

SUBJECT: Life without parole for repeat sexual assault, aggravated sexual assault

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Gallego, Aliseda, Burkett, Carter, Rodriguez, Zedler

0 nays

3 absent — Hartnett, Christian, Y. Davis

WITNESSES: None

BACKGROUND: Penal Code secs. 12.31, 12.42 (c)(3), and 12.42(c)(4) authorize the punishment of life-without-parole for capital murder, second convictions of what is called “super aggravated sexual assault” against children, and second convictions of continuous sexual abuse of a child.

The term “super aggravated sexual assault” refers to an enhancement of the aggravated sexual assault statute. It applies to convictions for aggravated sexual assault if the victim was younger than six years old, or younger than 14 and the offense included certain aggravating factors, including bodily injury or the use of a weapon. Like continuous sexual abuse of a child, a first offense for super aggravated sexual assault carries a minimum sentence of 25 years in prison and a maximum sentence of life, and offenders are not eligible for parole.

Under Penal Code, sec. 12.42(c)(2), second offenses of sexual assault and aggravated sexual assault are punished by life in prison. Under Government Code, sec. 508.145(c), persons serving this type of life sentence are not eligible for parole until they have served 35 years in prison, without consideration of good conduct time. Government Code, sec. 508.046 requires a two-thirds vote of the seven-member board of pardons and paroles.

Code of Criminal Procedure, Art. 42.12, sec. 5(d) lists the offenses for which a defendant may not receive deferred adjudication. Under deferred adjudication, a judge may, after receiving a plea of guilty or no contest, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision (probation). If the

defendant successfully completes probation, the judge must dismiss the charges and discharge the defendant.

A defendant may not receive deferred adjudication if charged with:

- second offenses of sexual assault and aggravated sexual assault and was placed on community supervision for the first offense;
- continuous sexual abuse of a young child or children; or
- super aggravated sexual assault.

DIGEST:

CSHB 3 would require a sentence of life-without-parole for persons convicted of aggravated sexual assault and sexual assault who were previously convicted of sexual assault, aggravated sexual assault, or continuous sexual abuse of a young child or children.

This punishment would not apply if either of the convictions was for sexual assault in which the defendant was under 19 years old and the victim at least 13 years old.

CSHB 3 also would prohibit deferred adjudication for persons charged with sexual assault or aggravated sexual assault if they had a previous conviction for continuous sexual abuse of a young child, sexual assault, or aggravated sexual assault.

The bill would take effect September 1, 2011, and apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 3 would impose life-without-parole on certain repeat sexual assault and aggravated sexual assault offenders to make Texas' punishment more appropriately fit these crimes and to help protect the public. Repeat, violent sexual assault is the type of serious crime that deserves the most serious punishment available. Punishing these crimes with life-without-parole would align them with the current crimes receiving this punishment.

CSHB 3 would ensure that violent, repeat sex offenders never leave prison to victimize anyone else. Sexual assault and aggravated sexual assault are heinous crimes, and these offenders have high recidivism rates. The possibility of parole for these offenders is unacceptable, even if remote. Although these sex offenders cannot be paroled under current law until they have served at least 35 years behind bars, many offenders, especially

young ones, could live well beyond that 35 years. Instead of accepting plea agreements in these cases, prosecutors should obtain convictions for the actual crimes committed so that offenders would be subject to life-without-parole and the public would be protected from these dangerous sexual predators.

Although 2009 parole rates were about 17 to 21 percent, in the past they have been much higher. The possibility of never being released from prison may be more of a deterrent for some offenders.

CSHB 3 could bring peace of mind to victims by guaranteeing that certain repeat, violent sex offenders actually stayed in prison for life. Currently, family and friends of victims are forced to monitor an inmate's status throughout a life sentence, because release on parole remains possible.

Although this change would be important to ensure these offenders never would be released, it would not impose significant additional costs to the criminal justice system because these offenders already must serve at least 35 years without parole consideration and are rarely, if ever, paroled.

The Texas Department of Criminal Justice (TDCJ) has the expertise and resources to manage offenders who are ineligible for parole. The agency currently houses about 330 offenders with life-without-parole sentences with no serious problems. The department houses many hard-to-manage inmates, and privileges and punishments within a prison can be used as management tools. Studies have shown that these offenders do not pose a disproportionate risk of violence in prison.

OPPONENTS
SAY:

Texas' current law works adequately to punish and supervise persons repeatedly convicted of sexual assault and aggravated sexual assault. The law effectively imposes life-without-parole for repeat sexual assault and aggravated sexual assault by imposing life in prison. Under this sentence, they must serve 35 years of actual calendar time in prison before they are even eligible for parole, and being eligible for parole does not guarantee that an inmate will be released. Two-thirds of the seven-member board of pardons and paroles must approve these offenders for parole, an unlikely scenario in light of the tough parole policies of the last decade.

Requiring life-without-parole for these offenders would prevent the board of pardons and paroles from evaluating these offenders and making release decisions that best serve society. The board has been extremely cautious

about releasing violent, repeat sex offenders on parole. Although few are approved, it would be better to continue allowing these offenders to be eligible for parole, for both prison management reasons and to recognize that some offenders could be rehabilitated and society best served if they were released on parole.

With incarceration costs at about \$18,000 per inmate per year, the expense of housing an ever-growing prison population of inmates sentenced to life without parole could tax criminal justice resources, especially considering that medical expenses incurred by aging inmates are significantly higher than those of younger offenders.

Expanding life-without-parole beyond capital cases and the most serious sex crimes against children could distort the relationship between offenses and punishments in a system that currently reserves the harshest penalty of life-without-parole for these offenses. With a mandatory punishment of life-without-parole, it could be difficult to reach an agreement for a guilty plea in these cases, if prosecutors thought a plea agreement was advisable. As the number of crimes that carry a sentence of life-without-parole increases, it can become irresistible to continue to add new offenses.

CSHB 3 could result in problems with prison management. Managing inmates without being able to use parole as an incentive for good behavior could be difficult and expensive.

OTHER
OPPONENTS
SAY:

A better approach could be to make life-without-parole optional, rather than mandatory, for the repeat sex offenders described by the bill.

NOTES:

The committee substitute added the provision excluding convictions for sexual assault in which the defendant was under 19 years old and the victim at least 13 years old from the punishment of life-without-parole.