SUBJECT: Requiring certain violent offenders to serve 85 percent of sentences

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — Hightower, Allen, Alexander, Gray, Hupp

0 nays

4 absent — Edwards, Farrar, Marchant, Serna

WITNESSES: For — Woody Clements, Sterlene Donahue, Shirley Parish, Justice For All; Deborah Moore

Against — None

On — Wayne Scott and Melinda Hoyle Bozarth, Texas Department of Criminal Justice

BACKGROUND: Code of Criminal Procedure art. 42.12, sec.3(g), prohibits persons convicted of certain violent offenses and those who used or exhibited a deadly weapon in the commission of a felony from receiving judge-ordered probation. These "3g" offenders also are not eligible for parole until their actual calendar time served, without consideration of good conduct time, equals one-half of their sentence or 30 calendar years, whichever is less, and at least two years. These restrictions on parole eligibility apply to the "3g" offenses of murder, indecency with a child involving contact, aggravated kidnapping, aggravated sexual assault, aggravated robbery and sexual assault.

DIGEST: CSHB 547 would change to 85 percent of their sentence the minimum amount of time that "3g" offenders and offenders who used or exhibited a deadly weapon in the commission of a felony must serve before being eligible for parole.

The bill would change the charges given to juries to reflect the requirement that these offenders serve 85 percent of their sentences before parole eligibility.

These offenders could be eligible for "special needs" parole before they served 85 percent of their sentences if they were at least 65 years old, had served 60 percent of their sentences and the parole board determined they no longer constituted a threat to their victim or the public.

CSHB 547 would take effect on the day that the attorney general or another attorney representing the state in the *Ruiz v. Collins* lawsuit certified to the governor that no federal district court retains jurisdiction to enforce the final judgment entered in the case on December 11, 1992. The bill would apply to persons sentenced for offenses committed on or after the day the bill becomes effective.

SUPPORTERS SAY:

CSHB 547 would require the worst criminal offenders — those who commit "3g" offenses or those who used a deadly weapon — to stay in prison for at least 85 percent of their sentences. These violent offenders should be kept off the streets as long as possible. CSHB 547 would be a step toward "truth in sentencing," which would continue the state's efforts at developing a fair and just criminal justice system.

CSHB 547 would not disrupt the state's use of its prison capacity or increase demand for space because it would only codify what is happening today. Violent offenders sentenced today are currently serving about 80 percent of their sentences, and parole rates for these offenders is less than 7 percent. CSHB 547 would ensure that these violent offenders would not inappropriately be released because of a change in the sentiment of parole board members or because of a desire to manage prison beds. The Criminal Justice Policy Impact Statement estimates no significant impact on corrections agencies for the first five years after passage of the bill.

CSHB 547 would retain the possibility of parole for these offenders after they have served 85 percent of their sentences so that they would have hope that they might be released on parole. This would give these inmates adequate incentive to behave in prison and work toward rehabilitation.

CSHB 547 could help Texas qualify for federal funds given to states as part of the "truth-in-sentencing" prison grants.

CSHB 547 would take effect only when the federal district court jurisdiction to enforce the *Ruiz* final judgment ends. At this point, the state would be free from any restrictions in the judgment on its use of prison beds and would have the maximum flexibility to use its prison capacity. This event will be well publicized, providing adequate notice to all of the changes in law.

OPPONENTS SAY:

Current law already mandates long prison stays for "3g" offenders and by lengthening these stays CSHB 547 would be unnecessarily punitive and unwisely reduce the state's flexibility in managing its criminal justice resources.

Mandating longer prison stays could mean that the prison population would continue to grow and that the state would have to continue building more prisons, especially since new offenses are sometimes added to the "3g" list. Even though the state has excess prison capacity now, it would be short-sighted to begin mandating long, inflexible prison terms.

The current requirements that "3g" offenders serve one-half of their sentence or 30 years is already strong enough to ensure that inmates are adequately punished by spending a long time in prison but still allows for a realistic possibility of parole. This parole possibility gives inmates an incentive to behave in prison and make serious efforts at rehabilitation. Increasing the time an inmate must serve before becoming parole eligibility could make it more difficult to manage a prison population with no incentive to rehabilitate.

CSHB 547 would be a merely symbolic gesture that the public could misconstrue as making a significant change in prison terms. Currently, aggravated violent offenders being sentenced to prison now are serving about 80 percent of their sentences, and some sex offenders are likely to serve their full sentence. Parole rates for violent offenders were about 7 percent in fiscal 1996 and have been even lower this year.

The Legislature should not enact a law affecting criminal sentences that becomes effective on an undetermined date. CSHB 547 would become effective only when the attorney general or another attorney tells the governor that no federal district court has jurisdiction to enforce the final

judgement in the *Ruiz* case. This would not provide the strict and certain notice that should be given about laws affecting persons' liberty. For example, both prosecutors and defendants crafting plea bargains need to know how long before a defendant would have to serve before becoming eligible for parole.

OTHER OPPONENTS SAY:

The bill does not include information on how the Texas Department of Criminal Justice would calculate an eligible parole date for someone given a life sentence. Currently, a life sentence is inferred to be 60 years in prison, although the statutes do not mention a specific number. Persons given a life sentence for a "3g" offense become eligible for parole when they serve 30 years, which meets both restrictions applied to "3g" offenders — that they serve 30 years or one-half their sentences, whichever is less, before becoming parole eligible. CSHB 547 would make it unclear how to calculate 85 percent of a life sentence for which a number of years is not specified.

NOTES:

The committee substitute changed the effective date of the bill from September 1, 1997, to the day that the attorney general or another attorney certifies to the governor that that no federal district court retains jurisdiction to enforce the final judgment in the *Ruiz v. Collins* lawsuit.