

**SUBJECT:** "3g" designation for child sexual assault, repeat sexual assault

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Place, Talton, Farrar, Greenberg, Pickett, Pitts  
0 nays  
3 absent — Hudson, Nixon, Solis

**WITNESSES:** For — Laura Lyons, Austin Rape Crisis Center; Frances J. Ellison  
Against — None  
On — Tony Fabelo, Criminal Justice Policy Council

**BACKGROUND:** Code of Criminal Procedure art. 42.12, sec. 3(g), prohibits persons convicted of certain crimes from receiving judge-ordered probation. These "3g" offenders are also 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 a minimum of two years (art. 42.18). The 3g offenses are: murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault and aggravated robbery.  
  
Sexual assault is a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000.

**DIGEST:** CSHB 594 would add to the list of 3g offenses sexual assault of a child and — if the offender had a previous conviction for sexual conduct under indecency with a child, sexual assault or aggravated sexual assault — sexual assault. CSHB 594 would take effect September 1, 1995.

**SUPPORTERS SAY:** CSHB 594 would ensure that offenders convicted of sexual assault of a child or a second serious sex offense stay in prison for at least half their sentences or 30 years, and at a minimum, for two years. 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. Prison

sentences for sexual assault of a child typically range from 6.7 years to 10.3 years and for sexual assault of an adult, from 13 to 17.4 years. Offenders usually serve between about 35 percent and 55 percent of their sentences, meaning these offenders can be back on the streets in a few years. This is light punishment for such violent and devastating crimes.

Indecency with a child is already a 3g offense, and reason dictates that sexual assault of a child, often a more serious offense, should be as well. The House-passed version of HB 2727 by Place would also make sexual assault of a child a 3g offense.

CSHB 594 would increase sentences in a fiscally responsible manner and would have little effect on the availability of prison beds. The Criminal Justice Policy Impact Statement estimates that by 2000 there would be a need for 77 additional prison beds as a result of the bill, with no significant fiscal implication to the state. Even if this bill would result in a need for as many as 500 additional prison beds, as one estimate predicts, it would not have a significant impact on a prison system with over 100,000 beds. Locking up these violent offenders for a longer period would be a cost-effective use of correctional resources.

**OPPONENTS  
SAY:**

Lengthening the list of 3g offenses would disturb the balance of penalties created when the Penal Code was revised in 1993. The 3g designation should be reserved for the most serious and violent crimes. Expanding the list flattens the range of penalties and means that crimes that differ in seriousness are treated the same. Sexual assault of a child or an adult is already a second-degree felony punishable by two to 20 years in prison, and repeat offenses can be first-degree felonies.

Elevating these offenses 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, especially if they are children, are reluctant or unable to testify.

OTHER  
OPPONENTS  
SAY:

This bill would do nothing to meet the treatment needs of sex offenders. Sex offender treatment in prisons is limited to a 200-bed program and a volunteer-run program. Sex offenders tend to be repeat offenders, and since most will eventually be released, treatment, not just punishment, should be a priority.

CSHB 594 could create the need for as many as about 500 additional prison beds, according to the estimate by the Criminal Justice Policy Council.

NOTES:

The original version of the bill would have added sexual assault to the list of 3g offenses, made indecency with a child, sexual assault and aggravated sexual assault punishable by life in prison and eliminated parole for repeat sex offenders serving life terms.