

By: Lucio

S.B. No. 33

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for a capital offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 12.31, Penal Code, is amended to read as follows:

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the institutional division for life, for life without parole, or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the institutional division for life or for life without parole.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment, life imprisonment without parole, or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that a sentence of life imprisonment or life imprisonment without parole is mandatory on conviction of the capital felony.

SECTION 2. Section 508.046, Government Code, is amended to read as follows:

1 Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on
2 parole an inmate who was convicted of a capital felony punishable by
3 imprisonment for life or an offense under Section 21.11(a)(1) or
4 22.021, Penal Code, or who is required under Section 508.145(c) to
5 serve 35 calendar years before becoming eligible for release on
6 parole, all members of the board must vote on the release on parole
7 of the inmate, and at least two-thirds of the members must vote in
8 favor of the release on parole. A member of the board may not vote
9 on the release unless the member first receives a copy of a written
10 report from the department on the probability that the inmate would
11 commit an offense after being released on parole.

12 SECTION 3. Section 508.145(a), Government Code, is amended
13 to read as follows:

14 (a) An inmate under sentence of death or serving a sentence
15 of life imprisonment without parole is not eligible for release on
16 parole.

17 SECTION 4. Section 1, Article 37.071, Code of Criminal
18 Procedure, is amended to read as follows:

19 Sec. 1. (a) In a capital case in which the state does not
20 seek the death penalty, on a finding at trial that the defendant is
21 guilty of a capital offense, or on a plea of guilty or nolo
22 contendere by the defendant, the court shall conduct a separate
23 sentencing proceeding to determine whether the defendant shall be
24 sentenced to life imprisonment or life imprisonment without parole.
25 The proceeding shall be conducted in the trial court and before the
26 trial jury as soon as practicable, except that the court shall
27 empanel a new jury if required by Article 44.29(c) or if the

1 defendant has entered a plea of guilty or nolo contendere and
2 requested that a jury assess punishment. After a finding of guilty
3 is returned or after the defendant enters a plea of guilty or nolo
4 contendere, the defendant, with the consent of the attorney
5 representing the state, may change the defendant's election of who
6 assesses punishment. In the proceeding, evidence may be presented
7 by the state and the defendant or the defendant's counsel as to any
8 matter that the court considers relevant to sentence, in the same
9 manner as if the defendant were being sentenced in a noncapital
10 case. This subsection may not be construed to authorize the
11 introduction of any evidence secured in violation of the
12 Constitution of the United States or of the State of Texas.

13 (b) At the proceeding under this section, the court shall
14 instruct the jury that, after taking into account all the evidence
15 described by Subsection (a), the jury shall assess as punishment on
16 the defendant a sentence of life imprisonment in the institutional
17 division of the Texas Department of Criminal Justice or a sentence
18 of imprisonment in the institutional division for life without
19 parole. The court shall further charge the jury that a defendant
20 sentenced to imprisonment for life without parole under this
21 section is ineligible for release from the institutional division
22 on parole or mandatory supervision and that a defendant sentenced
23 to imprisonment for life is ineligible for release from the
24 institutional division on mandatory supervision and is ineligible
25 for release from the institutional division on parole until the
26 defendant's actual calendar time served, without consideration of
27 good conduct time, equals 40 years.

1 (c) If the jury assesses punishment as life imprisonment or
2 is unable to assess punishment, the court shall sentence the
3 defendant to life imprisonment in the institutional division of the
4 Texas Department of Criminal Justice. If the jury assesses
5 punishment as imprisonment for life without parole, the court shall
6 sentence the defendant to imprisonment in the institutional
7 division of the Texas Department of Criminal Justice for life
8 without parole. [~~If a defendant is found guilty in a capital felony~~
9 case in which the state does not seek the death penalty, the judge
10 shall sentence the defendant to life imprisonment.]

11 SECTION 5. Section 2(e), Article 37.071, Code of Criminal
12 Procedure, is amended to read as follows:

13 (e)(1) The judge [~~court~~] shall instruct the jury that if the
14 jury returns an affirmative finding to each issue submitted under
15 Subsection (b) [~~of this article~~], it shall answer the following
16 issue:

17 Whether, taking into consideration all of the evidence,
18 including the circumstances of the offense, the defendant's
19 character and background, and the personal moral culpability of the
20 defendant, there is a sufficient mitigating circumstance or
21 circumstances to warrant that a sentence of life imprisonment or
22 life imprisonment without parole rather than a death sentence be
23 imposed.

24 (2) The judge shall instruct the jury that:

25 (A) if the jury returns an affirmative finding on
26 each issue submitted under Subsection (b) and a negative finding on
27 an issue submitted under Subdivision (1), the judge shall sentence

1 the defendant to death;

2 (B) if the jury returns an affirmative finding on
3 each issue submitted under Subsection (b) and returns an
4 affirmative finding on an issue submitted under Subdivision (1),
5 the judge shall sentence the defendant to life imprisonment without
6 parole; and

7 (C) if the jury returns a negative finding on an
8 issue submitted under Subsection (b), the judge shall sentence the
9 defendant to life imprisonment.

10 (3) The judge, after instructing the jury under
11 Subdivision (2), shall further charge the jury that a defendant
12 sentenced to imprisonment for life without parole under this
13 article is ineligible for release from the institutional division
14 on parole or mandatory supervision and that a defendant sentenced
15 to imprisonment for life under this article is ineligible for
16 release from the institutional division on mandatory supervision
17 and is ineligible for release from the institutional division on
18 parole until the defendant's actual calendar time served, without
19 consideration of good conduct time, equals 40 years. [~~The court, on~~
20 ~~the written request of the attorney representing the defendant,~~
21 shall:

22 [~~(A) instruct the jury that if the jury answers~~
23 ~~that a circumstance or circumstances warrant that a sentence of~~
24 ~~life imprisonment rather than a death sentence be imposed, the~~
25 ~~court will sentence the defendant to imprisonment in the~~
26 ~~institutional division of the Texas Department of Criminal Justice~~
27 ~~for life, and~~

1 ~~[(B) charge the jury in writing as follows:~~

2 ~~["Under the law applicable in this case, if the defendant is~~
3 ~~sentenced to imprisonment in the institutional division of the~~
4 ~~Texas Department of Criminal Justice for life, the defendant will~~
5 ~~become eligible for release on parole, but not until the actual time~~
6 ~~served by the defendant equals 40 years, without consideration of~~
7 ~~any good conduct time. It cannot accurately be predicted how the~~
8 ~~parole laws might be applied to this defendant if the defendant is~~
9 ~~sentenced to a term of imprisonment for life because the~~
10 ~~application of those laws will depend on decisions made by prison~~
11 ~~and parole authorities, but eligibility for parole does not~~
12 ~~guarantee that parole will be granted."]~~

13 SECTION 6. Section 2(g), Article 37.071, Code of Criminal
14 Procedure, is amended to read as follows:

15 (g) If the jury returns an affirmative finding on each issue
16 submitted under Subsection (b) ~~[of this article]~~ and a negative
17 finding on an issue submitted under Subsection (e)(1) ~~[of this~~
18 ~~article]~~, the judge ~~[court]~~ shall sentence the defendant to death.
19 If the jury returns an affirmative finding on each issue submitted
20 under Subsection (b) and returns an affirmative finding on an issue
21 submitted under Subsection (e)(1) or is unable to answer an issue
22 submitted under Subsection (e)(1), the judge shall sentence the
23 defendant to imprisonment in the institutional division of the
24 Texas Department of Criminal Justice for life without parole. If
25 the jury returns a negative finding on any issue submitted under
26 Subsection (b) ~~[of this article or an affirmative finding on an~~
27 ~~issue submitted under Subsection (e) of this article]~~ or is unable

1 to answer any issue submitted under Subsection (b) [~~or (e) of this~~
2 ~~article~~], the judge [~~court~~] shall sentence the defendant to
3 imprisonment [~~confinement~~] in the institutional division [~~of the~~
4 ~~Texas Department of Criminal Justice~~] for life.

5 SECTION 7. Article 44.29(c), Code of Criminal Procedure, is
6 amended to read as follows:

7 (c) If any court sets aside or invalidates the sentence of a
8 defendant convicted of an offense under Section 19.03, Penal Code,
9 [~~and sentenced to death~~] on the basis of any error affecting
10 punishment only, the court shall not set the conviction aside but
11 rather shall commence a new punishment hearing under Article 37.071
12 or Article 37.0711 of this code, as appropriate, as if a finding of
13 guilt had been returned. The court shall empanel a jury for the
14 sentencing stage of the trial in the same manner as a jury is to be
15 empaneled by the court in other trials before the court for offenses
16 under Section 19.03, Penal Code. At the new punishment hearing, the
17 court shall permit both the state and the defendant to introduce
18 evidence as permitted by Article 37.071 or Article 37.0711 of this
19 code.

20 SECTION 8. (a) The change in law made by this Act applies
21 only to an offense committed on or after the effective date of this
22 Act. For purposes of this section, an offense is committed before
23 the effective date of this Act if any element of the offense occurs
24 before the effective date.

25 (b) An offense committed before the effective date of this
26 Act is covered by the law in effect when the offense was committed,
27 and the former law is continued in effect for that purpose.

1 SECTION 9. This Act takes effect September 1, 2003.