

SUBJECT: Life or 25 to 99 years for state jail felons with two prior felonies

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Talton, Dunnam, Farrar, Galloway, Keel, Nixon, A. Reyna  
0 nays  
2 absent — Place, Hinojosa

WITNESSES: None

BACKGROUND : Persons convicted of a felony, other than certain state jail felonies, and who have been previously convicted of two felonies must be punished by life in prison or a term of 25 to 99 years. The state jail felonies excluded from this requirement are those that are not subject to specific punishments because the offender used a deadly weapon or had previously been convicted of a specified violent felony or a felony that involved a deadly weapon.

DIGEST: HB 89 would require the enhanced punishment of life in prison or a term of 25 to 99 years to be given to persons convicted of felonies, *including* state jail felonies, if they had been previously convicted of two felonies.

HB 89 would take effect September 1, 1997.

SUPPORTERS SAY: HB 89 would allow persons being tried for state jail felonies to be treated like other persons being tried for felonies and to have their punishments enhanced to life in prison or 25 to 99 years if they had previously been convicted of two felonies. This change is needed to respond to the 1996 decision in *State v. Mancuso*, 919 S.W.2d 86, in which the Texas Court of Criminal Appeals held that the defendants' state jail felonies could not be enhanced to the more severe punishment allowed under the habitual offenders statute.

The habitual offender statute should apply to all repeat, habitual felons, including persons being tried for state jail felonies. Although their current offense may be a non-violent state jail felony, offenders who would be affected by HB 89 would have previously committed serious felonies and

their past felonies should work to enhance the punishment for their current offense. It is appropriate that persons convicted of three felonies be sentenced to life in prison or a term of 25 to 99 years.

Now that the state jail system has been in place for several years, this change is appropriate. When changes were made to the statutes governing state jail felonies in 1995, the system was still in its infancy, and the Legislature was appropriately cautious about developing laws to handle habitual state jail felons. Now it is clear that all persons convicted of three felonies should be handled the same. The state has ample prison capacity to handle any increase in demand created by HB 89, and this would be a wise use of state resources.

OPPONENTS  
SAY:

Last session the Legislature enacted provisions to deal with state jail felons who are habitual offenders, and these provisions should not be changed after only two years. These provisions specifically excluded some state jail felons from the requirement that persons being tried for felonies who have two prior felonies be automatically sentenced to life in prison or a term of 25 to 99 years.

Current law already deal appropriately with persons committing state jail felonies who have previous offenses. Persons being tried for state jail felonies who have committed prior felonies are punished for second- or third-degree felonies, depending on the the prior felonies and other circumstances. Because the these other provisions remain in the statute, HB 89 could result in confusion over how to handle certain state jail felons.

State jail felonies are nonviolent, low-level offenses that should not be enhanced like other more violent or serious felonies. When determining punishment for a crime, the most recent offense, in this case a state jail felony, should carry the most weight. It could be an unwise use of the state's resources to mandate life in prison or terms of 25 to 99 years for offenders whose current offense is nonviolent state jail felony.

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