

SUBJECT: Limiting parole and probation for sexual assault by adding to 3g list

COMMITTEE: Corrections — favorable, without amendment

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

0 nays

2 absent — Staples, Farrar

WITNESSES: None

BACKGROUND: Code of Criminal Procedure, art. 42.12, sec. 3(g) prohibits persons convicted of certain crimes from receiving judge-ordered community supervision (probation). The “3g” offenses are murder, capital murder, sexual assault of a child, aggravated sexual assault, indecency with a child involving contact, aggravated kidnaping, 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.

Parole eligibility for these offenders also is restricted. Capital murderers are not eligible for parole until they have served 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 at least two years (Government Code, sec. 508.145).

In general, other offenders are eligible for parole when their time served, plus good-conduct time, equals one-fourth of their sentence or 15 years, whichever is less. Persons serving a life sentence for some repeat sex offenses, including sexual assault, become eligible for parole only after serving 35 years, without consideration of good-conduct time.

DIGEST: HB 1535 would make all sexual assaults “3g” offenses.

The bill would take effect September 1, 1999, and apply only to offenses committed on or after that date.

SUPPORTERS
SAY:

HB 1535 would ensure that offenders convicted of sexual assault would not receive judge-ordered probation and would stay in prison for at least half of their sentences or 30 years, and for no less than two years. This punishment would be appropriate for someone who commits the serious crime of sexual assault. Sex offenders tend to be repeat offenders who prey on the most vulnerable members of society and should be kept off the streets as long as possible.

Sexual assault of a child and indecency with a child already are 3g offenses, and reason dictates that sexual assault of an adult should be as well. Sexual assault is a serious, heinous crime with a level of violence that is not necessarily different from that involved in an aggravated sexual assault or other 3g offenses. The Legislature is not bound by the Penal Code revisions of 1993 and has made changes to the list of 3g offenses since then.

Although parole approval rates for sex offenders may be low now, there is no guarantee that future parole boards will not start paroling persons convicted of sexual assault, as has occurred in the past. HB 1535 would ensure that from now on these offenders would serve at least half of their sentences before becoming eligible for parole. Any effect on state prison capacity would be minimal and not felt for many years. The state has adequate prison capacity to deal with any additional demand for prison beds that could result from this bill.

HB 1535 would exempt offenders only from judge-ordered probation. This is appropriate because in the case of sexual assault, only juries — as community representatives — should have authority to order probation.

OPPONENTS
SAY:

HB 1535 would remove a long-standing distinction between the punishments for aggravated sexual assault and for sexual assault. This would mean that crimes that differ in seriousness would be treated the same. Aggravated sexual assault already is a 3g offense and differs from sexual assault because, in general, the offender must cause or threaten serious bodily injury, attempt to cause death, use a deadly weapon, or commit the offense against someone younger than 14 or someone 65 or older. Because aggravated sexual assault involves a level of violence that does not have to be present for sexual assault, it deserves a harsher punishment.

Adding to the list of 3g offenses would disturb the balance of penalties created when the Penal Code was revised in 1993. The Punishment Standard Commission, which drafted the revised Penal Code, and the Legislature made a careful study of what to place on the 3g list and decided to reserve the 3g designation for the most serious and violent crimes. Adding sexual assault to the list would flatten the range of punishments.

Elevating sexual assault to 3g status could leave prosecutors unable to craft a plea bargain down to sexual assault with persons accused of aggravated sexual assault or indecency with a child, currently 3g offenses. Often a plea bargain is the best option in sex-offense cases that are difficult to prove or when witnesses are reluctant or unable to testify. Prosecutors could end up having to plea-bargain an aggravated sexual assault or sexual assault case down to assault or aggravated assault, which would result in the offender not having a conviction for a sex offense.

Sexual assault of adults already is punished harshly. Sexual assault is a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000. Repeat offenses can be punished as first-degree felonies or can carry life in prison with no parole eligibility for 35 years under a special statute for certain repeat sex offenders. Prison sentences for non-aggravated sex offenses are averaging about nine years, and offenders are serving about 80 percent of those sentences. Parole approval rates for non-aggravated sex offenders currently are below 2 percent.