

- SUBJECT:** Life without parole for super aggravated sexual assault
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Toth
0 nays
2 present not voting — Burnam, Schaefer
- WITNESSES:** For — Brent King, Chelsea's Shield; Morgan Neustein; Columba Wilson; *(Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; Lon Craft, Texas Municipal Police Association; Daniel Earnest, Jimmy Rodriguez , San Antonio Police Officers Association; MerryLynn Gerstenschlager, Texas Eagle Forum; Melinda Griffith, Combined Law Enforcement Associations of Texas; Ray Hunt, Houston Police Officers' Union; Dan Levey, National Organization of Parents of Murdered Children; Randle Meadows, Arlington Police Association; James Parnell, Dallas Police Association; Clay Taylor, Department of Public Safety Officers Association; Jennifer Tharp, Comal County Criminal District Attorney; Kristin Forburger; Andy Kahan)

Against — *(Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association)

On — Shannon Edmonds, Texas District and County Attorneys Association
- BACKGROUND:** Under Penal Code sec. 22.021 aggravated sexual assault is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000). If the offense is committed in conjunction with any of several aggravating circumstances described in sec. 22.021 (a)(2)(A), the penalty is enhanced, and it is sometimes referred to as “super aggravated sexual assault.” The term applies to convictions for aggravated sexual assault if the victim was younger than six years old, or younger than 14 and the offense included certain factors, including serious bodily injury or the use of a weapon. A first offense for super aggravated sexual assault carries a minimum sentence of 25 years in prison and a maximum sentence of life, and offenders are not eligible for parole.

DIGEST:

CSHB 1748 would impose a penalty of life-without-parole for “super-aggravated sexual assault” committed by persons 18 years old or older. The bill would add victims 14, 15, and 16 years old who suffer serious bodily injury to the list of victims which can qualify an offense to be punished under the super-aggravated sexual assault provisions relating to defendants 18 years old or older.

The penalty for “super-aggravated sexual assault” would remain 25 years minimum in prison with a maximum sentence of life in prison if the defendant was younger than 18 years old.

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

SUPPORTERS
SAY:

CSHB 1748 would impose life-without-parole on adult offenders who commit the heinous crime of super aggravated sexual assault to make the punishment more appropriately fit the crimes and to better protect the public. The crime of super aggravated sexual assault involves a violent, sexual crime against a child with aggravating factors and deserves the most serious punishment available.

The need for the change is illustrated by the crime committed against Chelsea King, a 17-year old who was brutally attacked, raped, and murdered by a man out on parole after serving only a handful of years for another rape of a child.

CSHB 1748 would impose a “one-strike” rule on this worst-of-the-worst offender so that no child would become the second victim of this type of violent criminal. Under current law, these violent sex offenders could serve out their sentences and be released into the community. This means that, for example, a 15-year old victim could see her offender released to society with no supervision.

Punishing these crimes with life without parole would align them with the list of current crimes, such as repeat convictions for continuous sexual abuse of a child, that carry this punishment. The law would not be unprecedented as there are many laws in Texas and other states that impose stronger penalties when children are the victim of violent crimes. The bill is crafted to meet the requirements in a U.S. Supreme Court decision that defendants receiving life without parole be 18 years old or

older. Punishments for offenders younger than 18 would remain as they are under current law.

Prosecutors would retain discretion to handle these cases appropriately and would have options to use plea agreements when advisable. For example, prosecutors could proceed with standard aggravated sexual assault that would not carry life-without-parole.

Although the fiscal note states that the impact of the bill is indeterminate, any use of state resources to handle this population of offenders would be warranted given the crime they would have committed and the public danger they represent.

**OPPONENTS
SAY:**

Current law works adequately to punish these offenders with sentences of life or 25 to 99 years in prison, and offenders are not eligible for parole. Adding more offenses to those eligible for life without parole could distort the relationship among offenses. As the number of crimes that carry life-without-parole increases, it can become irresistible to continue to add new offenses.

With a mandatory life without parole, it could be difficult to reach an agreement for a guilty plea in these cases, if prosecutors thought a plea agreement was advisable. In some cases, young, traumatized victims and their families may prefer to use a plea agreement to avoid a trial.