

# Texas’s Law of the Parties: An Explainer

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## *How Texas’s Law of the Parties Has Caused People to Spend Decades in Prison—and Even Be Sentenced to Death and Executed—Based on the Conduct of Others*

The promise of the American legal system is that people will be held accountable for their own actions. But in Texas, many people are spending decades in the prison system—and have even been sentenced to death and executed—based not on their own conduct, but on the conduct of another. This now-infamous law is termed the “Law of Parties.” This article will explore how so many people in Texas are serving sentences vastly disproportionate to their culpability—sentences that would offend the sense of justice of anyone concerned about fairness in the American legal system.

### **How Texas Prosecutors Obtain Convictions Based on the Conduct of Someone Other Than the Defendant**

Under Texas law, a person can be charged for any offense to which they are a “party,” even if they did not actually commit that offense. This includes actions in which the party who did not actually commit the crime is roughly as culpable as the person who did, such as a person who solicits, promotes, directs, or aids, the commission of the offense; a person who causes or aids an innocent person to commit the offense; or a person who has a legal duty to prevent commission of the offense and fails to make a reasonable effort to prevent it.<sup>1</sup>

However, a second prong of the law allows for the conviction of parties for offenses that they had very little role in committing. It states that a party can be held responsible for a crime committed by another, even if the party had “no intent to commit it,” as long as the offense “was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.”<sup>2</sup>

In short, a “co-conspirator”<sup>3</sup> can be convicted of an offense if they merely “should have anticipated” that it would occur. This standard is similar to that of negligence,<sup>4</sup> yet it applies the same level of culpability to negligent actors as it does to people who acted with specific intent to commit an offense.

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<sup>1</sup> Tex. Penal Code § 7.02(a).

<sup>2</sup> Tex. Penal Code § 7.02(b).

<sup>3</sup> Texas has abolished “accomplice liability,” but a “co-conspirator” can be thought of as a person who is colloquially considered an “accomplice” in common parlance.

<sup>4</sup> See *Criminal Negligence*, Black’s Law Dictionary (11th ed. 2019).

The law of parties is most infamous for prosecutors' use of it to obtain murder convictions against people who have never killed anyone. That is particularly true for capital murder cases.

The law of parties is potentially problematic in any case involving multiple defendants because it allows the State to obtain a conviction and sentence that is disproportionate to an accomplice's conduct and personal culpability for the offense. Because Texas law generally provides for a broad sentencing range in non-capital cases, prosecutors and judges can exercise their discretion to ensure that a defendant who has minimal culpability for an offense committed by a more culpable co-defendant receives a lesser sentence. For example, a first-degree felony is punishable by anywhere from five to 99 years or life in prison.<sup>5</sup> So if a person is convicted of (non-capital) murder—in most cases a first-degree felony<sup>6</sup>—despite being only minimally culpable for or having little role in the murder itself, they can be sentenced roughly commensurate with their culpability.

However, there is no such discretion to impose a lower sentence more commensurate with a party's culpability if the prosecution obtains a capital murder conviction under the law of parties. This is because the only sentencing options for a person convicted of capital murder are life in prison without possibility of parole or the death penalty.<sup>7</sup> So in a capital murder prosecution, even if one defendant is much less culpable than another—something that could be taken into consideration at sentencing if the charge were first degree murder—the only possible sentences for both defendants would be life without parole or death.

The interaction between the law of parties and the capital murder sentencing scheme has created enormous injustices in which people with extremely minimal roles in capital murder offenses are serving exorbitant sentences that nobody could credibly describe as fair and just.

One of Texas Defender Service's clients, Michael Highfill, is facing one such sentence. Mr. Highfill was convicted of capital murder and sentenced to life in prison,<sup>8</sup> even though his co-defendant testified that he had nothing to do with the murder and had no idea it was going to occur. Mr. Highfill was living on the streets in Austin, Texas, at the time due to a drug addiction; as a gay man living with HIV in the 1990s, he was extremely vulnerable. He needed a protector, which he found in his co-defendant, Rebecca Walton, an older, unhoused woman who had a history of drug abuse and took Mr. Highfill under her wing.

One night, Ms. Walton and Mr. Highfill were together when they met up with a man they knew as "Chico" Flores. Mr. Flores and two other men had recently beaten Ms. Walton and stolen her belongings, but he had some drugs, so Ms. Walton decided to ride around with him, and Mr. Highfill tagged along. At one point in the night, Ms. Walton retrieved a gun that she planned to sell to Mr. Flores, and they drove out to the country to shoot it. When they parked, Mr. Flores reached over to grab the gun, and Ms. Walton, scared that he would hurt her again, suddenly shot

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<sup>5</sup> Tex. Penal Code § 12.32.

<sup>6</sup> Tex. Penal Code § 19.02.

<sup>7</sup> Tex. Penal Code § 12.31.

<sup>8</sup> At the time, if the State did not seek the death penalty, a person convicted of capital murder was automatically sentenced to life in prison with the possibility of parole after 40 years. In 2005, the only non-death sentencing option for capital murder was changed to life without the possibility of parole.

him. At the time of the shooting Mr. Highfill was unarmed and in the back seat; he played no role in Mr. Flores' murder. By Ms. Walton's own account, Mr. Highfill was in shock after she shot Mr. Flores and he remained in shock the rest of the night while Ms. Walton tried to cover up the crime scene.

Ms. Walton and Mr. Highfill were eventually arrested and prosecuted in separate trials. Ms. Walton was tried first, and while the prosecution sought a capital murder conviction based on her own conduct, the jury acquitted her of capital murder and convicted her only of non-capital murder. In short, Ms. Walton's jury rejected the prosecution's contention that she killed Flores in order to commit a robbery. She was sentenced to 60 years in prison and will be parole eligible after 30 years. Even though Walton's jury had already determined that the offense of capital murder did not occur, the prosecution still elected to pursue a capital murder charge against Mr. Highfill. This was despite the prosecution conceding that Highfill was criminally responsible for Flores's death, if at all, only as a party to Walton's conduct. In front of a different jury than Ms. Walton's, Mr. Highfill was found responsible for a capital murder committed by Walton and sentenced to life in prison. Because of the limited sentencing range for a conviction of capital murder, the judge had no discretion to impose a sentence commensurate with Highfill's minimal culpability for the offense; instead, the judge was required by law to impose a *greater* sentence for Mr. Highfill than Ms. Walton received, despite the fact that he was indisputably less culpable for the offense.

While Mr. Highfill's life sentence is a particularly troubling example of an unjust sentencing outcome produced by the law of parties, it is by no means unique. By imputing the actions of one person to another, the law of parties will always create opportunities for unjust convictions and sentences as long as it is on the books.

### **Using the Law of Parties to Execute Those Who Have Never Killed.**

Since 2008, the Supreme Court has limited the use of the death penalty in the United States to "crimes that take the life of the victim."<sup>9</sup> But there is a loophole: a person who has never killed anyone can be sentenced to death even if they never intended for a life to be taken, as long as they were a "major participa[nt]" in a murder and acted "with reckless indifference to human life."<sup>10</sup> This is known as the *Enmund/Tison* rule, after the two cases from which it was developed.<sup>11</sup>

While Texas is required to follow the *Enmund/Tison* rule, Texas juries that have convicted a "non-triggerman" of capital murder under the law of parties are instead asked the following at sentencing when the prosecution seeks the death penalty: whether the defendant intended to kill the deceased or another or anticipated that a human life would be taken.<sup>12</sup> This is known as the "anti-parties" instruction. The Texas Court of Criminal Appeals ("CCA")—the highest appellate

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<sup>9</sup> *Kennedy v. Louisiana*, 554 U.S. 407, 447 (2008).

<sup>10</sup> *Tison v. Arizona*, 481 U.S. 137, 158 (1987).

<sup>11</sup> See *Tison v. Arizona*, 481 U.S. 137 (1987); *Enmund v. Florida*, 458 U.S. 782 (1982).

<sup>12</sup> Tex. Code Crim. Proc. art. 37.071, § 2(b)(2).

court in Texas for criminal cases—has held that this instruction comports with the *Enmund/Tison* rule, despite containing none of the language in that rule.<sup>13</sup>

Despite the CCA's holding that the Texas sentencing procedure is consistent with *Enmund/Tison*, Texas juries are sentencing people to death—and courts are upholding those sentences—when no reasonable person could argue that the defendant was a major participant in the murder or that they acted with reckless indifference to human life.

Take the case of Jeff Wood, a Texas Defender Service client who was convicted of capital murder and sentenced to death in Kerr County, Texas. Mr. Wood sat in a truck in the parking lot during a theft gone wrong but had very little to do with the charged offense—his co-defendant's unplanned and spontaneous murder of the store clerk. Mr. Wood never armed himself and had asked his co-defendant not to bring a firearm with him. Mr. Wood's co-defendant told police he had not planned to shoot the clerk; he held up a gun with his finger on the trigger, intending to scare the clerk, and the gun fired. After the gun fired, Wood entered the store shocked at what had occurred.

Despite his minimal involvement in the theft and non-existent involvement in the murder, Mr. Wood was convicted of capital murder and sentenced to death.<sup>14</sup> The CCA upheld his death sentence notwithstanding his minimal culpability. Ironically, Mr. Wood's case is similar to *Enmund*, in which the Supreme Court held that the defendant was ineligible for the death penalty; except Mr. Wood was an even lesser participant in the murder for which he was convicted than the defendant in that case, Earl Enmund. Whereas Mr. Enmund had armed those who participated in the killing, Mr. Wood asked his co-defendant not to arm himself, and whereas Mr. Enmund disposed of the murder weapon, Mr. Wood committed no other felonies. Further, the Supreme Court has held that participation in a robbery does not *per se* render someone's mental state sufficiently culpable under the *Enmund/Tison* rule.<sup>15</sup>

The case of Rodolfo Medrano is similarly representative of Texas courts' failures to implement the *Enmund/Tison* rule.<sup>16</sup> Mr. Medrano helped to manage money as part of a gang called the Tri-City Bombers in South Texas. On one occasion, he provided a number of weapons for fellow gang members, who he thought were going to steal some marijuana. He did not participate in the robberies, and at the time they occurred, he was in an entirely different city. Ultimately, six people were killed by the robbers. Mr. Medrano told police that neither he, nor anyone else, knew that anyone would be killed, and that the robbers did not follow the chain of command. He did not know that anyone was killed until the next day. Nevertheless, he was convicted of capital murder and sentenced to death. In analyzing Mr. Medrano's mental state, the CCA stated that he did anticipate that a death would occur because he knew the gang members had demonstrated a "willingness" to kill. However, Mr. Medrano's knowledge of the gang members' willingness to kill

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<sup>13</sup> *McFarland v. State*, 928 S.W.2d 482, 516–17 (Tex. Crim. App. 1996) (en banc), *abrogated on other grounds by Mosley v. State*, 983 S.W.2d 249 (Tex. Crim. App. 1998) (en banc). *See also Wood v. State*, 18 S.W.3d 642, 649 (Tex. Crim. App. 2000).

<sup>14</sup> *Ex parte Wood*, No. WR-45,500-02, 2016 WL 4445748 (Tex. Crim. App. Aug. 19, 2016); Petition for a Writ of Certiorari at 26, *Wood v. Texas*, 140 S.Ct. 147 (2019).

<sup>15</sup> *Tison*, 481 U.S. at 150–51.

<sup>16</sup> *Medrano v. State*, No. AP-75320, 2008 WL 5050076 (Tex. Crim. App. Nov. 26, 2008) (unpublished).

arguably means he *should have* anticipated that a death would occur, not that he *did* so anticipate. So while the CCA did superficially address when Mr. Medrano anticipated that a death would occur, its actual analysis appears to have been conducted under an improper standard. Further, the court affirmed his death sentence with little analysis of his level of participation as it relates to the *Enmund/Tison* rule, other than to state that he was “an officer in, and armorer of, a gang that engaged in illegal activities”—a proposition having little to do with his level of participation in the offense itself.

In short, Texas courts have failed to fulfill their duty to implement the Supreme Court’s *Enmund/Tison* rule. As a result, Texas has sentenced people to death who did not kill anyone, did not anticipate that their co-defendants would kill anyone, and could not reasonably be called major participants in the murders for which they were convicted.

### **How to Fix the Law of Parties in Texas**

There are myriad ways to address the injustices created by the law of parties, from death penalty cases on down. However, the most immediate and perhaps attainable changes can come from improvements in how prosecutors use their discretion. Prosecutors are never required to seek enhanced charges against a defendant under the law of parties; they can always charge individuals with offenses that align with their true level of culpability.

The legislature and the courts themselves can also address injustices that arise from the law of parties, particularly in death penalty cases. In the last legislative session, the Texas House passed a bill that would have changed the “anti-parties” statute in death penalty cases to allow jurors to impose a death sentence only if they believed that the defendant actually caused the death of the deceased or did not actually cause the death of the deceased but intended to kill the deceased or another.<sup>17</sup> It would no longer have allowed jurors to impose a death sentence if they believed the defendant only anticipated that a life would be taken. This would align Texas with the majority of American jurisdictions, which prohibit imposition of the death penalty against non-triggermen who lack an intent to kill.<sup>18</sup> The bill would also have changed the definition of conspirator liability in death penalty cases to more precisely track the language of the *Enmund/Tison* rule. However, the bill never received a vote in the Texas Senate. Texans can contact their legislators<sup>19</sup>—particularly their senators—and ask that they vote for similar bills in the future.

Finally, the courts in Texas have failed to uphold even the existing law—specifically the demand that individuals who do not kill cannot be sentenced to death unless they are major participants and act with a reckless disregard for human life. The courts must do a better job of policing the *Enmund/Tison* standard to ensure that disproportionate sentences do not stand.

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<sup>17</sup> Hayden Sparks, *Texas House Initially Approves Bill Limiting Death Penalty in ‘Law of Parties’ Cases*, The Texan (Apr. 20, 2023), [https://thetexan.news/issues/criminal-justice/texas-house-initially-approves-bill-limiting-death-penalty-in-law-of-parties-cases/article\\_3caebea2-0790-5364-9c57-aff9682e4b81.html](https://thetexan.news/issues/criminal-justice/texas-house-initially-approves-bill-limiting-death-penalty-in-law-of-parties-cases/article_3caebea2-0790-5364-9c57-aff9682e4b81.html).

<sup>18</sup> See Joseph Trigilio & Tracy Casadio, *Executing Those Who Do Not Kill: A Categorical Approach to Proportional Sentencing*, 48 Am. Crim. L. Rev. 1371. 1400–01 (2011).

<sup>19</sup> *Who Represents Me?*, Texas.gov, <https://wrm.capitol.texas.gov/home>.

The law of parties has created some of the worst injustices to come through the legal system in Texas, in both death penalty cases and non-death-penalty cases alike. The system needs to be changed to prevent disproportionate sentences like those of Mr. Highfill, Mr. Wood, and Mr. Medrano. By improving the use of prosecutorial discretion, tweaking the law itself, and seeking better oversight from the courts, Texans can ensure that the law of parties no longer creates the unjust outcomes for which it has become known.