

By: McClendon

H.B. No. 66

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. If a defendant is found guilty in a capital felony  
20 case in which the state does not seek the death penalty, the judge  
21 shall charge and instruct the jury as provided by Section 2(e)  
22 [~~sentence the defendant to life imprisonment~~].

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

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

1 issue:

2 Whether, taking into consideration all of the evidence,  
3 including the circumstances of the offense, the defendant's  
4 character and background, and the personal moral culpability of the  
5 defendant, there is a sufficient mitigating circumstance or  
6 circumstances to warrant that a sentence of life imprisonment or  
7 life imprisonment without parole rather than a death sentence be  
8 imposed.

9 (2) The court shall instruct the jury that if the jury  
10 returns a negative finding on an issue submitted under Subsection  
11 (b), is unable to answer an issue under Subsection (b), or returns  
12 an affirmative finding on the issue submitted under Subdivision  
13 (1), the jury, taking into account all the evidence described by  
14 Subdivision (1), shall also answer the issue as to whether the  
15 defendant should be sentenced to life imprisonment rather than life  
16 imprisonment without parole. The court shall further charge the  
17 jury that a defendant sentenced to confinement for life without  
18 parole under this article is ineligible for release from the  
19 department on parole or mandatory supervision and that a defendant  
20 sentenced to confinement for life under this article is ineligible  
21 for release from the department on mandatory supervision and is  
22 ineligible for release on parole until the defendant's actual  
23 calendar time served, without consideration of good conduct time,  
24 equals 40 years. [~~The court, on the written request of the attorney~~  
25 ~~representing the defendant, shall:~~

26 [~~(A) instruct the jury that if the jury answers~~  
27 ~~that a circumstance or circumstances warrant that a sentence of~~

1 ~~life imprisonment rather than a death sentence be imposed, the~~  
2 ~~court will sentence the defendant to imprisonment in the~~  
3 ~~institutional division of the Texas Department of Criminal Justice~~  
4 ~~for life, and~~

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

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

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

19 (g) If the jury returns an affirmative finding on each issue  
20 submitted under Subsection (b) [~~of this article~~] and a negative  
21 finding on an issue submitted under Subsection (e)(1) [~~of this~~  
22 ~~article~~], the court shall sentence the defendant to death. If the  
23 jury returns a negative finding on any issue submitted under  
24 Subsection (b) and [~~of this article or~~] an affirmative finding on an  
25 issue submitted under Subsection (e)(2) [~~of this article~~] or is  
26 unable to answer any issue submitted under Subsection (b) or (e) [~~of~~  
27 ~~this article~~], the court shall sentence the defendant to

1 confinement in the institutional division of the Texas Department  
2 of Criminal Justice for life. If the jury returns a negative  
3 finding under Subsection (e)(2), the court shall sentence the  
4 defendant to life imprisonment without parole.

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

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

13 SECTION 8. This Act takes effect September 1, 2005.