

**SUBJECT:** Allowing voluntary castration of certain child sex offenders

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 5 ayes — Alexander, Farrar, Hupp, Marchant, Serna  
2 nays — Hightower, Gray  
2 absent — Allen, Edwards

**WITNESSES:** For — Woody Clements, Sterlene Donahue, William “Rusty” Hubbarth, Justice for All; Deborah Moore  
Against — None  
On — Michael M. Warren, Texas Department of Criminal Justice

**DIGEST:** CSHB 769 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 planned to undergo an orchiectomy. Judges would be prohibited from requiring a defendant to undergo 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.

CSHB 769 would allow TDCJ physicians to perform an orchiectomy on an inmate who:

- had been convicted of indecency with a child; sexual assault of a child or aggravated sexual assault of someone younger than 14 years old and had a previous conviction for one of these same offenses;
- requested the procedure in writing;
- was at least 21 years old;
- signed a statement admitting the offense;

- was evaluated and counseled before the procedure by a psychiatrist and a psychologist appointed by TDCJ who had experience in sex offender treatment;
- had given the physician informed, written consent;
- had not previously requested the procedure and then withdrawn the request;
- consulted with a monitor appointed to assist the inmate with his decision.

An inmate would be able to change his mind to undergo the procedure at any time. An inmate who withdrew his request for the procedure could not have the procedure performed by TDCJ. The name of an inmate requesting the procedure would be confidential, but could be used to notify and provide information to the spouse of an inmate who was married.

Either the psychiatrist or psychologist appointed by TDCJ to evaluate the inmate would have to be a staff member of a medical facility under contract with TDCJ or TDCJ's institutional division. A doctor who performed an orchiectomy would not be liable for an act or omission relating to the procedure unless it constituted negligence.

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 ensure he had been given adequate information about the procedure by medical professionals who were providing treatment and advice; provide information if the monitor considered the inmate inadequately informed; and determine whether the inmate's decision was made without coercion and advise the inmate to withdraw his request if the monitor believed 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.

CSHB 769 would require TDCJ to conduct a long-term study for at least 10 years after the date an orchiectomy was performed to measure the rate of recidivism among inmates who underwent the procedure. During the study, TDCJ would have to provide for the psychiatric or psychological evaluation

of an inmate who had an orchiectomy and volunteered to be evaluated and for periodic monitoring and evaluation of the presence of the hormone testosterone in the inmate's body. Before each regular legislative session, TDCJ would be required to submit a report to the Legislature that compared the recidivism rate of sex offenders who had undergone an orchiectomy to those who have not.

CSHB 769 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS  
SAY:**

Allowing some child sex offenders to volunteer to be castrated would give these offenders a viable medical treatment option to help them control their sexual compulsion. This would help protect children from these repeat offenders. Although prison inmates have volunteered in the past to be castrated, TDCJ has lacked clear statutory authority to perform the procedure.

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 these offenders, including allowing volunteer orchiectomies. This could also help offenders, many of whom want to live normal lives and to stop molesting children.

Castration of sex offenders is not new or barbaric. Several European countries have used castration to treat sex offenders and have seen reduced recidivism rates among offenders who undergo the procedure. In some of these countries recidivism among sex offenders has dropped from over 50 percent to around 2 percent to 10 percent. California recently began allowing chemical castration for some sex offenders.

CSHB 769 would be limited to the worst offenders who commit sex crimes against children and who must be repeat offenders to qualify to volunteer for an orchiectomy. These are the offenders for whom studies have given the clearest evidence that castration has had the effect of reducing recidivism.

The bill contains many safeguards to ensure the procedure would not be abused or used unfairly. The procedure would be limited to volunteers, who

would have to have screening and counseling to ensure they understood their decision and who would have to admit their crime in writing and give written, informed consent to the procedure. The bill also would require the appointment of an outside monitor to assist the inmate to ensure he made an informed decision. By allowing an inmate to volunteer only once, the bill would stop inmates from repeatedly volunteering for the procedure just to get out of their cells for the necessary evaluations and then changing their minds

CSHB 769 would prohibit the introduction of evidence before sentencing that a defendant planned to undergo the procedure to ensure there would be no reduction in punishment because of an offender's plans. In addition, an offender could not be required to undergo the procedure as a condition of probation or parole.

Surgical castration is preferable to chemical castration, which lasts only as long as the offender continues treatment. Chemical castration has been shown to have more negative side effects for castrates. It would not necessarily be easy for an inmate who has been castrated to obtain testosterone. Also, the bill would allow for the monitoring of testosterone in the person's body for those who have volunteered to be evaluated in the required study.

CSHB 76 contains safeguards so that doctors who perform orchiectomies would not be liable except in cases of negligence. In addition, monitors appointed to help inmates with their decisions would only be liable in cases of intentional or gross negligence. Doctors who are part of the TDCJ health care system would not be forced to perform the procedure. Currently, there are procedures to handle cases in which a medical situation is outside of a doctor's area of expertise, and this procedure would be no different. One reason some doctors were reluctant to perform the procedure in the past is because of a lack of statutory authority.

CSHB 769 would require a study of recidivism rates of offenders who undergo the procedure so that its effectiveness could be evaluated.

OPPONENTS  
SAY:

Castration is a primitive, inhumane method of treating sex offenders that does not have a place in modern American society and would be more a punishment than a treatment. The procedure could face a constitutional court challenge as a cruel and unusual punishment. Instead of spending state funds on castrations, the state should focus its efforts on treatment and rehabilitation of offenders. Offenders would be free to have voluntary castrations once they were released to in the free world.

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 allow cutting off the hands of thieves?

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 uneducated or mentally retarded, may not fully understand the procedure and its ramifications. Despite the bill's provisions, there is a danger that volunteering for the procedure could become a bargaining tool used by inmates or the state.

The effects of castration are not clear from existing studies of castration in European countries. At least some studies involved small numbers of individuals and did not include a control group.

The effects of castration are not necessarily permanent and can be at least partially undone by testosterone supplements and implants. Testosterone can be easily obtained from doctors or illicit sources that supply steroids and hormones. Unless followed by long-term monitoring and testing for the presence of hormones, castration could be a useless procedure. It would be wrong to mislead the public into thinking that an offender is not a public danger when that would not be certain. Some offenders commit sex crimes, using objects other than sexual organs,

It is always questionable whether prison inmates can give free consent to any surgical procedure, and castration would be no different. It is unclear what would happen if doctors involved in the prison health care system did not want to perform the procedure.

OTHER  
OPPONENTS  
SAY:

CSHB 769 should include a requirement that inmates must participate in a therapy or treatment program that could include arousal reduction medications or submit to a period of chemical castration to suppress male hormones before a surgical procedure was performed.

This bill would not go far enough. Chemical or surgical castration should be mandated for certain sex offenders, or the bill should be expanded so that all sex offenders could volunteer to be castrated.

NOTES:

The committee substitute added provisions prohibiting inmates who have previously requested an orchiectomy and then withdrawn their request from having the procedure; requiring periodic monitoring and medical evaluations of the presence of testosterone for inmates volunteering for the TDCJ study; and allowing TDCJ to contract with public or private entities to conduct the study.

The companion bill, SB 123 by Bivins, passed the Senate by 25-4 on April 14 and was reported favorably, without amendment, by the House Corrections Committee on April 28, making it eligible to be considered in lieu of HB 769.

A similar bill, SB 769 by Bivins, passed the Senate during the 1995 regular session and was reported favorably by the House Corrections Committee but was placed on the calendar too late for consideration.