

- SUBJECT:** Stacked sentences for offenses against children, elderly, and the disabled
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody
1 nay — Schaefer
2 absent — Burnam, Toth
- WITNESSES:** For — Carlos Higgins, Texas Silver-Haired Legislature; Sherri Tibbe; (*Registered, but did not testify:* Dennis Borel, Coalition of Texans with Disabilities; Melody Chatelle, United Ways of Texas; Lon Craft, Texas Municipal Police Association; Catherine Cranston, Adapt of Texas, Personal Attendant Coalition of Texas; Brian Eppes, Tarrant County District Attorney's Office; Bob Kafka, Adapt of Texas; Stephanie LeBleu, Texas Court Appointed Special Advocates; Joy Rauls, Children's Advocacy Centers of Texas, Inc.; Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

Against — (*Registered, but did not testify:* Allen Place, Texas Criminal Defense Lawyer's Association)

On — (*Registered, but did not testify:* Shannon Edmonds, Texas District and County Attorneys Association)
- BACKGROUND:** Under Penal Code, sec. 3.03, sentences for convictions of most offenses arising from the same criminal episode and prosecuted in a single action must run concurrently. Sentences for convictions or plea agreements for the following offenses may run concurrently or consecutively:
- intoxication assault or manslaughter;
 - online solicitation of a minor;
 - continuous sexual abuse of a child;
 - indecency with a child;
 - sexual assault or aggravated sexual assault;
 - incest;

- sexual performance by a child;
- improper photography or visual recording;
- possession or promotion of child pornography;
- trafficking of persons; and
- compelling prostitution.

Additionally, if the judgment in any case contains an affirmative finding that the illegal activity was street-gang related, the sentences may run concurrently or consecutively.

DIGEST:

HB 220 would amend Penal Code, sec. 3.03 to allow concurrent or consecutive sentences for convictions or plea agreements for the offense of causing serious bodily injury or serious mental deficiency, impairment, or injury to a child, elderly person, or disabled person that was punishable as a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

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

SUPPORTERS
SAY:

By expanding the list of offenses for which sentences could be served consecutively, or “stacked,” HB 220 would recognize the heinous nature of causing serious injury to a child, elderly person, or disabled person. These crimes are at least as serious as the crimes already on the list.

Current law allows stacking sentences for continuous sexual abuse of a child, but not for continuous physical abuse of a non-sexual nature. HB 220 would allow for appropriate punishments in especially heinous situations, such as a recent case in which a man who repeatedly broke the legs and arms of his children is serving concurrent sentences and will be eligible for parole earlier than he would have been with consecutive sentences.

The bill would give judges a useful tool to help ensure that individuals who committed these crimes remained in prison. Stacking sentences would remain permissive, not mandatory. We entrust judges with discretion in many situations and would benefit from giving them the ability to strengthen sentences when the situation demands it.

With concurrent sentencing for offenses arising out of the same criminal episode, the offender is punished only once, despite having committed

multiple offenses. HB 220 would allow the offender to be punished for each crime, without separate trials that would be a drain on victims and on court resources.

The fiscal note and criminal justice impact statement both indicate that HB 220 would have no significant impact on state or local resources or the workload of correctional agencies.

OPPONENTS
SAY:

HB 220 would open the door to uneven punishments. Because consecutive sentencing is always discretionary, this bill could create a situation where the same crimes with the same severity were punished more or less harshly depending on the court and the jurisdiction. Justice should be dispensed evenly, and loosening the sentencing requirements would create more inequity in the justice system.

The Texas Board of Pardons and Paroles is already very diligent in reviewing cases. Even when a person receives concurrent sentences, the board can see that person has multiple convictions and would be less likely to parole the person. Stacking sentences in these cases would not decrease the likelihood of parole being granted because those with concurrent sentences are already less likely to receive parole.

Stacking sentences, as HB 220 would do, would not be an effective deterrent to these crimes. The cost of keeping people imprisoned would divert resources from other important efforts, such as criminal investigations and the probation and parole systems.

NOTES:

In 2011, the House passed a similar bill, HB 1601 by Price, which was placed on the Senate Intent Calendar but not enacted.