

Amend CSSB 60 (house committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 6-22) and substitute the following:

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.

(2) Strike SECTION 4 of the bill (page 3, line 27 through page 4, line 12) and substitute the following:

SECTION 4. 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 punishable by imprisonment for life 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.

(3) Strike SECTION 5 of the bill (page 4, lines 13-21) and substitute the following:

SECTION 5. Section 508.145(a), Government Code, is amended to read as follows:

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

(4) Strike SECTION 6 of the bill (page 4, lines 22-26) and substitute the following:

SECTION 6. Section 1, Article 37.071, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. (a) In a capital case in which the state does not seek the death penalty, on a finding at trial that the defendant is guilty of a capital offense, or on a plea of guilty or nolo contendere by the defendant, the court shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment or life imprisonment without parole. The proceeding shall be conducted in the trial court and before the trial jury as soon as practicable, except that the court shall empanel a new jury if required by Article 44.29(c) or if the defendant has entered a plea of guilty or nolo contendere and requested that a jury assess punishment. After a finding of guilty is returned or after the defendant enters a plea of guilty or nolo contendere, the defendant, with the consent of the attorney representing the state, may change the defendant's election of who assesses punishment. In the proceeding, evidence may be presented by the state and the defendant or the defendant's counsel as to any matter that the court considers relevant to sentence, in the same manner as if the defendant were being sentenced in a noncapital case. This subsection may not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas.

(b) At the proceeding under this section, the court shall instruct the jury that, after taking into account all the evidence described by Subsection (a), the jury shall assess as punishment on the defendant a sentence of life imprisonment in the institutional division of the Texas Department of Criminal Justice or a sentence

of imprisonment in the institutional division for life without parole. The court shall further charge the jury that a defendant sentenced to imprisonment for life without parole under this section is ineligible for release from the institutional division on parole or mandatory supervision and that a defendant sentenced to imprisonment for life is ineligible for release from the institutional division on mandatory supervision and is ineligible for release from the institutional division on parole until the defendant's actual calendar time served, without consideration of good conduct time, equals 40 years.

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

(5) In SECTION 7 of the bill, in Subdivision (1), Subsection (a), Section 2, Article 37.071, Code of Criminal Procedure (page 5, line 6), strike "death or" and substitute "death, life imprisonment, or".

(6) Strike SECTION 8 of the bill (page 5, line 23 through page 7, line 3) and substitute the following:

SECTION 8. Section 2(e), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

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

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment or

life imprisonment without parole rather than a death sentence be imposed.

(2) The judge shall instruct the jury that:

(A) if the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subdivision (1), the judge shall sentence the defendant to death;

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

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

(3) The judge, after instructing the jury under Subdivision (2), shall further charge the jury that a defendant sentenced to imprisonment for life without parole under this article is ineligible for release from the institutional division of the Texas Department of Criminal Justice on parole or mandatory supervision and that a defendant sentenced to imprisonment for life under this article is ineligible for release from the institutional division on mandatory supervision and is ineligible for release from the institutional division on parole until the defendant's actual calendar time served, without consideration of good conduct time, equals 40 years. ~~[The court, on the written request of the attorney representing the defendant, shall:~~

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

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

~~["Under the law applicable in this case, if the defendant is sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice for life, the defendant will~~

~~become eligible for release on parole, but not until the actual time served by the defendant equals 40 years, without consideration of any good conduct time. It cannot accurately be predicted how the parole laws might be applied to this defendant if the defendant is sentenced to a term of imprisonment for life because the application of those laws will depend on decisions made by prison and parole authorities, but eligibility for parole does not guarantee that parole will be granted."~~

(7) Strike SECTION 9 of the bill (page 7, lines 4-16) and substitute the following:

SECTION 9. Section 2(g), Article 37.071, Code of Criminal Procedure, is amended to read as follows:

(g) If the jury returns an affirmative finding on each issue submitted under Subsection (b) ~~[of this article]~~ and a negative finding on an issue submitted under Subsection (e)(1) ~~[of this article]~~, the judge ~~[court]~~ shall sentence the defendant to death. If the jury returns an affirmative finding on each issue submitted under Subsection (b) and returns an affirmative finding on an issue submitted under Subsection (e)(1) or is unable to answer an issue submitted under Subsection (e)(1), the judge shall sentence the defendant to imprisonment in the institutional division of the Texas Department of Criminal Justice for life without parole. If the jury returns a negative finding on any issue submitted under Subsection (b) ~~[of this article or an affirmative finding on an issue submitted under Subsection (e) of this article]~~ or is unable to answer any issue submitted under Subsection (b) ~~[or (e) of this article]~~, the judge ~~[court]~~ shall sentence the defendant to imprisonment ~~[confinement]~~ in the institutional division ~~[of the Texas Department of Criminal Justice]~~ for life.

(8) Strike SECTIONS 10 and 11 of the bill (page 7, line 17 through page 9, line 21).

(9) Renumber remaining SECTIONS of the bill accordingly.