SUBJECT: Authorizing child safety zones for "3g" offenders

COMMITTEE: Corrections — favorable, as amended

VOTE: 7 ayes — Haggerty, Allen, Culberson, Ellis, Gray, Lengefeld, Longoria

0 nays

2 absent — Staples, Farrar

WITNESSES: None

BACKGROUND: The Code of Criminal Procedure requires judges who assign community supervision (probation) and parole panels that grant parole to persons convicted of certain sex offenses against children to require as a condition of probation or parole that offenders stay out of "child safety zones." These requirements apply to the following offenses if the victim was a child: aggravated sexual assault; sexual assault; indecent exposure; indecency with a child; prohibited sexual conduct (incest); sexual performance by a child; possession of child pornography; aggravated kidnapping with the intent to violate or abuse the victim sexually; or first-degree felony burglary with intent to commit felony indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, or aggravated kidnapping with sexual intent.

Code of Criminal Procedure, art. 42.12, sec. 3(g) prohibits persons convicted of certain crimes from receiving judge-ordered probation. The "3g" offenses are murder, capital murder, sexual assault of a child, aggravated sexual assault, indecency with a child involving contact, aggravated kidnapping, aggravated robbery, and some repeat drug-free zone offenses. In addition, the 3g provisions apply to persons who use or exhibit a deadly weapon while committing a felony or who are parties to these offenses.

In some cases, persons convicted of 3g offenses can be placed on community supervision by juries. When this occurs, judges set the probation conditions.

Parole eligibility for 3g offenders also is restricted. Capital murderers are not eligible for parole until they serve 40 years, without consideration of good-

conduct time. All other 3g offenders are ineligible for parole until their time served, without consideration of good-conduct time, equals one-half of their maximum sentence or 30 years, whichever is less, and they must serve at least two years.

DIGEST:

HB 2206, as amended, would authorize judges setting probation conditions and parole panels establishing parole conditions for persons convicted of 3g offenses to require as a condition of probation or parole that the offenders stay out of established child safety zones if warranted by the nature of the offense.

Offenders could be prohibited from supervising or participating in athletic, civic, or cultural programs or from entering locations of those programs that involve persons 17 years old or younger. They also could be prohibited from going in, on, or within a distance — determined by the judge or parole panel — of premises where children commonly gather, including schools, day-care facilities, playgrounds, public or private youth centers, public swimming pools, or video arcade facilities.

Offenders could ask a court or a parole panel to modify the child safety zone if it interfered with the offender's ability to attend school or hold a job and created an undue hardship, or if the zone was broader than necessary to protect the public.

HB 2206 would take effect September 1, 1999.

SUPPORTERS SAY:

HB 2206, as amended, would authorize — but not mandate — child safety zones when the most serious offenders, those on the 3g list, are placed on probation or parole. While current law requires the establishment of child safety zones for some sex offenders, including some on the 3g list, other 3g offenses also may warrant the establishment of a zone. In some cases, judges or parole panels may want to monitor and restrict as closely as possible serious, violent offenders who should not have easy access to children.

HB 2206 would not infringe on judges' or parole panels' discretion in decisions about establishing child safety zones. The parameters in HB 2206 could give judges and panels guidance in establishing a zone, but judges and panels also would be free to craft specific conditions applicable for each case. The statutes list many optional conditions for judges or parole panels to

impose, and these never have been taken to be exclusive or exhaustive lists.

Under the bill, judges and parole panels could order probationers or parolees to stay away from places where children congregate and from programs that involve children. Law enforcement officers and others report that they often observe that offenders who could harm children are in parks or school areas, but the observers are powerless to do anything if the offenders are not breaking the law. Establishing child safety zones would allow the state to revoke probation or parole if these offenders violated the conditions and were found around children. Any inconvenience to offenders would be outweighed by the advantage of saving children from harm.

The bill would ensure that offenders could ask for a modification of the zone if the zone created an undue hardship or was broader than necessary. For example, a judge or parole panel could modify a zone if an offender needed to pick up his or her child or grandchild from school or to attend a school event.

OPPONENTS SAY:

HB 2206 is unnecessary because judges and parole panels already have broad authority to place conditions on probationers and parolees. It could be inappropriate for the Legislature to continue to enumerate specific probation and parole conditions. There is a danger that some people could view lists of possible probation and parole conditions as exclusive lists, resulting in challenges whenever courts or parole panels deviated from the list. Also, courts and parole panels could become reluctant to craft conditions that were not on the list but could be more appropriate for a specific case.

Courts or parole panels could establish unreasonably restrictive child safety zones. Prohibiting offenders from certain areas could make it hard for them to reintegrate into work and family. For example, they might be unable to pick up their own children at school. Other laws and city ordinances could be used to arrest or deter persons from committing an offense.

Child safety zones would be difficult to enforce. It would be difficult for probationers and parolees as well as law enforcement authorities to judge if a person was a specified distance from a certain place, and police would not know if a person was subject to a zone restriction.

OTHER OPPONENTS SAY:

HB 2206 should mandate the imposition of child safety zones whenever 3g offenders are put on probation or paroled. Statewide standards are needed for child safety zones for all serious, violent offenders because probation and parole conditions now vary.

NOTES:

The committee amendment would include in the possible child safety zones locations where youths may be participating in programs and also state that the programs, events, and places listed in the bill would not be exclusive.

The companion bill, SB 660 by Cain, passed the Senate on the Local and Uncontested Calendar on March 25 and was reported favorably, without amendment, by the House Corrections Committee on April 6, making it eligible to be considered in lieu of HB 2206. SB 660 also is on the Local, Consent, and Resolutions Calendar for April 23.