

- SUBJECT:** Life in prison for repeat sex offenders
- COMMITTEE:** Criminal Jurisprudence — favorable, with amendment
- VOTE:** 8 ayes — Place, Talton, Farrar, Greenberg, Hudson, Nixon, Pickett, Solis
0 nays
1 absent — Pitts
- SENATE VOTE:** On final passage, April 4 — voice vote
- WITNESSES:** None
- BACKGROUND:** Persons convicted of a felony who have been convicted of two previous felonies must be punished by life in prison or a term of 25 to 99 years.
- Persons serving a life sentence for a capital felony are not eligible for parole until their actual calendar time served, without consideration of good conduct time, equals 40 years. Capital felons can be granted parole only by a two-thirds vote of the entire 18-member Board of Pardons and Paroles.
- Persons sentenced to prison for certain violent offenses are not eligible for parole until their time served, without consideration of good conduct time, equals one-half of their sentence or 30 years, whichever is less, and at least two years. These offenses, listed in Code of Criminal Procedure art. 42.18, sec. 3g and often called "3g" offenses, are murder, indecency with a child, aggravated kidnapping, aggravated sexual assault or aggravated robbery or for any felony for which the court enters an affirmative finding that a deadly weapon was used or exhibited during the offense or during flight from the offense. Other offenders are eligible for parole when their calendar time served plus good conduct time equals one-fourth of their sentence or 15 years, whichever is less.
- DIGEST:** SB 45, as amended, would require a sentence of life in prison for persons convicted of two previous felonies, one of which was a sex crime specified by the bill, and are subsequently convicted of:

- aggravated sexual assault;
 - aggravated kidnapping with intent to violate or abuse the victim sexually;
- or
- first-degree burglary committed with intent to commit aggravated sexual assault, aggravated kidnapping with intent to violate or abuse sexually, indecency with a child or sexual assault.

One of the two previous felonies would have to have been sexual performance by a child, possession or promotion of child pornography, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct (incest), aggravated kidnapping with sexual intent or first-degree felony burglary with intent to commit indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct or aggravated kidnapping with sexual intent.

Persons serving life sentences under the bill would have to serve 35 years without consideration of good conduct time before being eligible for parole. SB 45 would lower from 40 years without consideration of good conduct to 35 years the time that capital felons would have to serve before being eligible for parole.

Those serving life sentences under this bill would be added to those covered by the current requirement applied to capital felons that parole be granted only on a two-thirds vote of the entire 18-member Board of Pardons and Paroles.

SB 45 also would require that on votes for parole, in either type of case, the entire membership of the board would have to meet in person to vote and that board members could not vote unless they first received a copy of a written report by a psychiatrist selected by the Texas Department of Criminal Justice's managed health care advisory committee on the probability that the offender would commit additional offenses if released.

The requirement that the members of the Board of Pardons and Paroles meet in person and that they receive a psychiatrist's report before voting on parole for a capital felon would be effective whether an offense was committed before, on or after the bill's effective date, September 1, 1995.

All other provisions would apply to offenses committed on or after the bill's effective date.

SB 45 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 45 would ensure that repeat, violent sex offenders serve at least 35 years in prison. The offenders subject to life sentences under this bill would have been convicted of three felonies, two of which were sex crimes. These offenders have proven they are likely to reoffend and should be kept off the streets, and especially away from children, for at least 35 years. SB 45 could help prevent tragedies like the death of 7-year old Ashley Estell of Dallas who was killed by a convicted sex offender who was on parole after serving only 18 months of a 10-year sentence. After three chances, a violent sex offender should be sent to prison for life.

Currently, an offender described by SB 45 can receive a life sentence (considered to be 60 years for purposes of calculating parole eligibility in non-capital cases) or a term of 25 years to 99 years. But these offenders only have to serve one-quarter to one-half of the sentence: one-half for a "3g" offenders and one-fourth, including good conduct time, for others. This is inadequate punishment for the heinous crimes covered by this bill. The state has the prison capacity to deal with any increase in the need for beds that would result from this bill. These repeat sex crimes clearly deserve to be treated more harshly than other offenders. These offenders have proved that incarceration for life, not treatment, is the proper way to deal with them.

The gravity of the crimes and the importance to society of decisions about parole in these cases dictate that any decisions in favor of parole be considered by the entire Board of Pardons and Paroles. Requiring the entire board to meet in person to approve parole by a two-thirds vote would help ensure that a decision to release a repeat sex offender is justified. Requiring the board to receive a psychiatrist's report on the probability that a sex offender or a capital offender would commit additional offenses if released would give board members necessary information to make decisions about the release of these offenders.

OPPONENTS
SAY:

SB 45 would take away courts' sentencing discretion by mandating a life sentence for certain offenders. Currently, a person described by SB 45 who is convicted of a felony after two previous felony convictions can be sentenced to life in prison or a term of 25 to 99 years. SB 45 would require that they be given a life sentence. Sentencing discretion is important because it allows a court to look at an offender's past offenses as well as the current offense and the circumstances surrounding the offenses when imposing a punishment. SB 45 would be a move away from the 1993 Penal Code revisions that established punishment ranges rather than inflexible sentencing mandates.

Persons with the repetitive, violent criminal history described by SB 45 are already being dealt with harshly and most likely are receiving long prison sentences. If they are convicted of aggravated sexual assault, aggravated kidnapping or burglary with a deadly weapon finding (all "3g" offenses), they have to serve one-half of their sentence, or 30 years, before becoming parole eligible. Even then the offenders are only *parole eligible*, and the parole board has the discretion to keep them in prison.

Defining life in prison for persons convicted under SB 45 the same as life in prison for capital felons, 35 years, would blur the distinction between the two types of crimes. Even a five-year difference between life in prison for the two types of crime is not an appreciable difference. Capital murder should carry a penalty substantially more serious than other crimes.

Requiring a two-thirds vote of the entire Board of Pardons and Paroles before paroling a person should be reserved for capital felons to ensure that this special condition is used only for the most serious crimes. Also, statutorily requiring a psychiatrist report before a vote could be taken by the board could raise due process issues, possibly giving the offender a right to rebut the report.

The amount of time that capital felons must serve before being parole eligible should not be reduced from 40 to 35 years. A minimum of 40 years in prison should be the only alternative to the death penalty for capital felons.

OTHER
OPPONENTS
SAY:

This bill would do nothing to increase 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.

NOTES:

The Criminal Justice Policy Impact Statement on SB 45 estimates the bill would result in an increase in institutional division capacity of 220 by 2000.

The committee amendments would lower the time that must be served by capital felons and persons convicted under this bill from 40 years to 35 years before becoming parole eligible.

Rep. Place said he plans to offer an amendment that would restore to 40 years the time that capital felons must serve before becoming parole eligible, eliminate the requirement that the board meet in person to vote on the cases and make changes in the psychiatrist's report requirement.