

## **BILL ANALYSIS**

Senate Research Center  
77R693 GWK-F

S.B. 85  
By: Lucio  
Criminal Justice  
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As Filed

### **DIGEST AND PURPOSE**

Currently, Texas law allows juries in capital felony cases the option of deciding between the death penalty and a sentence of life which would allow a felon to be eligible for parole in no less than forty years. In situation where the death penalty is not sought, the defendant is automatically sentenced to a life sentence, with the possibility of parole, upon determination of guilt. As proposed, S.B. 85 adds life without parole to the available sentencing options for capital felons in cases where the death penalty is sought by the prosecution. This provides an alternative option for juries when deciding on a capital felony case.

### **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, by requiring an individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty to be punished by imprisonment in the institutional division for life, for life without parole, or by death. Makes conforming changes.

SECTION 2. Makes a conforming change.

SECTION 3. Makes a conforming change.

SECTION 4. Amends Section 1, Article 37.071, Code of Criminal Procedure, by requiring the judge to charge and instruct the jury as provided by Section 2(e), rather than sentence the defendant to life imprisonment, if the 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, by requiring the court to instruct the jury that if it returns a negative finding or is unable to answer an issue under Subsection (b), or returns an affirmative finding on the issue submitted under Subdivision (1), the jury, taking into account all the evidence described by Subdivision (1), is required to also answer the issue as to whether the defendant should be sentenced to life imprisonment rather than life imprisonment without parole. Requires the court to further charge the jury that a defendant sentenced to confinement for life or for life without parole under this article is ineligible for release from the Department of Criminal Justice (TDCJ) on parole or mandatory supervision, and that a defendant sentenced to confinement for life is ineligible for release on parole until the defendant's actual calendar time served, without consideration of good conduct time, equals 40 years. Deletes text regarding the sentencing of defendants and the application of parole. Makes a conforming change.

SECTION 6. Amends Section 2(g), Article 37.071, Code of Criminal Procedure, by requiring the court to sentence the defendant to life imprisonment without parole if the jury returns a negative finding under Subsection (e)(2). Makes conforming changes.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2001.