

**SUBJECT:** Life in prison at 40 years for certain repeat sex offenders

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 7 ayes — Hightower, Allen, Alexander, Edwards, Gray, Marchant, Serna  
1 nay — Hupp  
1 absent — Farrar

**WITNESSES:** For — Woody Clements, Sterlene Donahue, William “Rusty” Hubbarth, Justice For All; Laura Lyon, Texas Association Against Sexual Assault  
  
Against — Keith Hampton, Texas Criminal Defense Lawyers Association; Linda Marine, Texas Citizens United for the Rehabilitation of Errants; Deborah Moore  
  
On — Melinda Hoyle Bozarth, Texas Department of Criminal Justice; David P. Weeks

**DIGEST:** CSHB 104 would require that certain repeat sex offenders be sentenced to life in prison. The bill would apply to persons who were convicted of indecency with a child involving contact, sexual assault, or aggravated sexual assault, had been previously convicted of one of these offenses,*and* committed the second offense *after* the conviction for the first offense was final.  
  
These offenders would not be eligible for release on parole until their actual calendar time served, without consideration of good conduct time, equaled 40 calendar years.  
  
CSHB 104 would take effect September 1, 1997.

**SUPPORTERS SAY:** CSHB 104 is necessary to adequately punish repeat sex offenders. The bill would ensure that offenders who have committed two serious sex offenses would stay in prison at least 40 years before being considered for parole. Sex offenders tend to be repeat offenders who prey on the most vulnerable members of society and should be kept off the streets as long as possible.

While current law requires a minimum of 35 years in prison for some sex offenders who have previous felonies, CSHB 104 would more narrowly target repeat serious sex offenders. These offenders have proven that incarceration for life, not treatment, is the proper way to deal with them. Locking up these repeat offenders for a minimum of 40 years is not too harsh of a penalty when weighed against their continuing threat to society.

Currently, an offender described by CSHB 104 could receive a life sentence (considered to be 60 years for purposes of calculating parole eligibility in non-capital cases) or a term of 15 to 99 years. But these offenders only have to serve one-half of their sentences or 30 years before being eligible for parole. This is inadequate punishment for the heinous crimes covered by this bill, and these repeat sex offenders clearly deserve to be treated more harshly than other offenders. The state has the prison capacity to deal with any increase in the need for prison beds that would result from this bill.

CSHB 104 would apply only to offenders who have committed two serious sex offenses. There would have to be convictions, not deferred adjudication, for both offenses. In addition, the second offense would have to be committed after the final conviction for the first offense, ensuring that it would not apply to persons who committed their two offenses before being tried for the first one. Together these provisions would ensure that CSHB 104 would apply only to offenders who had already been tried, convicted, punished and given a chance to rehabilitate after one serious sex offense. Although the bill could apply to someone who had a conviction for statutory rape, the offender would be required to have two offenses to qualify for life in prison.

CSHB 104 would be in line with other laws that set long minimum terms for serious offenders. For example, under current law persons serving life sentences for certain sex offenses and who have been previously convicted of two felonies, one of which was a specified sex crime, are not eligible for parole until their calendar time served, without consideration of good conduct time, equals 35 years. Persons serving a life sentence in prison for a capital felony are not eligible for parole until their calendar time served, without consideration of good conduct time, equals 40 years. The offenders targeted by this bill should be treated at least as harshly as capital murderers. The availability of the death penalty for capital murders would ensure there

is a harsher penalty available for these offenders.

Currently, violent “3g” offenders are not eligible for “special needs” parole, used for inmates who are sick or elderly, so it would be inappropriate to make this program available to repeat sex offenders covered by CSHB 104.

OPPONENTS  
SAY:

The Legislature should not continue to craft a separate punishment system for sex offenders. Persons with repetitive, violent criminal histories are already being dealt with harshly and receiving long prison sentences. Repeat sex offenders should be punished under the standard Penal Code provisions for repeat and habitual felony offenders. For example, under these provisions, persons convicted of a first-degree felony such as aggravated sexual assault and who have been once before convicted of a felony must be given a term of 15 to 99 years or life in prison and must serve one-half of their sentences, or 30 years, without considering good conduct time, before becoming parole eligible. Even then the offenders are only *parole eligible*, and the parole board has the discretion to keep them in prison. CSHB 104 would be a move away from the 1993 Penal Code revisions that established punishment ranges rather than inflexible sentencing mandates.

CSHB 104 would establish penalties that could be inappropriate or out of line with other serious crimes such as murder or capital murder. For example, murder is a “3g” offense that requires offenders to serve 30 years in prison or one-half of their sentences, and persons who commit capital murder are eligible for parole after they serve 40 years in prison, without consideration of good conduct time. Defining life in prison for persons convicted under CSHB 104 the same as life in prison for capital felons could blur the distinction between the two crimes.

Elevating the punishments for the offenses listed in CSHB 104 could distort plea bargaining in these cases. Often a plea bargain is the best option in sex offense cases that are difficult to prove or when witnesses, especially children, are reluctant or unable to testify. For example, prosecutors could be unable to craft a plea bargain down to sexual assault with persons accused of aggravated sexual assault or indecency with a child involving contact because defendants would not want to agree to 40 years in prison. The result could be an increase in jury trials. Justice could be ill served

because innocent persons who would fall under CSHB 104 could agree to plea bargains on another offense because of their fear of mistakenly being found guilty of one of the offenses listed in CSHB 104 and being sentenced to life in prison.

CSHB 104 could have the unintended consequences of unfairly sending someone to prison for life who had as one of their offenses a conviction for statutory rape which can include a situation where a 20 year old had consensual sex with a 16 year old.

CSHB 104 would be costly, costing the state about \$2 million in additional prison operating costs over 10 years, requiring an additional 180 prison beds, according to the bill's fiscal note and criminal justice policy impact statement.

OTHER  
OPPONENTS  
SAY:

CSHB 104 would unfairly punish all repeat sex offenders the same way without making distinctions among those individuals who could be treated and potentially rehabilitated. It would be better to evaluate offenders who may represent a lower risk and eventually consider them for parole rather than set inflexibly long minimum prison terms. Treatment, not just punishment, should be a priority.

CSHB 104 should at least allow for parole eligibility sooner than 40 years for special cases in which inmates are sick or elderly, called "special needs parole." These inmates are often about to die, and their parole would not endanger the public but allow them to die in a hospice or nursing home, saving the state medical and housing costs.

NOTES:

The committee substitute changed offenders' prison terms from life without parole to parole eligibility after 40 years and added the requirement that the new offense be committed after the conviction for first offense had become final.

A related bill, SB 46 by Shapiro, which would require that persons convicted of certain sex offenders who have one previous conviction for a specified sex offense be given life in prison with no parole eligibility until the person has served 35 years in prison, passed the Senate on March 17 and was reported favorably, without amendment, the House Criminal Jurisprudence Committee on April 2.