

AN ACT

relating to the representation of certain defendants in capital cases and to the punishment for a capital felony or other felony punishable by a term of imprisonment exceeding 99 years.

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 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 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 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 without parole is mandatory on conviction of the capital felony.

SECTION 2. Subsection (c), Section 8.07, Penal Code, is amended to read as follows:

1 (c) No person may, in any case, be punished by death for an  
2 offense committed while the person [~~he~~] was younger than 18 [~~17~~]  
3 years.

4 SECTION 3. Section 508.046, Government Code, is amended to  
5 read as follows:

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

17 SECTION 4. Subsections (a) and (c), Section 508.145,  
18 Government Code, are amended to read as follows:

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

22 (c) An inmate serving a [~~life~~] sentence under Section  
23 12.42(c)(2), Penal Code, is not eligible for release on parole  
24 until the actual calendar time the inmate has served, without  
25 consideration of good conduct time, equals 35 calendar years.

26 SECTION 5. Subsections (a) and (f), Section 508.146,  
27 Government Code, are amended to read as follows:

1           (a) An inmate, other than an inmate who is serving a  
2 sentence of death or life without parole or an inmate who has a  
3 reportable conviction or adjudication under Chapter 62, Code of  
4 Criminal Procedure, may be released on medically recommended  
5 intensive supervision on a date designated by a parole panel  
6 described by Subsection (e), except that an inmate with an instant  
7 offense that is an offense described in Section 3g, Article 42.12,  
8 Code of Criminal Procedure, may only be considered if a medical  
9 condition of terminal illness or long-term care has been diagnosed,  
10 if:

11           (1) the Texas Correctional Office on Offenders with  
12 Medical or Mental Impairments, in cooperation with the Correctional  
13 Managed Health Care Committee, identifies the inmate as being  
14 elderly, physically disabled, mentally ill, terminally ill, or  
15 mentally retarded or having a condition requiring long-term care;

16           (2) the parole panel determines that, based on the  
17 inmate's condition and a medical evaluation, the inmate does not  
18 constitute a threat to public safety; and

19           (3) the Texas Correctional Office on Offenders with  
20 Medical or Mental Impairments, in cooperation with the pardons and  
21 paroles division, has prepared for the inmate a medically  
22 recommended intensive supervision plan that requires the inmate to  
23 submit to electronic monitoring, places the inmate on  
24 super-intensive supervision, or otherwise ensures appropriate  
25 supervision of the inmate.

26           (f) An inmate who is not a citizen of the United States, as  
27 defined by federal law, who is not under a sentence of death or life

1 without parole, and who does not have a reportable conviction or  
2 adjudication under Chapter 62, Code of Criminal Procedure, or an  
3 instant offense described in Section 3g, Article 42.12, Code of  
4 Criminal Procedure, may be released to immigration authorities  
5 pending deportation on a date designated by a parole panel  
6 described by Subsection (e) if the parole panel determines that on  
7 release the inmate would be deported to another country and that the  
8 inmate does not constitute a threat to public safety in the other  
9 country or this country and is unlikely to reenter this country  
10 illegally.

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

13 Sec. 1. If a defendant is found guilty in a capital felony  
14 case in which the state does not seek the death penalty, the judge  
15 shall sentence the defendant to life imprisonment without parole.

16 SECTION 7. Subdivision (1), Subsection (a), Section 2,  
17 Article 37.071, Code of Criminal Procedure, is amended to read as  
18 follows:

19 (1) If a defendant is tried for a capital offense in  
20 which the state seeks the death penalty, on a finding that the  
21 defendant is guilty of a capital offense, the court shall conduct a  
22 separate sentencing proceeding to determine whether the defendant  
23 shall be sentenced to death or life imprisonment without parole.  
24 The proceeding shall be conducted in the trial court and, except as  
25 provided by Article 44.29(c) of this code, before the trial jury as  
26 soon as practicable. In the proceeding, evidence may be presented  
27 by the state and the defendant or the defendant's counsel as to any

1 matter that the court deems relevant to sentence, including  
2 evidence of the defendant's background or character or the  
3 circumstances of the offense that mitigates against the imposition  
4 of the death penalty. This subdivision shall not be construed to  
5 authorize the introduction of any evidence secured in violation of  
6 the Constitution of the United States or of the State of Texas. The  
7 state and the defendant or the defendant's counsel shall be  
8 permitted to present argument for or against sentence of death. The  
9 court, the attorney representing the state, the defendant, or the  
10 defendant's counsel may not inform a juror or a prospective juror of  
11 the effect of a failure of a jury to agree on issues submitted under  
12 Subsection (c) or (e) [~~of this article~~].

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

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

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

25 (2) The court [~~, on the written request of the attorney~~  
26 ~~representing the defendant,~~] shall:

27 (A) instruct the jury that if the jury answers

1 that a circumstance or circumstances warrant that a sentence of  
2 life imprisonment without parole rather than a death sentence be  
3 imposed, the court will sentence the defendant to imprisonment in  
4 the institutional division of the Texas Department of Criminal  
5 Justice for life without parole; and

6 (B) charge the jury that a defendant sentenced to  
7 confinement for life without parole under this article is  
8 ineligible for release from the department on parole. [~~in writing~~  
9 ~~as follows:~~

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

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

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

1 Subsection (b) [~~of this article~~] or an affirmative finding on an  
2 issue submitted under Subsection (e)(1) [~~of this article~~] or is  
3 unable to answer any issue submitted under Subsection (b) or (e) [~~of~~  
4 ~~this article~~], the court shall sentence the defendant to  
5 confinement in the institutional division of the Texas Department  
6 of Criminal Justice for life imprisonment without parole.

7 SECTION 10. Subsections (a) and (b), Article 44.251, Code  
8 of Criminal Procedure, are amended to read as follows:

9 (a) The court of criminal appeals shall reform a sentence of  
10 death to a sentence of confinement in the institutional division of  
11 the Texas Department of Criminal Justice for life without parole if  
12 the court finds that there is legally insufficient evidence to  
13 support an affirmative answer to an issue submitted to the jury  
14 under Section 2(b), Article 37.071[~~, or Section 3(b), Article~~  
15 ~~37.0711, of this code or a negative answer to an issue submitted to~~  
16 ~~a jury under Section 2(e), Article 37.071, or Section 3(e), Article~~  
17 ~~37.0711, of this code)].~~

18 (b) The court of criminal appeals shall reform a sentence of  
19 death to a sentence of confinement in the institutional division of  
20 the Texas Department of Criminal Justice for life without parole  
21 if:

22 (1) the court finds reversible error that affects the  
23 punishment stage of the trial other than a finding of insufficient  
24 evidence under Subsection (a) of this article; and

25 (2) within 30 days after the date on which the opinion  
26 is handed down, the date the court disposes of a timely request for  
27 rehearing, or the date that the United States Supreme Court

1 disposes of a timely filed petition for writ of certiorari,  
2 whichever date is later, the prosecuting attorney files a motion  
3 requesting that the sentence be reformed to confinement for life  
4 without parole.

5 SECTION 11. Chapter 44, Code of Criminal Procedure, is  
6 amended by adding Article 44.2511 to read as follows:

7 Art. 44.2511. REFORMATION OF SENTENCE IN CAPITAL CASE FOR  
8 OFFENSE COMMITTED BEFORE SEPTEMBER 1, 1991. (a) This article  
9 applies to the reformation of a sentence of death in a capital case  
10 for an offense committed before September 1, 1991. For purposes of  
11 this subsection, an offense is committed before September 1, 1991,  
12 if every element of the offense occurred before that date.

13 (b) The court of criminal appeals shall reform a sentence of  
14 death to a sentence of confinement in the institutional division of  
15 the Texas Department of Criminal Justice for life if the court finds  
16 that there is legally insufficient evidence to support an  
17 affirmative answer to an issue submitted to the jury under Section  
18 3(b), Article 37.0711.

19 (c) The court of criminal appeals shall reform a sentence of  
20 death to a sentence of confinement in the institutional division of  
21 the Texas Department of Criminal Justice for life if:

22 (1) the court finds reversible error that affects the  
23 punishment stage of the trial other than a finding of insufficient  
24 evidence under Subsection (b); and

25 (2) within 30 days after the date on which the opinion  
26 is handed down, the date the court disposes of a timely request for  
27 rehearing, or the date that the United States Supreme Court



1 disposes of a timely filed petition for writ of certiorari,  
2 whichever date is later, the prosecuting attorney files a motion  
3 requesting that the sentence be reformed to confinement for life.

4 (d) If the court of criminal appeals finds reversible error  
5 that affects the punishment stage of the trial only, as described by  
6 Subsection (c), and the prosecuting attorney does not file a motion  
7 for reformation of sentence in the period described by that  
8 subsection, the defendant shall receive a new sentencing trial in  
9 the manner required by Article 44.29(c).

10 SECTION 12. Subsection (b), Section 508.145, Government  
11 Code, is repealed.

12 SECTION 13. Subsection (d), Section 2, Article 11.071, Code  
13 of Criminal Procedure, is amended to read as follows:

14 (d) The court of criminal appeals shall adopt rules for the  
15 appointment of attorneys as counsel under this section and the  
16 convicting court may appoint an attorney as counsel under this  
17 section only if the appointment is approved by the court of criminal  
18 appeals in any manner provided by those rules. The rules must  
19 require that an attorney appointed as lead counsel under this  
20 section not have been found by a federal or state court to have  
21 rendered ineffective assistance of counsel during the trial or  
22 appeal of any capital case.

23 SECTION 14. Subsection (d), Article 26.052, Code of  
24 Criminal Procedure, is amended to read as follows:

25 (d)(1) The committee shall adopt standards for the  
26 qualification of attorneys to be appointed to represent indigent  
27 defendants in capital cases in which the death penalty is sought.

1           (2) The standards must require that a trial ~~[an]~~  
2 attorney appointed as lead counsel to a death penalty case or an  
3 attorney appointed as lead counsel in the direct appeal of a death  
4 penalty case:

5                   (A) be a member of the State Bar of Texas;

6                   (B) exhibit proficiency and commitment to  
7 providing quality representation to defendants in death penalty  
8 cases;

9                   (C) have not been found by a federal or state  
10 court to have rendered ineffective assistance of counsel during the  
11 trial or appeal of any capital case;

12                   (D) have at least five years of experience in  
13 criminal litigation;

14                   (E) ~~[(D)]~~ have tried to a verdict as lead defense  
15 counsel a significant number of felony cases, including homicide  
16 trials and other trials for offenses punishable as second or first  
17 degree felonies or capital felonies;

18                   (F) ~~[(E)]~~ have trial experience in:

19                           (i) the use of and challenges to mental  
20 health or forensic expert witnesses; and

21                           (ii) investigating and presenting  
22 mitigating evidence at the penalty phase of a death penalty trial;  
23 and

24                   (G) ~~[(F)]~~ have participated in continuing legal  
25 education courses or other training relating to criminal defense in  
26 death penalty cases.

27           (3) The committee shall prominently post the standards

1 in each district clerk's office in the region with a list of  
2 attorneys qualified for appointment.

3 (4) Not later than the second anniversary of the date  
4 an attorney is placed on the list of attorneys qualified for  
5 appointment in death penalty cases and each year following the  
6 second anniversary, the attorney must present proof to the  
7 committee that the attorney has successfully completed the minimum  
8 continuing legal education requirements of the State Bar of Texas,  
9 including a course or other form of training relating to the defense  
10 of death penalty cases. The committee shall remove the attorney's  
11 name from the list of qualified attorneys if the attorney fails to  
12 provide the committee with proof of completion of the continuing  
13 legal education requirements.

14 SECTION 15. The court of criminal appeals shall amend rules  
15 adopted under Subsection (d), Section 2, Article 11.071, Code of  
16 Criminal Procedure, as necessary to comply with that subsection, as  
17 amended by this Act, not later than January 1, 2006.

18 SECTION 16. A local selection committee shall amend  
19 standards previously adopted by the committee to conform with the  
20 requirements of Subsection (d), Article 26.052, Code of Criminal  
21 Procedure, as amended by this Act, not later than the 75th day after  
22 the effective date of this Act. An attorney appointed to a death  
23 penalty case on or after the 75th day after the effective date of  
24 this Act must meet the standards adopted in conformity with the  
25 amended Subsection (d), Article 26.052. An attorney appointed to a  
26 death penalty case before the 75th day after the effective date of  
27 this Act is covered by the law in effect when the attorney was

1 appointed, and the former law is continued in effect for that  
2 purpose.

3 SECTION 17. (a) The change in law made by this Act applies  
4 only to an offense committed on or after the effective date of this  
5 Act. For purposes of this section, an offense is committed before  
6 the effective date of this Act if any element of the offense occurs  
7 before the effective date.

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

11 SECTION 18. This Act takes effect September 1, 2005.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 60 passed the Senate on April 14, 2005, by the following vote: Yeas 26, Nays 5; and that the Senate concurred in House amendments on May 28, 2005, by the following vote: Yeas 26, Nays 5.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 60 passed the House, with amendments, on May 25, 2005, by the following vote: Yeas 121, Nays 22, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor