

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 60
By: Lucio et al.
Criminal Justice
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In Texas, a jury does not have the option of sentencing an individual convicted of a capital offense to life without parole. Under current law, a jury in a capital offense trial can either sentence a person to death or give the person a life sentence under which the person can become eligible for parole in 40 years.

C.S.S.B. 60 gives Texas juries a third option by adding life without parole to the available sentencing options for all capital felony cases, including those cases in which the prosecution does not seek the death penalty. This bill enables a jury to assess a defendant in a capital offense case to death, to a life sentence, or to a life sentence without parole.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.31, Penal Code, to include imprisonment for life without parole, in addition to imprisonment for life or the death penalty, as a permitted method of punishment for an individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty. Makes conforming changes.

SECTION 2. Amends Section 508.046, Government Code, to apply this section's procedures for granting parole to an inmate who was convicted of a capital felony punishable by imprisonment for life, rather than to an inmate who was convicted of a capital felony.

SECTION 3. Amends Section 508.145(a), Government Code, to prohibit an inmate serving a sentence of life imprisonment without parole from being eligible for release on parole.

SECTION 4. Amends Section 1, Article 37.071, Code of Criminal Procedure, as follows:

Sec 1. (a) Requires the court, 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, to conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment or life imprisonment without parole. Requires that the proceeding be conducted in the trial court and before the trial jury as soon as practicable. Sets forth the conditions under which the court is required to empanel a new jury. Authorizes the defendant, after a finding of guilty is returned or after the defendant enters a plea of guilty or nolo contendere, with the consent of the state's attorney, to change the defendant's election of who assesses punishment. Provides that in the proceeding, certain evidence may be presented by the state and the defendant or the defendant's counsel. Provides that this subsection does not authorize introduction of any evidence secured in violation of the United States Constitution or the Texas Constitution.

(b) Requires the court, at the proceeding under this section, to instruct the jury that after taking into account all the evidence, the jury shall assess a penalty of either life imprisonment or life imprisonment without parole. Requires the court to instruct the jury that a defendant sentenced to life without parole is ineligible

for release on parole or mandatory supervision, and that a defendant sentenced to imprisonment for life is ineligible for release on mandatory supervision at any time and is ineligible for release on parole until the defendant's actual calendar time served, without consideration of good conduct time, equals 40 years.

(c) Requires the court, if the jury assesses punishment as life imprisonment or is unable to assess punishment, to sentence the defendant to life imprisonment. Requires the court, if the jury assesses punishment as imprisonment for life without parole, to sentence the defendant to imprisonment for life without parole. Deletes requirement that the judge sentence the defendant to life imprisonment if a defendant is found guilty in a capital felony case in which the state does not seek the death penalty.

SECTION 5. Amends Section 2(e), Article 37.071, Code of Criminal Procedure, as follows:

(e)(1) Requires the judge, rather than the court, to give jury instructions. Includes in the jury instructions life imprisonment without parole as an alternative to the death sentence if mitigating circumstances exist. Makes a nonsubstantive change.

(2) Requires the judge to give the jury instructions that set forth the alternative penalties to which the judge is required to sentence the defendant based on which finding the jury returns on certain issues.

(3) Requires the judge to further charge the jury that a defendant sentenced to imprisonment for life without parole under this article is ineligible for release on parole or mandatory supervision, and that a defendant sentenced to imprisonment for life is ineligible for release on mandatory supervision at any time and is ineligible for release on parole until the defendant's actual calendar time served, without consideration of good conduct time, equals 40 years. Deletes the requirement that the court instruct the jury on the circumstances under which the jury should choose imprisonment for life, and on the eligibility for parole of a person imprisoned for life.

SECTION 6. Amends Section 2(g), Article 37.071, Code of Criminal Procedure, to require the judge to sentence the defendant to life imprisonment without parole if the jury returns certain findings. Deletes the requirement that the judge sentence the defendant to life imprisonment if the jury returns an affirmative finding on an issue submitted under Subsection (c) or is unable to answer any issue submitted under Subsection (c). Makes nonsubstantive and conforming changes.

SECTION 7. Amends Article 44.29(c), Code of Criminal Procedure, to require a court which sets aside or invalidates a sentence of a defendant convicted of capital murder, rather than a defendant convicted of capital murder and sentenced to death, to follow certain procedures to assess punishment.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2005.