

SUBJECT: Sex offender parole on medically recommended intensive supervision

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Madden, Hochberg, McReynolds, Dunnam, Haggerty, Jones

0 nays

1 absent — Oliveira

WITNESSES: For — (*Registered, but did not testify*: Ruth Epstein, ACLU of Texas; David M. Gonzalez, Texas Criminal Defense Lawyers Association; Nicole Porter, American Civil Liberties Union of Texas; Ana Yanez-Correa, Texas Criminal Justice Coalition)

Against — None

On — (*Registered, but did not testify*: Dee Wilson, Texas Department of Criminal Justice — Texas Correctional Office on Offenders with Medical and Mental Impairments)

BACKGROUND: Government Code, sec. 508.146 allows the state's prison inmates, except those sentenced to death or life without parole and those who are required to register as sex offenders upon release, to be considered for release from prison on a type of parole called medically recommended intensive supervision (MRIS) if the following conditions are met:

- the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), in cooperation with the Correctional Managed Health Care Committee (CMHCC), identifies the inmate as being elderly, physically disabled, mentally ill, terminally ill, mentally retarded, or having a condition requiring long-term care;
- the parole panel determines that, based on the inmate's condition and a medical evaluation, the inmate does not constitute a threat to public safety; and
- TCOOMMI, in cooperation with the pardons and paroles division, has prepared a medically recommended intensive supervision plan that requires the inmate to submit to electronic monitoring, places

the inmate on super-intensive supervision, or otherwise ensures appropriate supervision of the inmate.

A parole panel must require as a condition of release that the offender remain under the care of a physician and in a medically suitable placement. At least once each quarter, TCOOMMI must report to the parole panel on the offender's medical and placement status. A parole panel may modify the conditions of release and impose any condition, including a condition that the offender reside in a halfway house or community residential facility, based on TCOOMMI's report.

Offenders convicted of certain serious and violent offenses listed in Code of Criminal Procedure, 42.12 sec. 3g (often called "3g" offenses), can be considered for MRIS under the above conditions only if a medical condition of terminal illness or long-term care has been diagnosed.

DIGEST:

HB 2611 would allow offenders who were required to register as sex offenders to be released on medically recommended intensive supervision under certain circumstances. The offender would have to be in a persistent vegetative state or be a person with an organic brain syndrome with significant to total mobility impairment.

In addition, the inmate would have to meet the criteria currently applied to MRIS releases of serious and violent 3g offenders that they have a condition of terminal illness or long-term care and all other criteria in current law.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2611 could save taxpayer dollars without compromising public safety by allowing sex offenders who were vegetative or had an organic brain syndrome and were immobile to be part of the pool of offenders eligible for release under the MRIS parole program. Expanding this pool could lead to more inmates being released on MRIS, thereby saving the state the costs of their medical care.

Incarcerated offenders are not eligible for Medicaid, Medicare, or other federally funded programs, which means that the state must pay 100 percent of the costs of caring for chronically ill and incapacitated elderly inmates. Once these offenders are released on parole, they become eligible

for Medicaid and other federal programs, which helps defray the state's costs.

To help take advantage of these circumstances, the state created the MRIS program so that chronically ill and incapacitated inmates could be identified and considered for release on parole as long as public safety would not be compromised. However, under current law, sex offenders are ineligible for release on MRIS, meaning that the state must carry the entire financial burden of these inmates. HB 2611 would address this situation by making sex offenders eligible for MRIS. The bill's fiscal note estimates that in fiscal 2008-09 about 12 terminally ill sex offenders would be eligible for MRIS consideration and that the bill could have a positive impact of about \$1.2 million.

Texas prisons hold about 25,760 inmates whose offenses of record are sex offenses. These offenders tend to have long sentences and often are not released on regular parole, so many grow old and sick in prison. Some of the inmates with the highest health care costs in recent years have been sex offenders, according to CMHCC.

HB 2611 would not endanger public safety. HB 2611 sets extremely strict conditions that would have to be met by any sex offender considered for the program. First, a doctor would have to diagnose them as having a medical condition of terminal illness or long-term care. Then, they would have to be in a persistent vegetative state or have an organic brain syndrome with significant to total mobility impairment. This would ensure that these offenders would be incapable of causing harm if released.

In addition, parole panels considering sex offenders would have to determine, as with all MRIS decisions, that the inmate did not pose a threat to the public, and the offender would have to submit to supervision. Parole panels effectively could screen sex offenders like any other offender considered for MRIS and could ensure that those released would not be able to reoffend. Furthermore, TCOOMMI would have to give a quarterly report to the parole panel on the offender's status. If an offender's condition improved or had some other change in circumstances, the panel could modify the conditions of release or even revoke the offender's parole altogether. HB 2611 would not mandate releases, but simply would give the state a larger pool of inmates to draw on for MRIS.

HB 2611 could help alleviate prison overcrowding. Moving some terminally ill or incapacitated sex offenders out of prison could free up prison beds or resources for other offenders. This is especially important now as Texas prisons are at capacity and the state is having to lease beds from counties.

HB 2611 would be good for inmate families, who would be able more freely to visit and help care for offenders near the end of their lives. They also would be able to ensure that loved ones were receiving the care and medication they needed, which greatly would reduce stress for relatives of offenders.

**OPPONENTS
SAY:**

Sex offenders who were convicted of felonies and sentenced to prison time should serve their sentences, regardless of their age or medical condition. The state has built a thorough system to punish sex offenders, and prohibiting their eligibility for MRIS is a part of those policies. In 2003, the Legislature expanded the MRIS statute to include several types of offenders but specifically decided to exclude sex offenders, and this policy should not be reversed.

Public safety concerns should trump the state's financial concerns. By expanding the net of eligibility to include sex offenders, HB 2611 would allow parole panels to grant MRIS to offenders who could live for many years, possibly have an improvement in their condition, and possibly commit other crimes. Sex offenders come in all ages and abilities and often do not stop their crimes with age. Doctors cannot always accurately predict how dangerous a patient might be in the future.