

BILL ANALYSIS

Senate Research Center
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S.B. 348
By: Lucio et al.
Criminal Justice
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DIGEST AND PURPOSE

Under current Texas law, a jury in a capital offense trial can either sentence a person to death or give the person a life sentence for which they can become eligible for parole in 40 years. However, Texas juries do not have the option of sentencing an individual convicted of a capital offense to life without parole. As proposed, S.B. 348 adds life without parole to the available sentencing options for all capital felonies, including those cases where the prosecution does not seek the death penalty. This bill allows a jury to sentence 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, as follows:

Sec. 12.31. CAPITAL FELONY. (a) Adds imprisonment for life without parole to the list of punishment options for an individual adjudged guilty of a capital felony.

(b) Makes conforming changes.

SECTION 2. Amends Section 508.046, Government Code, to make a conforming change.

SECTION 3. Amends Section 508.145(a), Government Code, to make a conforming change.

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 to require the defendant to be sentenced to life imprisonment or life imprisonment without parole. 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) (Effect of Reversal) 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 the evidence, during 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 subsection 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.

(b) Requires the court, at the proceeding under this subsection, to instruct the jury that, after taking into account all the evidence described by Subsection (a), the jury shall assess as punishment on the defendant a sentence of life imprisonment in the institutional division of the Texas Department of Criminal Justice (TDJC) 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 to 40 years.

(c) Requires the court to sentence the defendant to life imprisonment in the institutional division of TDJC, if the jury assesses punishment as life imprisonment or is unable to assess punishment. Requires the court to sentence the defendant to imprisonment in the institutional division of TDJC for life without parole, if the jury assesses punishment as imprisonment for life without parole. Deletes existing text requiring the judge to sentence a convicted defendant to life imprisonment when the state does not seek the death penalty in a capital felony case.

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 instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b), it is required to answer certain issues relating to the imposition of a sentence of life imprisonment without parole. Makes conforming changes regarding the judge's instructions to the jury explaining the three sentencing options. Deletes existing text requiring the court to meet certain requirements, upon the written request of the defendant's attorney.

SECTION 6. Amends Section 2(g), Article 37.071, Code of Criminal Procedure, as follows:

(g) Requires the judge, rather than the court, to sentence the defendant to death, if the jury returns an affirmative finding on each issue submitted under Subsection (b) and a negative finding on an issue submitted under Subsection (e)(1). Requires the judge, if the jury returns an affirmative finding on each issue submitted under Subsection (b) and returns an affirmative finding on an issue submitted under Subsection (e) (1) or is unable to answer an issue submitted under Subsection (e) (1), to sentence the defendant to imprisonment for life without parole into the institutional division of TDJC. Requires the judge, rather than the court, to sentence the defendant to imprisonment, rather than confinement, in the institutional division for life, if the jury returns a negative finding on any issue submitted under Subsection (b) or is unable to answer any issue submitted under Subsection (b). Deletes text referencing an affirmative finding on an issue submitted under Subsection (e) of this article.

SECTION 7. Amends Article 44.29(c), Code of Criminal Procedure, as follows:

(c) Requires a new punishment hearing for any defendant, rather than any defendant sentenced to death, convicted under Section 19.03, Penal Code, whose sentence has been set aside or invalidated by a court.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2003.