

- SUBJECT:** Life without parole, employment restrictions for certain sex offenders
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Toth  
0 nays  
1 absent — Hughes  
1 present not voting — Schaefer
- WITNESSES:** For — Rodney Arbuckle, Desoto Parish Sheriff's Office; Bascom Bentley III; Amy Fletcher; Craig Fletcher; Catherine Palmore; Ricky Richards; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Ann Hettinger, Concerned Women for America; Steven Tays, Bexar County Criminal District Attorney's Office)  
  
Against — Herman Buhrig; Helen Eisert; Janice Hosey; Philip Taylor; (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association; Mary Molnar, Texas Voices for Reason and Justice; Earl Anthony; Mandy Clare; Albertine Hendrickson; Charles Hosey; Jacalyn Iversen; Ed Lindquist; Wesley Pearson; Jorge Renaud; Bill Shier; G B Wardian )
- 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 convictions for aggravated sexual assault, continuous sexual assault of a young child, or continuous trafficking of persons if there is a previous conviction for one of these crimes.  
  
Code of Criminal Procedure, art. 62.001(6) defines the term "sexually violent offense" for the purposes of the state sex offender registry. It includes continuous sexual abuse of a young child, second-degree felony indecency with a child involving sexual contact, sexual assault, aggravated sexual assault, sexual performance by a child, aggravated kidnapping with sexual intent, and burglary of a habitation with intent to commit certain felony sex offenses.

DIGEST:

**Life without parole for certain repeat sex offenders.** CSHB 1302 would institute life without parole for convictions for a sexually violent offense, as defined by the bill, if the offender had a previous conviction for a sexually violent offense.

Sexually violent offense would be defined as continuous sexual abuse of a young child or aggravated sexual assault or any of the following offenses committed by a person at least 17 years old against a child younger than 13 years old:

- human trafficking of children involving certain sex offenses;
- indecency with a child involving sexual contact, sexual performance by a child;
- aggravated kidnapping with sexual intent; and
- burglary of a habitation with intent to commit third-degree felony indecency with a child, prohibited sexual conduct, or certain other felony sex crimes.

**Prohibited employment for certain sex offenders.** CSHB 1302 would prohibit persons subject to the state's sex offender registry for convictions of sexually violent offenses, as defined in Code of Criminal Procedure, art. 62.001(6), with victims younger than 13 years old from working for compensation in certain jobs. Registrants would be prohibited from: driving or offering to drive a bus, driving or offering to drive a taxicab or limousine; providing or offering to provide any type of service in another's home; and operating or offering to operate an amusement ride.

The bill would require judges in trials for sexually violent offenses to make an affirmative finding and enter it into the judgment if the victim or intended victim was younger than 13 years old at the time of the offense. Judges placing defendants on community supervision (probation) for sexually violent offenses would have to make the same finding and place it in the case file.

Sex offenders who would be subject to the state's sex offender registry requirement would have to be notified when leaving prison or the state juvenile agency of the prohibitions on employment. The verification form given by local law enforcement authorities to sex offenders subject to these prohibitions would have to include a summary of the types of prohibited employment.

The bill would take effect September 1, 2013. The sentence of life without parole would apply to offenses committed on or after that date.

The changes related to prohibited employment would apply to those required to register as a sex offender in whose case the affirmative finding relating to the victims age was made on or after the bill's effective date. The provisions relating to affirmative findings for persons placed on probation would apply to trials that began on after the bill's effective date.

**SUPPORTERS  
SAY:**

CSHB 1302 would impose life without parole on certain repeat violent sex offenders with young victims to make the punishment more appropriately fit the crimes and would impose employment restrictions on some violent sex offenders to better protect children.

CSHB 1302 might have prevented tragedies like the one that occurred when a 12-year old boy named Justin was abducted, strangled, and his body left in a swamp by a taxi cab driver with a prior violent sex crime against a child. This bill would be named Justin's Law in his honor, and has been passed unanimously by Oklahoma and Louisiana.

**Life without parole for certain repeat sex offenders.** The bill is narrowly drawn so that life without parole would apply only to the most dangerous sexual predators. Offenders would have to be 17 or older and have committed a second violent sex crime against a child 12 or younger. Persons who repeatedly commit violent sex crimes against society's most vulnerable members deserve the most serious punishment available, life without parole.

Punishing second offenses of the violent sex crimes listed in CSHB 1302 with life without parole would align them with current crimes, such as repeat convictions for continuous sexual abuse of a child, that receive this punishment.

CSHB 1302 would ensure that these offenders — who have already proved that they will reoffend — never leave prison to victimize anyone else. Although these sex offenders could receive long sentences under current law and have restrictions on their consideration for parole, the possibility of parole for these offenders is unacceptable, even if remote.

Prosecutors would retain discretion to handle these cases appropriately and

would have options to use plea agreements when advisable. They could prosecute these crimes as standard offenses without enhancements that carry life without parole if it were best.

Any use of state resources to handle this population of offenders would be warranted, given the nature of the crime and the public danger these offenders represent. The fiscal note estimates no significant implication to the state, and the criminal justice impact statement estimates that 13 offenders would meet the bill's criteria based on fiscal 2012 data.

**Prohibited employment for certain sex offenders.** By prohibiting violent sex offenders from certain types of employment, CSHB 1302 would help protect children. The bill would limit sex offenders' access to children in the places where children are most vulnerable.

The restrictions in the bill would be narrowly and appropriately drawn. The restrictions would apply only to a violent sexual offense committed against a child younger than 13, and all offenders who meet these criteria should have their employment restricted. The occupations that would be prohibited are a carefully drawn up list of only four categories. Numerous other occupations and places would remain open to sex offenders.

OPPONENTS  
SAY:

**Life without parole for certain repeat violent sex crimes.** Current laws work adequately to punish these offenders with long sentences and restrictions on parole, some even prohibiting parole and requiring long minimum sentences. Adding more offenses to those eligible for life without parole could distort the relationship among offenses. As the number of crimes that carry life without parole increases, it can become irresistible to continue to add new offenses.

With mandatory 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. In some cases, young, traumatized victims and their families may prefer to use a plea agreement to avoid a trial.

**Prohibited employment for certain sex offenders.** The employment prohibitions in CSHB 1390 would go too far in placing restrictions on all offenders in a broad category, without making any distinction about the risk of registrants.

By limiting the scope of possible employment, CSHB 1302 could exacerbate the serious difficulties sex offenders often have in finding employment. Holding a job is an important aspect of sex offenders' reintegrating into society and remaining law-abiding. Restricting employment could have a ripple effect that hurts sex offenders' families.

OTHER  
OPPONENTS  
SAY:

CSHB 1302 would institute a list of offenses defined as "sexually violent offense" that differs from the current list with that name in the laws covering the sex offender registry. This could introduce confusion into the application of both sets of laws.

The bill could foster confusion and difficulties in enforcement by pegging life without parole and employment prohibitions to offenses with victims younger than 13 while other offenses that use victims age ranges use under 14 years old.