

SUBJECT: Revisions to prohibition on jury-recommended probation for sex crimes

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vo
0 nays
3 absent — Christian, Hodge, Vaught

WITNESSES: For — (*Registered, but did not testify*: Steve Lyons, Houston Police Department)

Against — Kristin Etter, Texas Criminal Defense Lawyers Association;
(*Registered, but did not testify*: Ruth Epstein, ACLU of Texas; Charlotte Lewis; Susan Woodham)

On — Shannon Edmonds, Texas Criminal Defense Lawyers Association;
(*Registered, but did not testify*: Randy Batten, Vincent Castilleja, and Scott Merchant, Texas Department of Public Safety)

BACKGROUND: In 2007, the 80th Legislature enacted HB 8 by Riddle, which increased penalties for sex crimes committed against children. The bill authorized the death penalty or life-without-parole for second convictions of “super aggravated sexual assault” against children. First offenses are punished with 25 years to life and are ineligible for parole. HB 8 also created a new offense of “continuous sexual abuse.” The offense is a first-degree felony punishable by a term of 25 years to life, and offenders are not eligible for parole.

Code of Criminal Procedure art. 42.12(d) lists offenses for which jury-recommended community supervision is prohibited.

DIGEST: CSHB 718 would revise the offenses for which jury-recommended community supervision was prohibited. It also would remove numerous references in the parole statutes to the offense of continuous sexual abuse, for which parole is prohibited.

The bill would make aggravated kidnapping offenses for which the victim is 17 years old, instead of 14 years old, ineligible for jury-recommended probation. It also would eliminate the provision prohibiting jury-recommended probation in all cases of indecency with a child involving contact in which the victim was younger than 14 years old. Instead, the restriction on jury-recommended probation would apply only to indecency with a child involving contact if there was no finding in the case that the circumstances involved consensual conduct between a defendant younger than 19 years old and a victim at least 13 years old.

The bill would take effect September 1, 2009. The changes relating to offenses eligible for jury-recommended probation would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 718 would revise the current provisions prohibiting jury-recommended probation for two offenses so that they would better protect children. The bill would make the prohibition apply to all cases of aggravated kidnapping instead of just those with victims under 14 years old. Aggravated kidnapping is a violent, serious offense, no matter what the age of the victim, and jury-recommended probation in these cases would be inappropriate. CSHB 718 would harmonize this provision with the ones requiring sex offender registration for aggravated kidnapping with child victims.

The bill would refine the prohibition on jury-recommended probation as it relates to indecency with a child involving contact so that there could be the possibility of probation in cases of consensual teenage conduct. Given the nature of these cases, probation may be appropriate in some cases. For example, a case could involve a 17 and a half year old having sex or touching his 14 year old girlfriend, and a jury should be able to consider probation in such cases. CSHB 718 would give juries the discretion to evaluate the individual circumstances of these offenses and decide whether to grant probation.

Other changes in the bill are nonsubstantive and consist of correcting references to other parts of the statutes and removing references to continuous sexual abuse that are scattered in the laws dealing with parole since parole is not an option in these cases.

OPPONENTS
SAY:

CSHB 718 could go too far in eliminating the possibility of jury-recommended probation in cases of indecency with a child involving contact that did not fit the parameters of CSHB 718 and in all aggravated kidnapping cases, not just those with younger victims. In general, it is always best to give juries the maximum amount of discretion to look at the individual case and to consider mitigating circumstances that might make probation appropriate.