

By: Dutton

H.B. No. 366

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 508.046, Government Code, is amended to read as follows:

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

SECTION 2. Section 508.145(b), Government Code, is amended to read as follows:

(b) An inmate serving a life sentence 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~~].

SECTION 3. Section 2(e), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

1 (e)(1) The court shall instruct the jury that if the jury
2 returns an affirmative finding to each issue submitted under
3 Subsection (b) of this article, it shall answer the following
4 issue:

5 Whether, taking into consideration all of the evidence,
6 including the circumstances of the offense, the defendant's
7 character and background, and the personal moral culpability of the
8 defendant, there is a sufficient mitigating circumstance or
9 circumstances to warrant that a sentence of life imprisonment
10 rather than a death sentence be imposed.

11 (2) The court, on the written request of the attorney
12 representing the defendant, shall:

13 (A) instruct the jury that if the jury answers
14 that a circumstance or circumstances warrant that a sentence of
15 life imprisonment rather than a death sentence be imposed, the
16 court will sentence the defendant to imprisonment in the
17 institutional division of the Texas Department of Criminal Justice
18 for life; and

19 (B) charge the jury in writing as follows:

20 "Under the law applicable in this case, if the defendant is
21 sentenced to imprisonment in the institutional division of the
22 Texas Department of Criminal Justice for life, the defendant will
23 not become eligible for release on parole or mandatory supervision
24 ~~[, but not until the actual time served by the defendant equals 40~~
25 ~~years, without consideration of any good conduct time. It cannot~~
26 ~~accurately be predicted how the parole laws might be applied to this~~
27 ~~defendant if the defendant is sentenced to a term of imprisonment~~

1 ~~for life because the application of those laws will depend on~~
2 ~~decisions made by prison and parole authorities, but eligibility~~
3 ~~for parole does not guarantee that parole will be granted]."~~

4 SECTION 4. (a) The change in law made by this Act applies
5 only to an offense committed on or after the effective date of this
6 Act. For purposes of this section, an offense is committed before
7 the effective date of this Act if any element of the offense occurs
8 before the effective date.

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

12 SECTION 5. This Act takes effect September 1, 2003.