all youths sentenced to life without parole nationwide are Black. A Black youth is twice, two times more likely to receive a life without the possibility of parole sentence if his victim is White. Conversely, if a White youth, a White youth is two times less likely to receive life without parole if his victim is Black. So, if SB 2 becomes law how will the severe racial disparities that have been noted, how will these racial disparities in the application of these severe penalties be addressed for our juveniles?

Senator Huffman: Well, I personally believe that the facts of the offense should dictate whether or not a person is charged with capital murder, doesn't matter what the race or background is of either the victim or the perpetrator, the alleged perpetrator. And that's the way that we should proceed.

Senator Rodríguez: Well, I think that there's been a lot of media accounts about this issue, and, as you know, there's approximately 25 cases pending in our courts right now involving 17-year-olds arrested for capital-eligible crimes in Texas. Of those, at least 13 of these cases involve African Americans, six are Hispanic, and two are White, and although it may not reflect racial discrimination, as you seem to be suggesting, shouldn't we be concerned about the disproportionate impact on Black and Hispanic youth?

Senator Huffman: I think we should be concerned, yes.

Senator Rodríguez: I think we should be concerned, and I think that that's why it's important to study the issue during the interim, and I hope that you will be supportive of that effort in order to shed some more light on how this bill would impact juveniles in our community. And I want to thank you for your responses, Senator, and I know you've been steadfast in your position.

GUEST PRESENTED

Senator Paxton was recognized and introduced to the Senate Rick Santorum, former United States Senator from Pennsylvania.

The Senate welcomed its guest.

CO-AUTHORS OF SENATE BILL 1

On motion of Senator Hegar, Senators Birdwell, Campbell, Lucio, Nelson, Patrick, Paxton, and Taylor will be shown as Co-authors of **SB 1**.

CO-AUTHOR OF SENATE BILL 2

On motion of Senator Huffman, Senator Campbell will be shown as Co-author of **SB 2**.

MOTION TO RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 9:52 a.m. agreed to recess, in memory of Casey Lee Whitley Damen, wife of Jason Damen, former legislative aide to Senator Hegar, pending the introduction of bills and resolutions on first reading, the receipt of messages, and the receipt of committee reports, until 2:00 p.m. tomorrow.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 25 by Davis, In memory of Harry Chester Powell, Jr.

SR 28 by Nichols, In memory of William Riley Boyd, Jr.

SR 32 by Birdwell, In memory of William R. Moody.

Congratulatory Resolutions

SR 26 by Seliger and Duncan, Recognizing James C. Conkwright on the occasion of his retirement.

SR 27 by West, Recognizing Ernestine Doris Barrett on the occasion of her 88th birthday.

SR 29 by Nichols, Recognizing Judy Smith on the occasion of her retirement.

SR 30 by Ellis, Recognizing the Booker T. Washington High School Class of 1963 on the occasion of its 50-year reunion.

SR 31 by Carona, Recognizing TracyLocke on the occasion of its 100th anniversary.

SR 33 by Zaffirini, Recognizing Casa de Misericordia on the occasion of its 15th anniversary.

RECESS

Pursuant to a previously adopted motion, the Senate at 1:00 p.m. Friday, July 12, 2013, recessed, in memory of Casey Lee Whitley Damen, until 2:00 p.m. today.

APPENDIX

COMMITTEE REPORT

The following committee report was received by the Secretary of the Senate:

July 11, 2013

HEALTH AND HUMAN SERVICES — **HB 2**

RESOLUTIONS ENROLLED

July 9, 2013

SR 3, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 12, SR 13, SR 14, SR 15, SR 16, SR 17, SR 18, SR 19, SR 20, SR 21, SR 22, SR 23, SR 24

