

By: Dutton

H.B. No. 454

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 for life without parole. [~~If a defendant is found guilty~~  
8 in a capital felony case in which the state does not seek the death  
9 penalty, the judge shall sentence the defendant to life  
10 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 of the Texas Department of Criminal Justice on parole or mandatory  
15 supervision and that a defendant sentenced to imprisonment for life  
16 under this article is ineligible for release from the institutional  
17 division on mandatory supervision and is ineligible for release  
18 from the institutional division on parole until the defendant's  
19 actual calendar time served, without consideration of good conduct  
20 time, equals 40 years. [The court, on the written request of the  
21 attorney representing the defendant, 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, 2005.