

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.

David Newburn
President of the Senate

Jim Coakley
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.

Lacey Spaw
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.

Robert Haney
Chief Clerk of the House

Approved:

17 JUNE '05
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:10 PM
JUN 17 2005
Roger Williams
Secretary of State