

- SUBJECT:** Burglary with intent to commit a sex offense
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody
0 nays
2 absent — Schaefer, Toth
- WITNESSES:** For — Kevin Petroff, Galveston County District Attorney's Office

Against — (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association)
- BACKGROUND:** Code of Criminal Procedure, art. 42.12, sec. 3g, prohibits persons convicted of certain serious and violent crimes from receiving judge-ordered community supervision (probation). These offenses are often referred to as “3g offenses,” and include: murder; capital murder; indecency with a child; aggravated kidnapping; aggravated sexual assault; aggravated robbery; sexual assault; first-degree injury to a child; sexual performance of a child; certain drug offenses; first-degree criminal solicitation, compelling prostitution, trafficking of persons, and certain felonies involving use of a deadly weapon.

Under Government Code, sec. 508.145(d), most “3g” offenders are ineligible for parole until their time served equals half their sentence or 30 years, whichever is less, without consideration of good conduct time, and a minimum of two years.

Penal Code, sec. 30.02 makes it a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) to commit burglary of a habitation with intent to commit a felony other than theft.
- DIGEST:** HB 1620 would add first-degree burglary of a habitation if committed with the intent to commit felony continuous sexual abuse of a young child, indecency with a child, sexual assault, aggravated sexual assault, or prohibited sexual conduct to the list of offenses in Code of Criminal

Procedure, art. 42.12, sec. 3(g) that make persons convicted of the crime ineligible to receive judge-ordered community supervision.

Persons convicted of this crime also would be ineligible for parole until their time served, without consideration of good conduct time, equaled one-half of their sentence or 30 years, whichever was less, and a minimum of two years.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 1620 is necessary to ensure that persons who commit burglary of a home with intent to commit a sexual crime are punished appropriately and to ensure that they are considered for parole only after serving a fair portion of their sentence.

The bill would be a natural extension of current law, which makes other serious offenses involving sex crimes 3(g) offenses. Currently, someone convicted of burglary with intent to commit a sex offense could receive probation by a judge, a punishment that would not reflect the seriousness of this crime given that there was intention to commit a sex crime.

HB 1690 also would ensure that offenders who committed this crime were not eligible for parole until they had served a significant portion of their sentences. These offenders currently are eligible for parole consideration when their time served plus their good conduct time equals one-fourth of their sentence, or 15 years, whichever is less. This can result in offenders being released on parole without serving enough of a sentence to be adequately punished or rehabilitated, and this could endanger the public.

**OPPONENTS
SAY:**

HB 1690 is unnecessary because current law already severely punishes the crime of burglary of a habitation with the intent to commit a felony as a first-degree felony. Including the crime on the “3g” list would reduce the options available to judges and curtail their ability to handle each case individually to ensure that justice is served. As the list of “3g” offenses grows, some of the distinctions in the seriousness of different crimes blurs.

HB 1620 would result in delays in these offenders being considered for parole, and in some cases this may be inappropriate. Parole eligibility does not ensure release, and the board should be able to consider parole for offenders who commit this crime under the standard time lines.