

SUBJECT: Offenses prohibiting mandatory supervision; review of release

COMMITTEE: Corrections — favorable, with amendment

VOTE: 8 ayes — Hightower, Gray, Allen, Culberson, Farrar, Pitts, Serna, Telford
0 nays
1 absent — Longoria

WITNESSES: For — Pamela S. Lyncher, Ellen Davidson, Justice for All
Against — None
On — Wayne Scott, Bill McCray, Texas Department of Criminal Justice;
Carl Reynolds, Texas Board of Criminal Justice

BACKGROUND: With some exceptions, persons in prison who have not been released on parole are required to be released to "mandatory supervision" when their calendar time served plus good conduct time equals their sentence. Persons released on mandatory supervision are considered to be on parole, are under supervision by a parole officer and subject to parole conditions until their time served plus time on mandatory supervision equals their sentence.

Offenders serving sentences for certain offenses and for felony offenses for which the court enters an affirmative finding that a deadly weapon was used or exhibited during the offense or immediate flight from the offense may not be released on mandatory supervision. The offenses which prohibit release on mandatory supervision are: first-degree murder; capital murder; first- or second-degree aggravated kidnapping; second-degree sexual assault; second- or first-degree aggravated assault; first-degree aggravated sexual assault; first-degree injury to a child, elderly individual or disabled individual; first-degree arson; second-degree robbery; first-degree aggravated robbery; first-degree burglary; or felonies for which the punishment was increased because it occurred in a drug-free zone.

DIGEST: HB 1433, as amended, would prohibit from being released on mandatory supervision persons who are serving a prison sentence and have *previously* been convicted of one of the offenses for which mandatory supervision is denied or for a felony for which a deadly weapon finding was made by the court.

Persons would be prohibited from being released on mandatory supervision if a parole panel found that their good conduct time was not an accurate reflection of their potential for rehabilitation and that their release would unreasonably endanger the public. The parole panel's decision would not be subject to administrative or judicial review. If release was denied, the parole panel would be required to reconsider the person for release on mandatory supervision at least twice during the two years after its decision. If release on mandatory supervision was refused both times, persons would become permanently ineligible for release on mandatory supervision and could only be released on parole or when their sentences were complete.

HB 1433 would take effect September 1, 1995.

SUPPORTERS SAY: HB 1433 would tighten the mandatory supervision release laws to ensure that the most dangerous felons are not eligible for automatic release and would give parole panels discretion over the process so that the most violent, serious offenders are not automatically set free without their records and potential threat to the public being considered. Prison beds and state resources should be used for these serious, repeat offenders who pose a threat to the public.

Prohibiting persons who have a *previous* conviction for an offense that is ineligible for mandatory supervision from being released on mandatory supervision, whatever their current offense, would close the door on early release for these repeat offenders. These offenders have proved that they are dangerous, repeat felons who should not be automatically released.

Requiring all mandatory supervision releases to go through a parole panel would ensure that offenders will be reviewed before being let out of prison and not simply released because of an arbitrary calculation of their sentence and good conduct time. To be considered for release under mandatory supervision, an offender would have had to have been denied release on

parole, and these offenders should be closely scrutinized before being automatically released.

HB 1433 would be fair to offenders and protect the public because it requires that these offenders be considered by parole panels but not that they be released if their good conduct time does reflect their rehabilitation potential and their release would be unreasonably endanger the public. Offenders who are denied release on mandatory supervision by a panel would be assured of future consideration by a panel at least twice in the two years after the first denial. Offenders who are considered and rejected for release under mandatory supervision three times would have had ample consideration and would have to serve their sentences.

Parole panels should not be given guidelines to determine whether good conduct time is an accurate reflection of an offender's potential for rehabilitation and whether the offender would unreasonably endanger the public. This decision is similar to current parole decisions and should not be confined by statutory guidelines.

OPPONENTS
SAY:

Denying eligibility for release on mandatory supervision to persons on the basis of their previous offense, even if they were given probation, could unfairly judge some persons on their past rather than how they had behaved in prison.

This bill would change mandatory supervision release from a requirement that persons be released to a requirement that parole panels not release persons if certain conditions are met. This could create a "liberty interest" for offenders in the panels' decision since the panels could deny offenders what is now a right to release. As a result, the state may have to provide a higher level of due process to offenders being considered for release on mandatory supervision. For example, offenders could have more standing to probe into and rebut documents such as victim statements that could be examined by parole panels.

The criminal justice policy impact statement estimates that HB 1433 would result in an increase in demand for prison capacity of 1,199 by 2000. This could mean additional prison construction costs or costs to contract for extra beds. Construction costs for state-built facilities to meet the demand

for 1,199 beds would be about \$46 million and operating costs about \$16 million in 2000, according to the fiscal note. Any available resources for criminal justice would be better spent on funding a juvenile justice progressive sanctions model and juvenile prevention efforts than adding even more prison space.

This bill could have an even larger impact on the prison system than indicated by the criminal justice impact statement. Offenders who would be considered by a parole panel for release on mandatory supervision have already been denied parole, and there is little reason to think a panel would let them out if they have discretion in the decision.

OTHER
OPPONENTS
SAY:

Parole panels should be given guidelines for determining whether good conduct time is an accurate reflection of an offender's potential for rehabilitation and whether the offender would unreasonably endanger the public.

NOTES:

The committee amendment would change the disqualification for mandatory supervision to persons who had been *convicted* of certain offenses instead of persons who had previously served a sentence for the offenses.

The companion bill, SB 838 by Brown, has been referred to the Senate Criminal Justice Committee.