

SUBJECT: Advising certain child sex offenders of the option of voluntary castration

COMMITTEE: Corrections — favorable without amendment

VOTE: 4 ayes — Allen, Hopson, Mabry, Stick

0 nays

3 absent — Alonzo, Farrar, Haggerty

WITNESSES: For — None

Against — Meredith Rountree, ACLU of Texas

BACKGROUND: The 75th Legislature in 1997 enacted SB 123 by Bivins, allowing Texas Department of Criminal Justice (TDCJ) inmates who meet specified criteria and are convicted of certain sex crimes against children to volunteer for an orchiectomy. Orchiectomy, also called castration, is the surgical removal of one or both testicles.

Government Code. sec. 501.061 permits TDCJ physicians to perform an orchiectomy on an inmate who:

- has been convicted of indecency with a child, sexual assault of a child, or aggravated sexual assault of someone younger than 14 years old and was convicted previously of one of these same offenses;
- requests the procedure in writing;
- is at least 21 years old;
- signs a statement admitting the offense;
- receives evaluation and counseling before the procedure by a psychiatrist and a psychologist appointed by TDCJ who have experience in sex offender treatment;
- gives the physician informed, written consent;
- has not previously requested the procedure and then withdrawn the request; and
- consults with a monitor appointed to assist the inmate with his decision.

According to TDCJ officials, 49 inmates have requested the procedure since 1997. Fourteen were found to be eligible under the law. One inmate has been castrated, and six more are waiting for the procedure.

DIGEST: HB 679 would amend Government Code, sec. 501.061 to require that TDCJ - Institutional Division inform certain inmates age 21 or older of their option to be castrated. An inmate in this category would have to:

- have been convicted of indecency with a child, sexual assault of a child, or aggravated sexual assault of someone younger than age 14;
- have had a previous conviction for one of these same offenses; and
- have not requested castration previously and subsequently withdrawn the request.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: The low number of inmates volunteering for castration indicate that few inmates know about the availability of the procedure and its effectiveness in reducing recidivism among serial child molesters. The bill would not change the eligibility criteria nor existing safeguards under current law. TDCJ would provide the information only to about 3,000 of the 26,900 incarcerated sex offenders would might qualify.

HB 679 would not impose any additional burdens on TDCJ officials. Information about castration is included in the inmate handbook already distributed to inmates, and the institutional division routinely evaluates all inmates for various programs. The Legislative Budget Board identifies no significant costs in implementing the program.

Current statutes penalize inmates who file frivolous suits against prison officials and procedures, so fears that this bill would lead to such suits are unfounded.

OPPONENTS SAY: Lack of inmate participation comes from a recognition that castration is a barbaric and inhumane punishment rather than a suitable medical treatment for sex offenders. Inmates already are well aware of the program, and providing letters or other individual notices to nearly 27,000 inmates would be costly.

Inmates might feel intimidated by TDCJ officials, and some might be coerced into taking an action that would harm them permanently. Sex offenders already are a marginalized group within the prison population, and their rights should be respected.

Jailhouse lawyers and other writ writers might seize on the opportunity to sue TDCJ for promoting a potentially unconstitutional means of cruel and inhumane punishment. Others perversely might file legal action if the department failed to follow state law and provide adequate notice to all potentially eligible inmates.