

SUBJECT: Allowing voluntary castration of some sex offenders

COMMITTEE: Corrections — favorable, without amendment

VOTE: 5 ayes — Allen, Culberson, Longoria, Serna, Telford

2 nays — Hightower, Gray

2 absent — Farrar, Pitts

SENATE VOTE: On final passage, March 28 — 27-2 (Ellis, West)

WITNESSES: For — William J. Winslade

Against — None

On — Carl Reynolds, Texas Board of Criminal Justice

DIGEST: SB 40 would allow 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.)

Defendants and prosecutors would be prohibited from offering evidence before sentencing that the defendant plans to undergo an orchiectomy. Judges would be prohibited from requiring a defendant from undergoing an orchiectomy as a condition of community supervision (probation), and parole panels would be prohibited from requiring inmates to undergo an orchiectomy as a condition of parole or mandatory supervision.

SB 40 would allow Texas Department of Criminal Justice physicians to perform a orchiectomy on an inmate who:

- has been convicted of indecency with a child, sexual assault of a child or aggravated sexual assault of a child and has a previous conviction for one of the same offenses;
- requests the procedure;
- is at least 21 years old;

- signs a statement admitting to the offense;
- is evaluated and counseled before the procedure by a psychiatrist and a psychologist appointed by TDCJ and with experience in the treatment of sex offenders;
- has given the physician informed, written consent; and
- consults with a monitor appointed to assist the inmate with his decision.

The inmate would be able to change his mind to undergo the procedure at any time. The name of an inmate requesting the procedure would be confidential.

The executive director of the Texas State Board of Medical Examiners, in consultation with two or more executive directors of college or university institutes for the study of medical ethics or medical humanities, would be required to appoint a monitor to assist an inmate in making the decision. The monitor would have to have experience in mental health, law and ethics. The monitor would have to consult with the inmate to determine if the inmate has received adequate information by medical professionals, to provide information if the monitor thinks the inmate is inadequately informed, to determine whether the inmate's decision was made without coercion and to advise the inmate to withdraw his request for the orchiectomy if the monitor thinks the inmate was coerced. The monitor would not be liable for damages from an act or an omission unless it was intentional or grossly negligent.

SB 40 would require TDCJ to conduct a long-term study for at least 10 years after the date an orchiectomy is performed to measure the rate of recidivism among inmates who undergo the procedure. TDCJ would have to provide for the psychiatric or psychological evaluation of an inmate who has had an orchiectomy and volunteers to be evaluated. Before each regular legislative session, TDCJ would be required to submit a report to the Legislature that compares the recidivism rate of sex offenders who have undergone an orchiectomy to those who have not.

Physicians who perform an orchiectomy would not be liable for an act or omission relating to the procedure unless the act or omission constituted negligence.

**SUPPORTERS
SAY:**

Castration would be a medical treatment option to help child sex offenders control their sexual compulsion. Persons who commit sex crimes against children tend to be repeat offenders with recidivism rates over 50 percent who will continue to victimize children throughout their lives. The state should do all it can to protect children from the heinous crimes committed by child molesters, including allowing volunteer orchiectomies. This could also help offenders many of whom want to live normal lives and to stop molesting children.

Several European countries have used castration to treat sex offenders and have reduced recidivism rates among offenders who have undergone the procedure. In some of these countries recidivism among sex offenders has dropped from over 50 percent to around 2 percent to 10 percent.

SB 40 would allow only volunteers to undergo the procedure and would prohibit any reduction in punishment because an offender had an orchiectomy or promised to undergo the procedure. SB 40 contains safeguards such as requiring screening and counseling and the appointment of an outside monitor to assist the inmate to ensure that inmates make an informed decision.

Surgical castration is preferable to chemical castration which lasts only as long as the offender continues treatment.

SB 40 would require a study of recidivism rates of offenders who undergo the procedure so that its effectiveness can be evaluated.

**OPPONENTS
SAY:**

Castration is a primitive, inhumane method of treating sex offenders that does not have a place in modern society. Texas should not become the only state in the country to allow surgical castration of offenders.

Castration would be more a punishment than a treatment. Allowing voluntary castrations could lead to its use as a punishment or a prerequisite to sentencing or to inmates mistakenly believing that they will have their punishments reduced if they volunteer for the procedure. Some inmates, especially ones who are mentally retarded, may not fully understand the procedure and its ramifications.

The effects of castration are unclear, and the state should not sanction such an unproved, irreversible procedure. Many sex crimes are crimes of violence that would not be reduced after an orchiectomy. Would the state next begin cutting off the hands of thieves?

The effects of castration can be at least partially undone by testosterone supplements and implants. Some offenders commit sex crimes despite castration.

OTHER
OPPONENTS
SAY:

This bill does not go far enough and should allow all sex offenders to volunteer to be castrated.