

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 85
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Criminal Justice
4-20-2001
Committee Report (Substituted)

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 situations 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. C.S.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, to require the court to conduct a separate sentencing proceeding to determine whether a defendant is required to be sentenced to life imprisonment or life imprisonment without parole, 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. Requires the proceeding to be conducted in the trial court and before the trial jury as soon as practicable, except that the court is required to empanel a new jury if required by Article 44.29(c) or if the defendant has entered a plea of guilty or nolo contendere and requested that a jury assess punishment. Authorizes the defendant, with the consent of the attorney representing the state, to change the defendant's election of who assesses punishment, after a finding of guilty is returned or after the defendant enters a plea of guilty or nolo contendere. Authorizes evidence in the proceeding to be presented by the state and the defendant or the defendant's counsel as to any matter that the court considers relevant to sentence, in the same manner as if the defendant were being sentenced in a noncapital case. Prohibits this section from being construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Texas.

Requires the court, at the proceeding under this section, to instruct the jury that, after taking into account all the evidence described by this section, the jury is required to assess as punishment on the defendant a sentence of life imprisonment in the institutional division of the Texas Department of Criminal Justice (department) or a sentence of imprisonment in the institutional division for life without parole. Requires the court to further charge the jury that a defendant sentenced to imprisonment for life without parole under this section is ineligible for release from the institutional division on parole or mandatory supervision and that a defendant sentenced to imprisonment for life is ineligible for release from the institutional division on

mandatory supervision and is ineligible for release from the institutional division on parole until the defendant's actual calendar time served, without consideration of good conduct time, equals 40 years.

Requires the court, if the jury assesses punishment as life imprisonment or is unable to assess punishment, to sentence the defendant to life imprisonment in the institutional division of the department. Requires the court, if the jury assesses punishment as imprisonment for life without parole, to sentence the defendant to imprisonment in the institutional division of the department for life without parole. Deletes text that required a judge to sentenced a defendant to life imprisonment under certain circumstances.

SECTION 5. Amends Section 2(e), Article 37.071, Code of Criminal Procedure, to require the judge to instruct the jury that: if the jury returns an affirmative finding on issues submitted under this section, the judge is required sentence the defendant to death; if the jury returns an affirmative finding on certain issues submitted under this section, the judge is required to sentence the defendant to life imprisonment without parole; and if the jury returns a negative finding on an issue submitted under this section, the judge is required to sentence the defendant to life imprisonment. Requires the judge, after instructing the jury under this section, to further charge the jury that a defendant sentenced to imprisonment for life without parole under this article is ineligible for release from the institutional division on parole or mandatory supervision and that a defendant sentenced to imprisonment for life under this article is ineligible for release from the institutional division on mandatory supervision and is ineligible for release from the institutional division 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, to require a judge to sentence the defendant to imprisonment in the institutional division of the department for life without parole, if the jury returns an affirmative finding on certain issues submitted under this section or is unable to answer an issue submitted under this section. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Article 44.29(c), Code of Criminal Procedure, to require the court not to set a conviction aside but rather to commence a new punishment hearing under Article 37.071 or Article 37.0711 of this code, as appropriate, as if a finding of guilt had been returned, if any court sets aside or invalidates the sentence of a defendant convicted of an offense under Section 19.03 (Capital Murder), Penal Code, rather than Section 19.03 and sentenced to death, on the basis of any error affecting punishment only.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTIONS 1 - 3. No change.

SECTION 4. Deletes proposed text and adds new text regarding the sentencing of a defendant to life imprisonment or life imprisonment without parole.

SECTION 5. Differs from As Filed version by adding new text to clarify the sentencing of a defendant.

SECTION 6. Differs from As Filed version by adding new text regarding the sentencing of a defendant to life without parole under certain circumstances.

SECTION 7. Differs from As Filed version by deleting the phrase "sentenced to death."

SECTION 8. Renumbers proposed SECTION 7 as SECTION 8.

SECTION 9. Renumbers proposed SECTION 8 as SECTION 9.