

SUBJECT: Parole reconsideration for aggravated sexual assault, capital murder

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Murphy, J. White, Allen, Keough, Krause, Tinderholt

0 nays

1 absent — Schubert

WITNESSES: For — Andy Kahan, Victim Advocate City of Houston; Jerry Daniel;  
(*Registered, but did not testify*: Justin Wood, Harris County District  
Attorney's Office; Jessica Anderson, Houston Police Department)

Against — Jennifer Erschabek, Texas Inmate Families Association;  
Lisa Haufler; Nancy Mcenany; (*Registered, but did not testify*: Robert L  
Elzner)

On — (*Registered, but did not testify*: Rissie Owens, Board of Pardons  
and Paroles)

BACKGROUND: Under Government Code, sec. 508.145(d)(1), inmates serving time for certain serious and violent offenses, including aggravated sexual assault, are not eligible for parole until their actual calendar time served, not considering good conduct time, equals one-half of their sentence or 30 years, whichever is less, with a minimum of two years. Under Government Code, sec. 508.145(b) an inmate serving a life sentence for a capital felony is not eligible for release on parole until actual calendar time equals 40 years, without consideration of good conduct time.

Government Code, sec. 508.141(g) requires the Board of Pardons and Paroles to adopt a policy establishing the dates the board may reconsider for release inmates who previously have been denied release on parole or mandatory supervision. For inmates convicted of aggravated sexual assault and those convicted of capital murder who are serving life terms, the board may reconsider them after an initial denial anytime between one

and five years.

Penal Code, sec. 22.021 makes aggravated sexual assault a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

Under Penal Code, sec. 12.31 the current punishment for a capital felony is death or life without parole, except that a juvenile certified to stand trial as an adult for a capital felony can receive a sentence of life in prison. Before life without parole was established in 2005 as a possible punishment for capital felonies, offenders could receive life in prison, which carried the possibility of parole.

**DIGEST:** HB 1914 would allow the Board of Pardons and Paroles to delay reconsideration for parole after an initial denial for up to 10 years, instead of five years, for offenders convicted of aggravated sexual assault and offenders serving a life sentence for a capital felony.

The bill would take effect September 1, 2015, and the Board of Pardons and Paroles would be required to adopt a policy consistent with HB 1914 as soon as practicable after that date.

**SUPPORTERS SAY:** HB 1914 would ensure that a reasonable amount of time elapsed between parole considerations for a person who had committed aggravated sexual assault or a capital felony, which are among the most heinous crimes. The bill is necessary because some victims and their families, including those tragically affected by the 1970s Houston Mass Murders, every few years face a situation where they have to protest the potential parole of the person involved in the crime that affected them or their loved ones.

Under current law, after offenders convicted of aggravated sexual assault or capital murder become eligible for parole and are denied, they must be reconsidered every one to five years. In some cases, the Board of Pardons and Paroles sets off reconsideration of these cases, even for egregious offenses, for three years. Because of this, some families have to begin the painful process of protesting potential parole every two-and-a-half years.

Having these offenders come up for parole consideration so frequently can be traumatic and burdensome for victims and their families, who want to weigh in with the parole board on the decision. Victims and their families often relive the crime and feel victimized during this process. One family has dealt with this traumatic and heartbreaking situation at 41 parole hearings since their son's death. Allowing these cases to be considered no more frequently than every 10 years could bring a small measure of peace to the families of victims.

The bill would be narrowly focused in addressing this injustice. It would apply only to aggravated sexual assault and capital murder, two of the most serious crimes for which parole is an option. A maximum 10-year period between parole considerations would be reasonable if the parole board thought it was appropriate given the nature of these horrific crimes. If a 10-year setoff period were imposed, offenders still would have the possibility of parole as an incentive for rehabilitation and good behavior in prison without the false hope of release after serving short stints between considerations.

The parole board still would have discretion to handle these cases individually and to grant parole or set the reconsideration of a case anywhere from one to 10 years. The bill would change only the maximum amount of time that the board could wait before reconsidering a case, and the board could continue to schedule reconsiderations in three-year increments. Because of the importance of discretion in the parole process, the bill would not establish a minimum time between parole considerations.

Holding parole considerations frequently can be an inefficient use of resources. Allowing the parole board to schedule consideration of appropriate cases for longer periods than under current law would allow the board to focus its resources on other cases.

**OPPONENTS  
SAY:**

The bill is unnecessary because current law creates a fair system of review that balances the needs of victims and offenders by setting a reasonable

limit of five years on the maximum amount of time that the parole board may put off a reconsideration of parole. Allowing the parole board to delay parole consideration for up to 10 years after an initial decision for some offenders could be too long. Factors affecting parole decisions can change, and being reviewed for possible parole can give offenders hope and be an incentive for them to work at rehabilitation and demonstrate good behavior in prison.

Aggravated sexual assault and capital felony offenders now serve multiple decades in prison before being considered for parole the first time. If subsequent parole reviews can be scheduled a decade later each time parole is denied, some offenders might receive few, if any, chances at parole.

OTHER  
OPPONENTS  
SAY:

HB 1914 would not go far enough to serve the interests of justice. The bill instead should set a minimum term between considerations for parole for those convicted of aggravated sexual assault or capital murder. A decade between parole considerations would be appropriate, given the seriousness of these crimes and the pain the process inflicts on victims and their families. A minimum term is needed because, even though the Board of Pardons and Paroles currently has authority to set the reconsideration of cases for up to five years, it still chooses to reconsider some cases every three years, even for the worst crimes.

NOTES:

The Senate companion bill, SB 771 by Hancock, was referred to the Senate Criminal Justice Committee on March 2.